



# City of San Marcos

## Regular Meeting Agenda - Final City Council

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Tuesday, June 2, 2020

6:00 PM

Virtual Meeting

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**Due to COVID-19, this will be a virtual meeting. To view the meeting please go to [www.sanmarcostx.gov/videos](http://www.sanmarcostx.gov/videos) or watch on Grande channel 16 or Spectrum channel 10.**

### I. Call To Order

### II. Roll Call

### III. 30 Minute Citizen Comment Period

*Persons wishing to speak during the citizen comment period please submit your written comments to [citizencomment@sanmarcostx.gov](mailto:citizencomment@sanmarcostx.gov) no later than 12:00pm on the day of the meeting. The first 10 comments will be read aloud during the citizen comment portion of the meeting. Comments shall have a time limit of three minutes each. Any threatening, defamatory or other similar comments prohibited by Chapter 2 of the San Marcos City Code will not be read.*

## PRESENTATIONS

1. Receive status reports and updates on response to COVID-19 pandemic; hold council discussion, and provide direction to Staff.

## CONSENT AGENDA

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

2. Consider approval, by motion, of the following meeting Minutes:
  - A. May 14, 2020 - Special Meeting Minutes
  - B. May 19, 2020 - Special Meeting Minutes
3. Consider approval of Ordinance 2020-31, on the second of two readings, amending the official zoning map of the city by rezoning approximately 5.217 acres of land, generally located west of the intersection of Old Ranch Road 12 and Craddock Avenue, from "FD" Future Development, "CC" Community Commercial, and "P" Public and Institutional districts to "SF-6" Single Family District; including procedural provisions; and providing an effective date.
4. Consider approval of Ordinance 2020-32, on the second of two readings, annexing into the City approximately 9.61 acres of land, generally located in the 400 Block of Centerpoint Road; including procedural provisions; and providing an effective date.

5. Consider approval of Ordinance 2020-33, on the second of two readings, amending the Official Zoning Map of the City by rezoning approximately 7.959 acres of land, generally located in the 400 Block of Centerpoint Road, from "FD" Future Development District to "HC" Heavy Commercial District; and including procedural provisions.
6. Consider approval of Ordinance 2020-34, on the second of two readings, annexing into the City approximately 59.89 acres of land located at 4087 State Highway 21; including procedural provisions; and providing an effective date.
7. Consider approval of Ordinance 2020-35, on the second of two readings, amending the Official Zoning Map of the City by rezoning approximately 14.90 acres of land located at 4087 State Highway 21, from "FD" Future Development District to "LI" Light Industrial District; and including procedural provisions.
8. Consider approval of Ordinance 2020-36, on the second of two readings, amending the Official Zoning Map of the City by rezoning approximately 44.99 acres of land located at 4087 State Highway 21, from "FD" Future Development District to "MH" Manufactured Home District; and including procedural provisions.
9. Consider approval of Ordinance 2020-37, on the second of two readings, approving an update to the Service and Assessment Plan for the Whisper Public Improvement District; making a finding of special benefit to the property in the district, levying additional assessments against property with the district; establishing a lien on such property; approving an updated assessment roll for the district; providing for payment of the assessments in accordance with Chapter 372, Texas Local Government Code; providing for the method of assessment and the payment of the additional assessments; providing for penalties and interest on delinquent assessments; providing for a severability clause; providing an effective date; and providing for related matters.
10. Consider approval of Resolution 2020-106R, rejecting the sole bid received in response to an invitation for bids (IFB No. 220-163) from MA Smith Contracting Company, Inc. for the Guadalupe Street Improvements Project; and declaring an effective date.
11. Consider approval of Resolution 2020-107R, approving a Change Order to the construction contract with Cash Construction Company, Inc. for the Main Lift Station Force Main Replacement Project to increase the contract price by \$526,585.00 bringing the total contract price to \$6,876,093.04; authorizing the City Manager or his designee to execute the appropriate documents relating to the change order on behalf of the City; and declaring an effective date.
12. Consider approval of Resolution 2020-108R, approving a Change in Service to the engineering services agreement with Lockwood, Andrews & Newnam, Inc. relating to the Purgatory Creek Improvements Project in the estimated amount of \$174,734.00 for a total contract price of \$2,336,948.00; authorizing the City Manager or his designee to execute the appropriate purchasing documents to implement the change in service; and declaring an effective date.
13. Consider approval of Resolution 2020-109R, approving contracts with Hays Energy, LLC for the sale of reclaimed water for and the treatment of Wastewater from Hays Energy's

Electric Power Generation Facility South of the city; authorizing the City Manager, or his designee, to execute said contracts on behalf of the City; and declaring an effective date.

14. Consider approval of Resolution 2020-110R, approving an agreement with Express Personnel for the provision of a temporary staff person to perform professional services including electrical inspections for the Development Services Department in an annual amount not to exceed \$90,000.00 for up to three years; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.
15. Consider approval of Resolution 2020-111R, authorizing a property tax refund of \$80.73 assessed on the property located at 705 Crystal Cove, San Marcos, Texas for Tax Year 2019 as allowed by Section 33.011(k) of the Texas Property Tax Code; and declaring an effective date.
16. Consider approval of Resolution 2020-112R, directing the Interim Director of Finance of the City of San Marcos to calculate the voter-approval tax rate of the City of San Marcos in the manner provided for a special taxing unit by using an 8% threshold for new revenue instead of 3.5% as authorized by Texas Tax Code Section 26.04(C-1) due to the Governor's State-Wide Declaration of Disaster in response to the COVID-19 Pandemic; and declaring an effective date.
17. Consider approval of Resolution 2020-113R, approving the first amendment of the Interlocal Agreement with Texas State University for the provision of reclaimed water; and declaring an effective date.

## PUBLIC HEARINGS

*Persons wishing to participate (speak) during the Public Hearing portion of the meeting you must email [citizencomment@sanmarcostx.gov](mailto:citizencomment@sanmarcostx.gov) prior to 12:00PM the day of the meeting. A call in number will be provided for participation.*

18. Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-40, amending Chapter 86, Article 5, Division 4 of the San Marcos City Code regarding impact fees to, among other things, change the methodology for establishing impact fees for industrial and commercial uses having peak flow rates in excess of 500 gallons per minute, and to add homes constructed with federal funds awarded to the City and City facilities as projects exempt from the assessment of impact fees; including procedural provisions; providing for the repeal of any conflicting provisions; and providing an effective date; and consider approval of Ordinance 2020-40, on the first of two readings.
19. Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-41, amending Chapter 86, Article 8, Division 1 and 2 of the San Marcos City Code to, among other things, change the rate structure of the Stormwater Utility to an impervious basis for all customer classes, and to update provisions regarding the maintenance and repair of structural controls in connection with the municipal separate Storm Sewer System (MS4); including procedural provisions; providing for the repeal of any conflicting provisions; and providing an effective date and consider approval of Ordinance 2020-41, on the first of two readings.

20. Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-42, adopting Youth Programs Standards of Care for 2020; providing a severability clause; declaring an effective date; and consider approval of Ordinance 2020-42, on the first of two readings
21. Receive a Staff presentation and hold a Public Hearing to receive comments for or against amending the Community Development Block Grant (CDBG) 2019-2020 Action Plan to add the Community Development Block Grant - Coronavirus Response (CDBG-CV) allocation of \$425,261, and proposed programs and projects.

## **NON-CONSENT AGENDA**

22. Consider approval of Ordinance 2020-43, on the first of two readings, reclassifying and increasing the rank of the firefighter position assigned to the Fire Prevention Division, from the rank of firefighter to the rank of engineer in accordance with Section 143.021 of the Texas Local Government Code; amending the Fire Department staffing table maintained by the City Clerk in accordance with Section 2.373 of the San Marcos City Code to reflect such reclassification; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.
23. Consider approval of ordinance 2020-44, on the first of two readings, amending section 2.421 of the San Marcos City Code by adding a new subsection (e) to clearly state that the policy and purpose statements in that section supporting the adoption of the San Marcos Code of Ethics shall not be cited, used, or considered by a citizen or by the ethics review commission as the basis of an ethics complaint filed against any officer or employee of the city; and declaring an effective date.
24. Consider approval of Ordinance 2020-45, on first and final reading, authorizing the issuance of the City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District)"; approving and authorizing an indenture of trust, a bond purchase agreement, an offering memorandum, a continuing disclosure agreement, a landowner agreement and other agreements and documents in connection therewith; making findings with respect to the issuance of such bonds; providing for approval of this Ordinance on only one reading as authorized by Texas Government Code, Section 1201.028; and providing an effective date.
25. Consider approval of Resolution 2020-114R, adopting the Community Development Block Grant (CDBG) 2020-2024 Citizen Participation Plan that sets the timing for hearings and comment periods for grants from the US Department of Housing and Urban Development (HUD); authorizing the City Manager, or his designee, to act as the Official Representative of the City in matters related to the (CDBG) Program; and declaring an effective date.
26. Consider approval of Resolution 2020-115R, amending the Community Development Block Grant (CDBG) Consolidated plan for Fiscal Years 2015-2019 to add the Community Development Block Grant-Coronavirus (CDBG-CV) Allocation of \$425,261.00 and to add Economic Development as a funding category; and declaring an effective date.
27. Hold discussion on Capes Dam and Hays County Parks proposals, and provide direction

to the City Manager.

### **EXECUTIVE SESSION (if necessary)**

*NOTE: The City Council may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The City Council may also publicly discuss any item listed on the agenda for Executive Session.*

28. Executive Session in accordance with the following Government Code Sections:
- A. §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding state law preemption of city ordinances regulating the sale or use of single-use packages and containers.
  - B. §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding pending litigation, to wit: The Mayan at San Marcos River, LLC and City of Martindale v. City of San Marcos, Docket No. 04-19-00018-CV in the 4th Court of Appeals of Texas

#### **ACTION/DIRECTION PROVIDED DURING EXECUTIVE SESSION**

29. Consider action, by motion, regarding the following Executive Session items held during the Work Session and/or Regular Meeting:
- A. §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding state law preemption of city ordinances regulating the sale or use of single-use packages and containers.
  - B. §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding pending litigation, to wit: The Mayan at San Marcos River, LLC and City of Martindale v. City of San Marcos, Docket No. 04-19-00018-CV in the 4th Court of Appeals of Texas

#### **IV. Question and Answer Session with Press and Public.**

*This is an opportunity for the Press and Public to ask questions related to items on this agenda.*

#### **V. Adjournment.**

**POSTED ON WEDNESDAY, MAY 27, 2020 @ 8:00PM**

**TAMMY K. COOK, INTERIM 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](mailto:ADArequest@sanmarcostx.gov)





## Legislation Text

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**File #:** ID#20-342, **Version:** 1

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**AGENDA CAPTION:**

Receive status reports and updates on response to COVID-19 pandemic; hold council discussion, and provide direction to Staff.

**Meeting date:** June 2, 2020

**Department:** City Manager's Office

**Amount & Source of Funding**

**Funds Required:** N/A

**Account Number:** N/A

**Funds Available:** N/A

**Account Name:** N/A

**Fiscal Note:**

**Prior Council Action:** [Click or tap here to enter text.](#)

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

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**File #:** ID#20-342, **Version:** 1

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

Choose an item.

**Background Information:**

**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.



Legislation Text

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**File #:** ID#20-315, **Version:** 1

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**AGENDA CAPTION:**

Consider approval, by motion, of the following meeting Minutes:

- A. May 14, 2020 - Special Meeting Minutes
- B. May 19, 2020 - Special Meeting Minutes

**Meeting date:** 6/2/2020

**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 14, 2020 - Special Meeting Minutes
- B. May 19, 2020 - Special Meeting Minutes

**Council Committee, Board/Commission Action:** [Click or tap here to enter text.](#)

**Alternatives:**

**Recommendation:** Approve Minutes as attached



# City of San Marcos

## Meeting Minutes City Council

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Thursday, May 14, 2020

3:00 PM

Virtual Meeting

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This meeting was held using conferencing software due to the COVID-19 rules.

### I. Call To Order

With a quorum present, the special meeting of the San Marcos City Council was called to order by Mayor Hughson at 3:01 p.m. Thursday, May 14, 2020.

### II. Roll Call

**Present:** 6 - Council Member Melissa Derrick, Mayor Jane Hughson, Mayor Pro Tem Ed Mihalkanin, Deputy Mayor Pro Tem Mark Rockeymoore, Council Member Maxfield Baker and Council Member Saul Gonzales

**Absent:** 1 - Council Member Joca Marquez

### PRESENTATIONS

1. Receive status reports and updates on response to COVID-19 pandemic; hold council discussion, and provide direction to Staff.

**Chase Stapp, Director of Public Safety provided an update and provided status reports in response to the COVID-19 pandemic.**

#### **Known Cases as of today:**

- 1,342,594 U.S. cases with at least 80,820 fatalities in 55 states or territories including D.C. (More than 18,000 new cases since yesterday)
- 41,048 cases in 220 Texas counties with 1,133 fatalities
- 214 in Hays County with 3 fatalities (69 active and 142 recovered)
- 2,026 tests returned negative
- 19 active and 41 recovered in San Marcos (1 fatality)
- 20 cases have required hospitalization, 3 current

#### **Update to Governor Abbott's Actions:**

- **May 7: Executive Order eliminating confinement as a punishment for violating orders**
- **May 11: Federal funding for local jurisdictions**
  - Letter and call to city and county leaders announcing \$5.06 billion in funding available to local governments in Texas through the Coronavirus Aid, Relief, and Economic Security

**(CARES) Act; \$1.85 of this available to cities and counties under 500k population**

**- Cities under population of 500,000 eligible for \$55 per capita allocation from the \$1.85 billion - San Marcos potentially eligible for \$3.5 to \$3.7 million in reimbursement funds**

**- US Treasury: “funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.”**

- **May 11: All nursing home residents, staff to be tested**

**Efforts to date:**

- **Recovery Task Force continues to meet**
- **Processed Late Fee Exemptions for 117 commercial utility accounts, 80 residential utility accounts since implementation on March 26**
- Set up payment arrangements totaling over \$237,000 for 895 utility customer accounts over that same time period**
- **Transitioned to Council review of COVID-19 dashboard**

**Upcoming Considerations:**

- **Evaluate duration of parks closures**
- **Requirements for safety practices at re-opened businesses**
- **Phased approach of re-opening City services and facilities**
- **Business Assistance Program - partnership with County**
- **CDBG-CV applications due May 20**

**(<http://sanmarcostx.gov/3065/CDBG-Action-Plans>)**

- **Future Council meeting updates**

**Mr. Stapp asked Council if they would like to continue weekly updates via a Special Meeting for the COVID-19 updates. Council consensus is to continue the update during the City Council meetings and continue the special meeting update during non-council meeting weeks through the month of June, adding to existing special meetings when available.**

**Council Member Baker expressed concerns regarding the city’s efforts to provide enough Personal Protection Equipment (PPE). Director Stapp noted that we have plenty now and will request more as the need extends into the future. He also inquired about the Chamber of Commerce ensuring businesses are adhering to the Governor's recommendations. Council consensus is for staff to have discussion with the Chamber of Commerce to encourage their members to follow the Governor's recommendations. The Chamber of Commerce has been extremely helpful in getting the word out on a number of**

topics that have been helpful, such as publicizing the list of restaurants that are open and quick links to the Governor's Open Texas plan.

Council Member Baker asked where does the City stand with liability when staff returns to work. Mr. Cosentino mentioned that Mr. Lumbreras has outlined the steps on how the City is handling the safety and health of staff. Mr. Lumbreras provide details on the processes, procedures, and requirements for city staff. Mr. Cosentino mentioned that as the City is rolling out the business financial assistance, the City can create criteria on the grants. If businesses are going to apply, then the business must adhere to the Governor's recommendations.

Mr. Lumbreras stated that city staff is developing a teleworking policy and it does have to be evaluated in which cases it will apply.

Council Member Derrick expressed concerns for staff being in cubicles and vent circulation.

Mr. Lumbreras reiterated if employees can't meet the social distancing requirement then staff will need to put on a face mask. Mr. Lumbreras stated that we are following CDC guidelines in terms of their recommendations. Mr. Lumbreras mentioned that we are putting up shields for public facing counters similar to the grocery stores.

Council Member Baker asked what is the number of deaths or hospitalizations that is designated to enforce strict measures. Mr. Stapp stated that staff is working with the health department and epidemiologist to develop a method of ratio that includes the daily new case count, number of recovery cases and active cases and that number will help determine to enforce strict measures.

Council Member Baker suggested to write a letter to the Governor and Attorney General to support our city to have strict controls as Austin and San Antonio has.

Council consensus is to contact different municipalities for interest in requesting from the Governor the ability to enforce authority as a local government.

## **EXECUTIVE SESSION**

2. Executive Session in accordance with Section §551.074 of the Texas Government Code: Personnel Matters - Council will be discussing and conducting annual performance evaluations of the City Manager and Municipal Court Judge.

**Council convened into Executive Session at 4:21 p.m. to provide appointee evaluations to the City Manager and Municipal Court Judge.**

**DIRECTION/ACTION FOLLOWING EXECUTIVE SESSION**

3. Consider action, by motion, or provide direction to Staff regarding the following Executive Session item in accordance with Section §551.074 of the Government Code: Personnel Matters - Council will be discussing and conducting annual performance evaluations of the City Manager and Municipal Court Judge.

**Mayor Hughson stated that evaluations were provided to the City Manager and Municipal Court Judge.**

**III. Adjournment.**

**Mayor Hughson adjourned the Special Meeting of the City Council at 5:09 p.m.**

**Tammy K. Cook, Interim City Clerk**

**Jane Hughson, Mayor**



# City of San Marcos

## Meeting Minutes City Council

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Tuesday, May 19, 2020

3:00 PM

Virtual Meeting

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**This meeting was held using conferencing software due to the COVID-19 rules.**

### I. Call To Order

**With a quorum present, the special meeting of the San Marcos City Council was called to order by Mayor Hughson at 3:06 p.m. Tuesday, May 19, 2020. This meeting was held virtually.**

### II. Roll Call

**Dr. Mihalkanin arrived after roll call at 3:10 p.m.**

- Present:** 6 - Council Member Melissa Derrick, Mayor Jane Hughson, Mayor Pro Tem Ed Mihalkanin, Deputy Mayor Pro Tem Mark Rockeymoore, Council Member Maxfield Baker and Council Member Saul Gonzales
- Absent:** 1 - Council Member Joca Marquez

### 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 Attorney and Interim City Clerk.

**A motion was made by Council Member Derrick, seconded by Council Member Baker, to enter into Closed Session at 3:07 p.m. The motion carried by the following vote:**

- For:** 5 - Council Member Derrick, Mayor Hughson, Deputy Mayor Pro Tem Rockeymoore, Council Member Baker and Council Member Gonzales
- Against:** 0
- Absent:** 2 - Mayor Pro Tem Mihalkanin and Council Member Marquez

### DIRECTION/ACTION FOLLOWING EXECUTIVE SESSION

2. 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 Interim City Clerk.

**Mayor Hughson stated executive session concluded at 5:05 p.m. and evaluations**

were conducted.

III. Adjournment.

**Mayor Hughson adjourned the special meeting of the City Council on Tuesday, May 19, 2020 at 5:09 p.m.**

**Tammy K. Cook, Interim City Clerk**

**Jane Hughson, Mayor**



## Legislation Text

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**File #:** Ord. 2020-31(b), **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-31, on the second of two readings, amending the official zoning map of the city by rezoning approximately 5.217 acres of land, generally located west of the intersection of Old Ranch Road 12 and Craddock Avenue, from “FD” Future Development, “CC” Community Commercial, and “P” Public and Institutional districts to “SF-6” Single Family District; including procedural provisions; and providing an effective date.

**Meeting date:** June 2, 2020

**Department:** Planning & Development Services

**Amount & Source of Funding**

**Funds Required:** N/A

**Account Number:** N/A

**Funds Available:** N/A

**Fiscal Note:**

**Prior Council Action:** N/A

**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.

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**File #:** Ord. 2020-31(b), **Version:** 1

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- Transportation - Choose an item.
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

The request is associated with the Mystic Canyon development which includes 127 single-family lots. In 2018, the applicant was granted a zoning change from FD to SF-6 for 56.6 acres of the surrounding property. While the developer also had the subject property under contract, it was not included with the application materials for the original zoning change.

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

At their April 28 meeting, the Planning & Zoning Commission voted 6-0 in favor of this request.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends **approval** of the request for a zoning change from “FD” Future Development, “CC” Community Commercial, and “P” Public and Institutional to “SF-6” Single-Family.

## Ord. 2020-31 (Mystic Canyon)

Receive a Staff presentation and hold a Public Hearing to consider comments for or against Ordinance 2020-31, amending the official zoning map of the city by rezoning approximately 5.217 acres of land, generally located west of the intersection of Old Ranch Road 12 and Craddock Avenue, from “FD” Future Development, “CC” Community Commercial, and “P” Public and Institutional districts to “SF-6” Single Family District; including procedural provisions; and providing an effective date; and consider approval of Ordinance 2020-31, on the first of two readings.

**Location:**

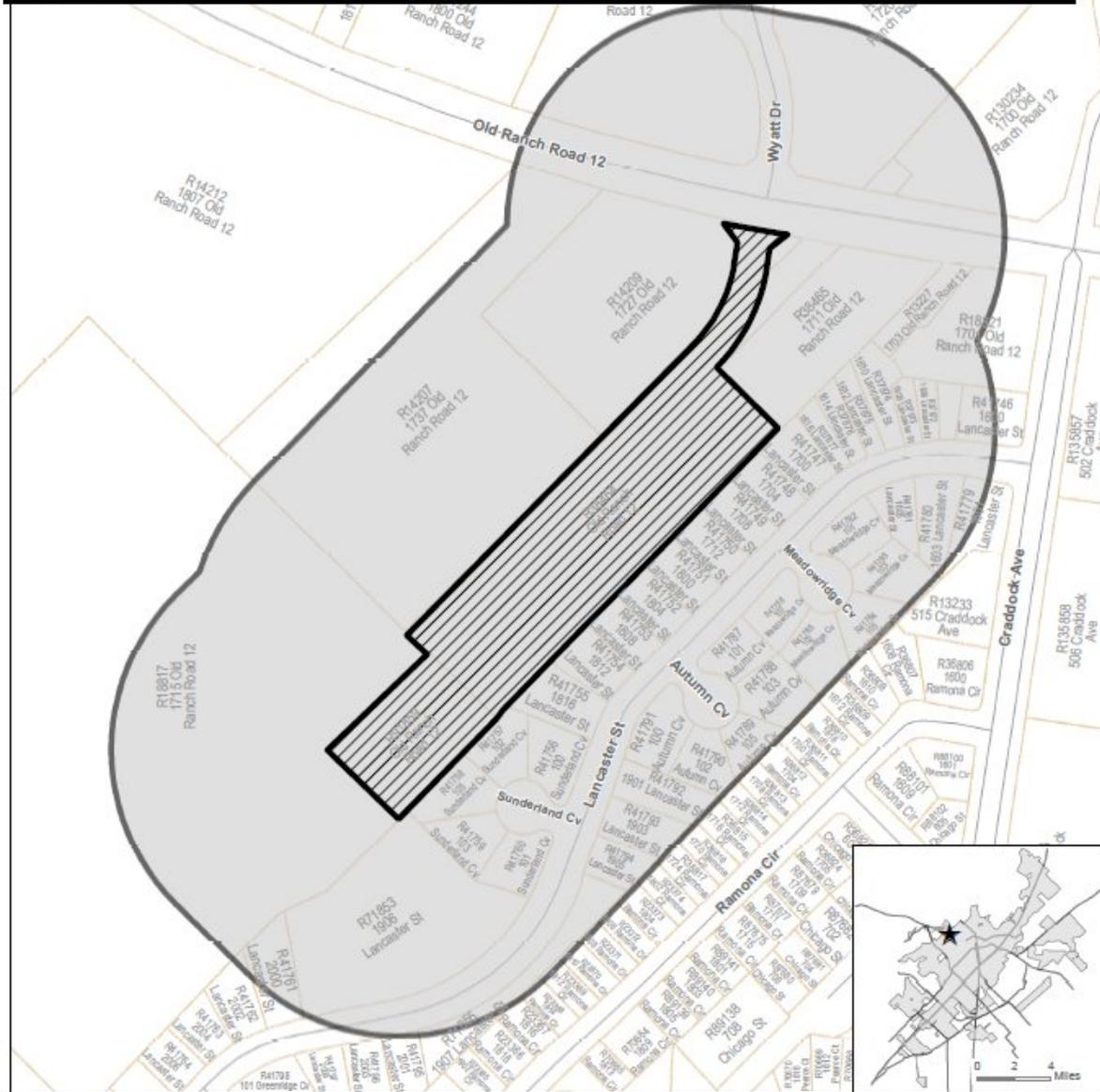
- Approximately 5.217 acres
- **Current Configuration:**  
Vacant land
- Surrounding uses include:
  - Single-family residences
  - Multifamily
- Located within an Existing Neighborhood on the Preferred Scenario Map



<ul style="list-style-type: none"> <li>★ Site Location</li> <li>▭ Subject Property</li> <li>▭ Parcel</li> <li>▭ City Limit</li> </ul>	<p>0 150 300 600 Feet</p>	<p>This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.</p> <p style="text-align: right;">Map Date: 3/6/2020</p>
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## Context & History

- **Existing Zoning:**  
Future Development (FD)
- **Proposed Zoning:**  
Single Family (SF-6)
- Proposed SF-6 zoning allows single-family detached units.
- Associated with Mystic Canyon zoning change which was approved in 2018.

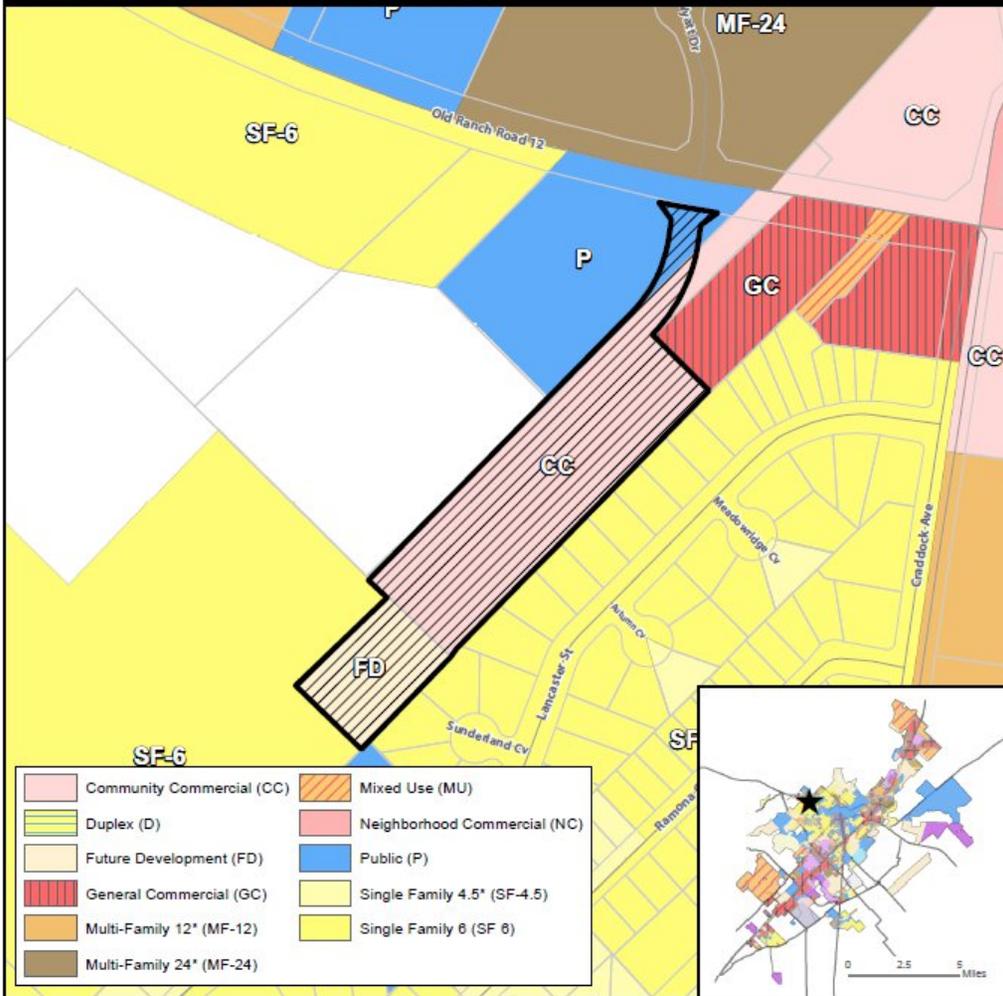


★	Site Location
	Subject Property
	400' Buffer
	Parcel
	City Limit

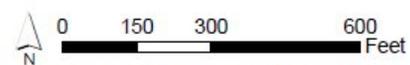
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/6/2020

**ZC-20-04  
Zoning Map  
FD, CC, P to SF-6 — Ranch Road 12**



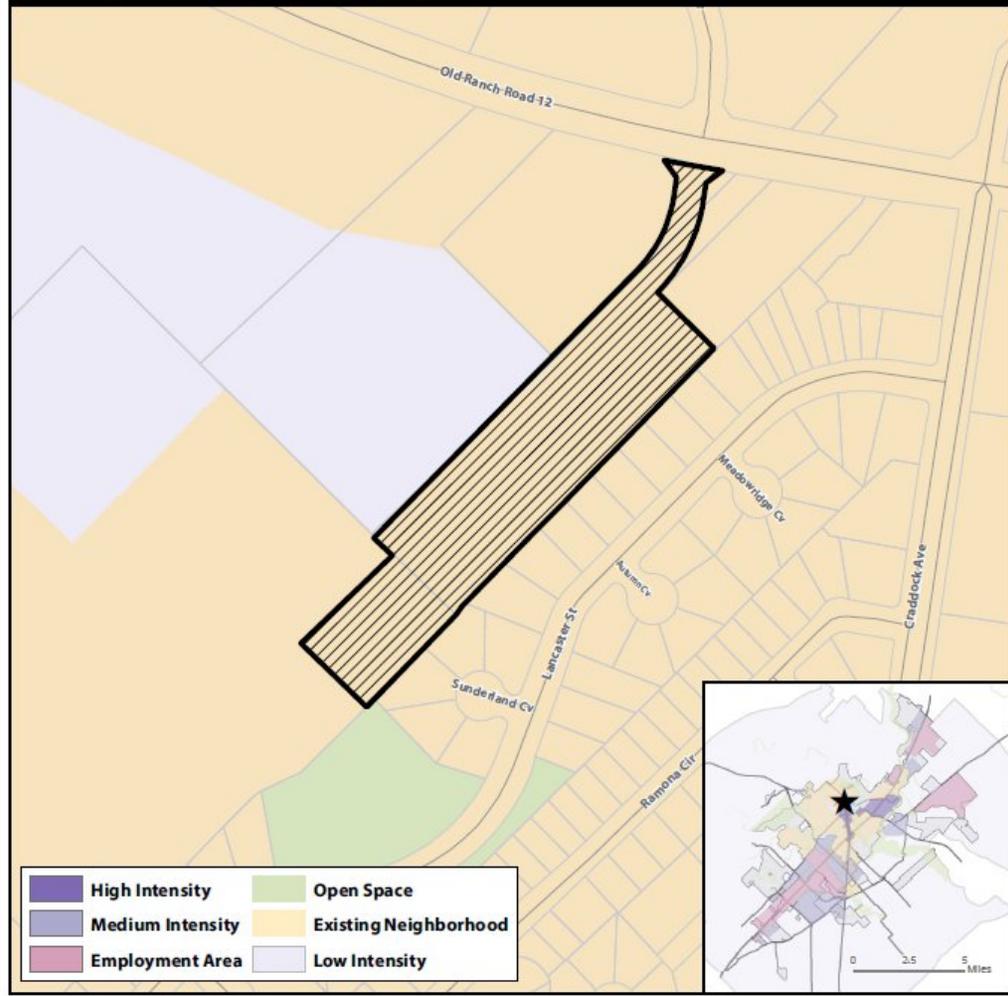
- Site Location**
- Subject Property**
- Parcels**
- City Limit**



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/6/2020

**ZC-20-04  
Preferred Scenario  
FD, CC, P to SF-6 — Ranch Road 12**

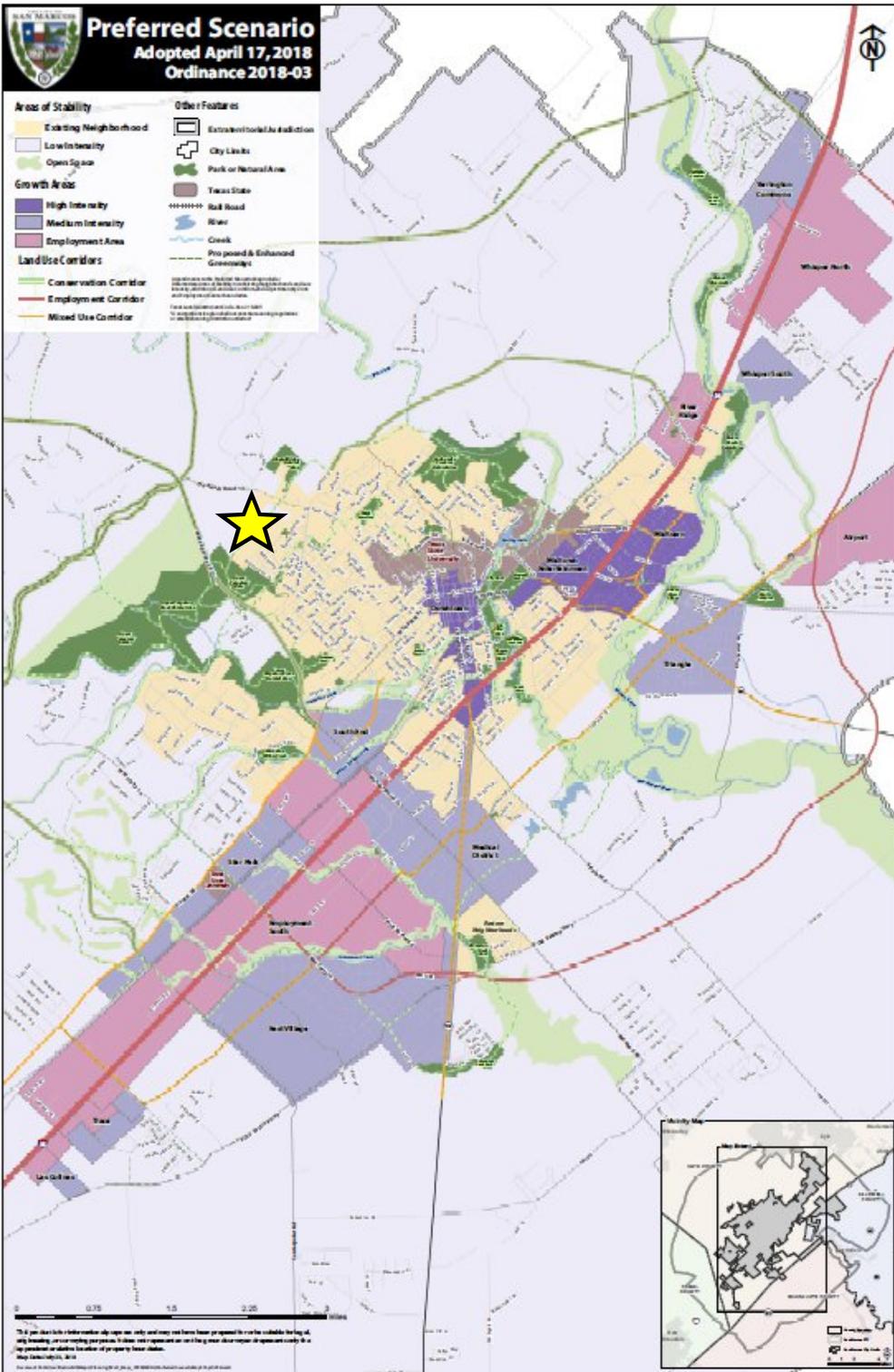


- Site Location**
- Subject Property**
- Parcels**
- City Limit**



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/6/2020



# Comprehensive Plan Analysis

**Step 1:** Where is the property located on the Comprehensive Plan?

## Existing Neighborhood Area

“Established, primarily residential areas intended to maintain their existing character and to follow development and redevelopment patterns that are compatible with the existing character.” (4.1.1.6)

# Comprehensive Plan Analysis

**Step 2:** Is the request consistent with the Comprehensive Plan / District Translation Table?

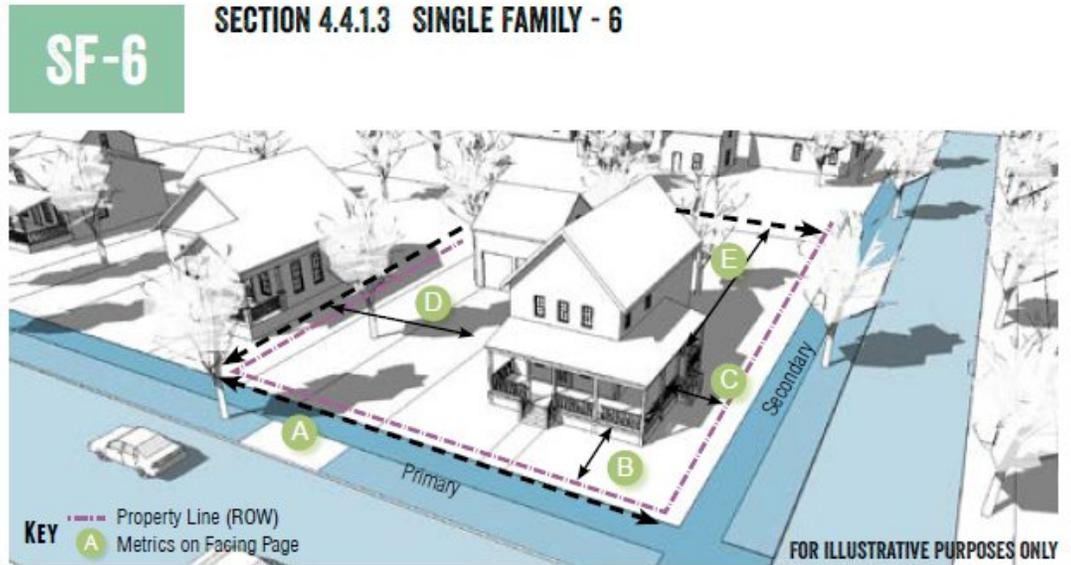
Applicant is requesting a Conventional residential District (SF-6) within an Existing Neighborhood Area. Zoning request is C – Considered, and is consistent with the San Marcos Development Code.

**TABLE 4.1 COMPREHENSIVE PLAN / DISTRICT TRANSLATION**

DISTRICT CLASSIFICATION	COMPREHENSIVE PLAN DESIGNATIONS					
	OPEN SPACE/ AGRICULTURAL	LOW INTENSITY	EXISTING NEIGHBORHOOD	MEDIUM OR HIGH INTENSITY ZONE	EMPLOYMENT CENTER	CORRIDOR
Conventional Residential	NP	NP	C	--	--	--
Neighborhood Density Districts	NP	NP	See Section 4.1.2.4 - 4.1.2.5	NP	NP	C
Character Districts	NP	C	--	C	NP	C
Special Districts	--	NP	NP	NP	C	C
Legend	-- = Not Allowed (PSA Required)		NP = Not Preferred		C = Consider	

# SF-6 Zoning Analysis:

- The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet.
- **Allowable Building Types:** House, Cottage, and Civic Building.
- Proposed rezoning aligns with vision of the Comprehensive Plan.
- The property is vacant.



**GENERAL DESCRIPTION**

The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet. Characterized by smaller landscaped areas with moderate setbacks and more frequent pedestrian use. Uses that would substantially interfere with the residential nature of the district are not allowed.

**DENSITY**

Units Per Gross Acre	5.5 max.
Impervious Cover	50% max.
Occupancy Restrictions	Section 5.1.4.1

**TRANSPORTATION**

Block Perimeter	3,000 ft. max	Section 3.6.2.1
Streetscape Type	Residential	Section 3.8.1.10
Sidewalks are not required for lots greater than 1 acre		

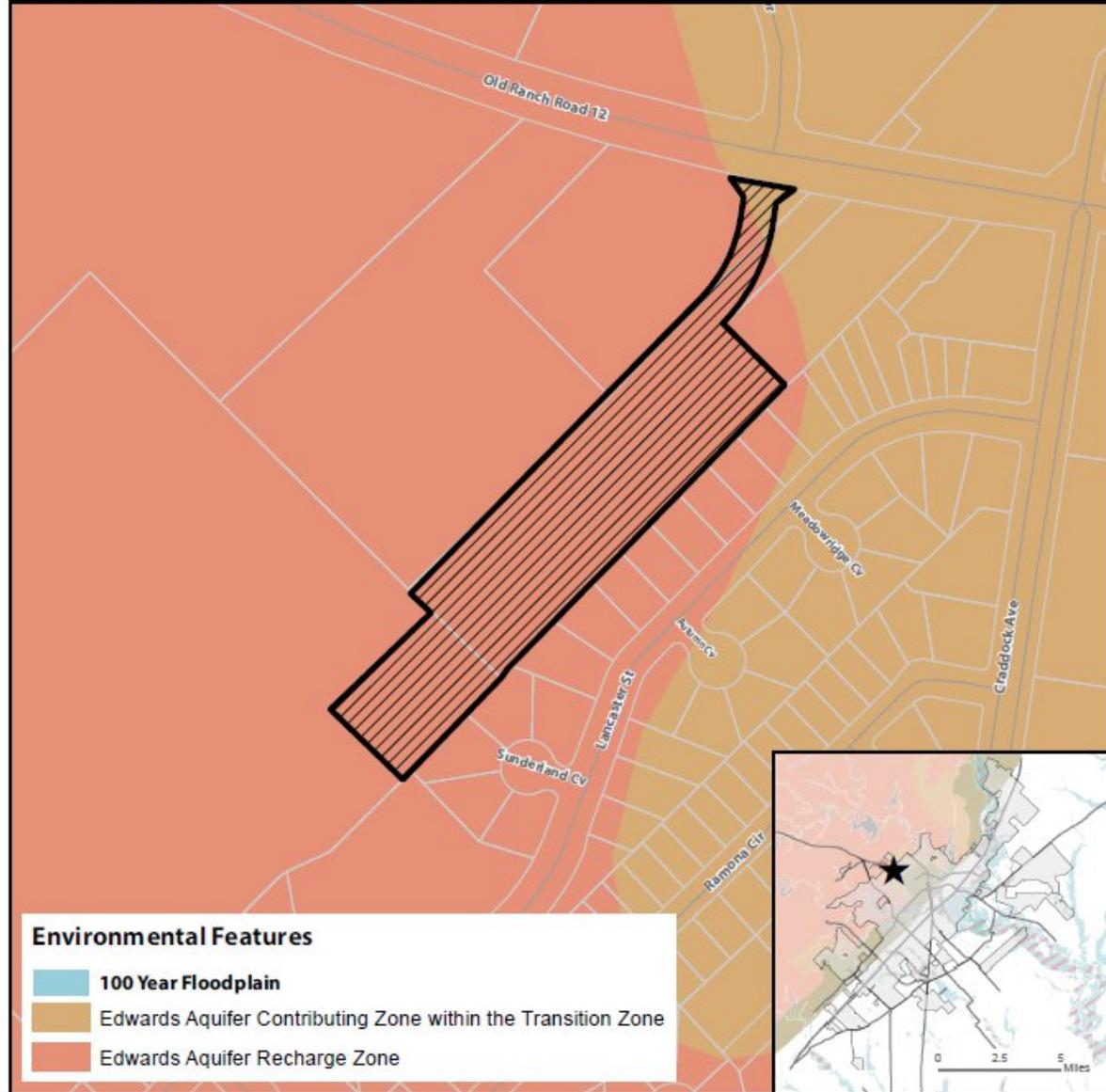
**BUILDING TYPES ALLOWED**

Accessory Dwelling	Section 4.4.6.1
House	Section 4.4.6.2
Cottage	Section 4.4.6.3
Civic	Section 4.4.6.15

# Environmental Analysis

- Not located in floodplain.
- Located within Edwards Aquifer Recharge Zone.
- Not located on significant slopes.

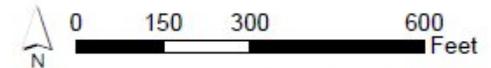
**ZC-20-04**  
**Environmental Features**  
**FD, CC, P to SF-6 — Ranch Road 12**



**Subject Property**

**Parcels**

**City Limit**



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/6/2020



## **Planning & Zoning Commission Recommendation:**

At the April 28, 2020 Meeting the Planning and Zoning Commission recommended approval of the zoning change with a 7 - 0 vote.

## **Staff Recommendation:**

Staff provides this request to the Commission for your consideration and recommends **approval** of the request for a zoning change from “FD” Future Development, “CC” Community Commercial, and “P” Public and Institutional to “SF-6” Single-Family.

## Zoning District Comparison Chart

<b>Topic</b>	<b>Existing Zoning: Future Development (FD)</b>	<b>Existing Zoning: Community Commercial (CC)</b>	<b>Proposed Zoning: Single Family (SF-6)</b>
<b>Zoning Description</b>	The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.	The CC, Community Commercial is established to provide areas for quality larger general retail establishments and services facilities for the retail sale of goods and services. The district should generally consist of retail nodes located along or at the intersection of major collectors or thoroughfares to accommodate high traffic volumes generated by general retail uses.	The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet. Characterized by smaller landscaped areas with moderate setbacks and more frequent pedestrian use. Uses that would substantially interfere with the residential nature of the district are not allowed.
<b>Uses</b>	Residential ( <i>See Land Use Matrix</i> )	Commercial. ( <i>See Land Use Matrix</i> )	Single-family residential. ( <i>See Land Use Matrix</i> )
<b>Parking Location</b>	No location standards	No location standards	No location standards
<b>Parking Standards</b>	2 spaces per dwelling unit (if single family detached)	Varies based on use.	1 space per dwelling unit.
<b>Max Residential Units / acre</b>	0.4 units per acre (max)	N/A	5.5 units per acre (max)
<b>Occupancy Restrictions</b>	N/A	N/A	N/A
<b>Landscaping</b>	Tree and shrub requirements	10% - 15%	Tree and shrub requirements
<b>Building Height (max)</b>	2 stories	N/A	2 stories
<b>Setbacks</b>	50' front setback, 20 ft side setback, . Rear setback: 20% of the lot depth	20' front setback, 5 ft side setback, 5 ft rear setback	25' front Setback, 5' side setback, 20' rear set back.
<b>Impervious Cover (max)</b>	30%	80% (20% for Mystic Canyon due to location within Edwards Aquifer Recharge Zone).	50% (20% for Mystic Canyon due to location within Edwards Aquifer Recharge Zone).
<b>Lot Sizes</b>	Allows a variety of lot sizes depending on Building Type.	Allows a variety of lot sizes depending on Building Type.	Allows a variety of lot sizes depending on Building Type.
<b>Streetscapes</b>	Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area.	Conventional.	Residential, and Conventional.
<b>Blocks</b>	No Block Perimeter Required	3,000 ft. Block Perimeter max.	3,000 ft. Block Perimeter max.

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY REZONING APPROXIMATELY 5.217 ACRES OF LAND, GENERALLY LOCATED WEST OF THE INTERSECTION OF OLD RANCH ROAD 12 AND CRADDOCK AVENUE, FROM “FD” FUTURE DEVELOPMENT, “CC” COMMUNITY COMMERCIAL, AND “P” PUBLIC AND INSTITUTIONAL DISTRICTS TO “SF-6” SINGLE FAMILY DISTRICT; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

1. On April 28, 2020, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “FD” Future Development, “CC” Community Commercial, and “P” Public and Institutional Districts to “SF-6” Single Family District for approximately 5.217 acres of land, generally located west of the intersection of Old Ranch Road 12 and Craddock Avenue.
2. The Planning and Zoning Commission voted to recommend that the request be approved by the City Council.
3. The City Council held a public hearing on May 19, 2020 regarding the request.
4. All requirements pertaining to Zoning Map amendments have been met.
5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

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

**SECTION 1.** The Official Zoning Map of the City is amended to rezone the tract of land described in Exhibit A, attached hereto and made a part hereof, from “FD” Future Development, “CC” Community Commercial, and “P” Public and Institutional Districts to “SF-6” Single Family District.

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

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

**SECTION 4.** This ordinance will take effect after its passage, approval and adoption on

second reading.

**PASSED AND APPROVED** on first reading on May 19, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney

# EXHIBIT A

0.999 ACRES (43,532 S.F.)  
BENJAMIN J. WHITE SURVEY NO. 13, ABSTRACT NO. 469  
ROBERT H. WILLIAMS SURVEY NO. 12, ABSTRACT NO. 470  
HAYS COUNTY, TEXAS

## FIELD NOTES

BEING ALL OF THAT CERTAIN 0.999 ACRE (43,532 S.F.) TRACT OF LAND, SITUATED THE BENJAMIN J. WHITE SURVEY NUMBER 13, ABSTRACT NUMBER 469, & THE ROBERT H. WILLIAMS SURVEY NUMBER 12, ABSTRACT NUMBER 470, HAYS COUNTY, TEXAS, BEING ALL OF A CALLED 1.00 ACRE TRACT OF LAND CONVEYED TO THAD WHEELLOCK IN VOLUME 1453, PAGE 542, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, SAID 0.999 ACRE (43,532 S.F.) TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 1/2 inch iron rod found at the southernmost corner of said 1.00 acre tract, being in the northwest line of Lot 24, Sendera Subdivision, recorded in Volume 6, Page 77, Plat Records of Hays County, Texas, same being at an eastern corner of a called 46.54 acre tract of land conveyed to Debra and Michael Moffitt in Volume 4252, Page 477, Official Public Records of Hays County, Texas, for the southernmost corner and the **POINT OF BEGINNING** of the herein described tract of land,

**THENCE**, along the common line of said 1.00 acre tract and said 46.54 acre tract, the following two (2) courses and distances, numbered 1 and 2,

- 1) N47°25'01"W, a distance of 172.16 feet to a 1/2 inch iron rod found at the westernmost corner of said 1.00 acre tract, being an interior corner of said 46.54 acre tract, for the westernmost corner of the herein described tract of land, and
- 2) N45°30'03"E, a distance of 257.58 feet to a calculated point at the northernmost corner of said 1.00 acre tract, being at an easternmost corner of said 46.54 acre tract, same being in the southwest line of Lot 1, R12 Plaza Subdivision, recorded in Volume 4, Page 264, Plat Records of Hays County, Texas, for the northernmost corner of the herein described tract of land,

**THENCE**, S47°21'31"E, along the southwest line of said Lot 1 and the northeast line of said 1.00 acre tract, a distance of 166.39 feet to a 1/2 inch iron rod found at the easternmost corner of said 1.00 acre tract, being in the northwest line of Lot 20, of said Sendera Subdivision, for the easternmost corner of the herein described tract of land,

**THENCE**, S44°13'10"W, along the northwest line of said Sendera Subdivision and the southeast line of said 1.00 acre tract, a distance of 257.18 feet to the **POINT OF BEGINNING** and containing 0.999 acres (43,532 S.F.) of land.

Surveyed by:  05 DEC 2019

Aaron Thomason, R.P.L.S. NO. 6214  
*Carlson, Brigance and Doering, Inc.*  
5501 West William Cannon  
Austin, TX 78749  
Ph: 512-280-5160 Fax: 512-280-5165  
Aaron@cbdeng.com



BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD83

J: AC3D\5130\SURVEY\FIELD NOTES\FN – ZONING AND ANNEXATION.DOC

# SKETCH TO ACCOMPANY FIELD NOTES



SCALE: 1" = 100'

## LEGEND

- 1/2" IRON ROD FOUND (UNLESS OTHERWISE NOTED)
- △ CALCULATED POINT

BARBARA EDWARDS  
(6.8036 ACRES)  
VOL. 4241, PG. 225  
O.P.R.H.C.TX.

LOT 1  
R12 PLAZA  
SUBDIVISION  
VOL. 4, PG. 264  
P.R.H.C.TX.

LOT 18

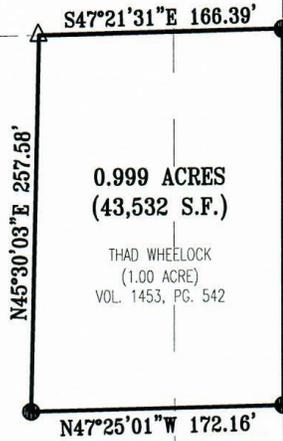
LOT 19

LOT 20

LOT 21

LOT 22

SUNDERLAND COVE  
(50'R.O.W.)



0.999 ACRES  
(43,532 S.F.)

THAD WHELLOCK  
(1.00 ACRE)  
VOL. 1453, PG. 542

POINT OF BEGINNING

DEBRA MOFFITT AND  
HUSBAND MICHAEL L. MOFFITT  
(46.54 ACRES)  
VOL. 4252, PAGE 477  
O.P.R.H.C.TX.

SENDERA SUBDIVISION  
VOL. 6, PG. 77  
P.R.H.C.TX.

LOT 24

BENJAMIN J. WHITE SR. SURVEY # 13,  
ABSTRACT # 460  
ROBERT H. WILLIAMS SURVEY # 12,  
ABSTRACT No. 470  
APPROXIMATE SURVEY LINE

LOT 25



BEARING BASIS: TEXAS COORDINATE SYSTEM SOUTH CENTRAL ZONE (4204), NAD83

**Carlson, Brigrance & Doering, Inc.**  
FIRM ID #E3791    REG. # 10024900

Civil Engineering	◆	Surveying
5501 West William Cannon	◆	Austin, Texas 78749
Phone No. (512) 280-5160	◆	Fax No. (512) 280-5165

PATH:- J:AC3D\5130\SURVEY\FN - ZONING & ANNEXATION.DWG

4.217 ACRES  
BENJAMIN J. WHITE SURVEY NO. 13, ABSTRACT NO. 469  
ROBERT H. WILLIAMS SURVEY NO. 12, ABSTRACT NO. 470  
THOMAS H.W. FORSITH SURVEY, ABSTRACT NO. 173  
ELIJAH CLARK SURVEY, ABSTRACT NO. 83  
HAYS COUNTY, TEXAS

**FIELD NOTES**

**BEING ALL OF THAT CERTAIN 4.217 ACRE TRACT OF LAND, SITUATED IN THE BENJAMIN J. WHITE SURVEY NUMBER 13, ABSTRACT NUMBER 469, THE ROBERT H. WILLIAMS SURVEY NUMBER 12, ABSTRACT NUMBER 470, THE THOMAS H. W. FORSITH SURVEY, ABSTRACT NO. 173, AND THE ELIJAH CLARK SURVEY, ABSTRACT NUMBER 83, HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CALLED 0.224 ACRE TRACT OF LAND (TRACT 2) CONVEYED TO KALI KATE SERVICES, INC. IN DOCUMENT NUMBER 20000174, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND A PORTION OF LOT 1, R12 PLAZA SUBDIVISION, RECORDED IN VOLUME 4, PAGE 264, PLAT RECORDS OF HAYS COUNTY, TEXAS, SAID 4.217 ACRE TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING**, at a 1/2 inch iron rod found at the northwest corner of said 0.224 acre tract, being at a northeast corner of a called 2.768 acre tract of land conveyed to Texas State University at San Marcos in Volume 1019, Page 516, Official Public Records of Hays County, Texas, same being at a point of beginning of a curve to the left in the south right-of-way line of Old Ranch Road 12 (100' R.O.W.), for a northwest corner and the **POINT OF BEGINNING** of the herein described tract of land,

**THENCE**, with the common boundary line of said Old Ranch Road 12 and said 0.224 acre tract, the following two (2) courses and distance numbered 1 and 2,

- 1) Along said curve to the left, having a radius of 3869.99 feet, an arc length of 100.25 feet, and a chord that bears S80°10'37"E, a distance of 100.25 feet to a TXDOT concrete highway monument,
- 2) S81°15'08"E, a distance of 19.78 feet to a calculated point at the northeast corner of a called 0.031 acre tract of land conveyed to All J. Investments, Ltd. in Volume 1743, Page 223, Official Public Records of Hays County, Texas, being in the north line of said 0.224 acre tract, for a northeast corner of the herein described tract of land,

**THENCE**, with the west line of said 0.031 acre tract, the west line of a called 0.231 acre tract of land conveyed to All J. Investments, Ltd. in Volume 1743, Page 223, Official Public Records of Hays County, Texas, over and across said 0.224 acre tract of land, and over and across said Lot 1, the following three (3) courses and distances, numbered 1 through 3,

- 1) S53°43'33"W, a distance of 42.16 feet to a calculated point at a western corner of said 0.031 acre tract, and
- 2) S08°20'41"W, a distance of 34.76 feet to a calculated point at the beginning of a curve to the right, and
- 3) Along said curve to the right, having a radius of 330.00, an arc length of 207.85 feet, and a chord that bears S26°23'17"W, a distance of 204.43 feet to a 1/2 inch iron rod found at a south corner of said 0.231 acre tract of land, being in the northwest line of Lot 1A, Lot 1-A R 12 Plaza Subdivision, a subdivision recorded in Volume 6, Page 354, Plat Records of Hays County, Texas, for an interior corner of the herein described tract of land,

**THENCE**, S44°25'54"W, with the northwest line of said Lot 1-A, and over and across said Lot 1, a distance of 3.04 feet to a 1/2 inch iron rod found at the westernmost corner of said Lot 1-A, for an interior corner of the herein described tract of land,

**THENCE**, S45°36'28"E, with the southwest line of said Lot 1-A and over and across said Lot 1, a distance of 160.00 feet to a 1/2 inch iron rod found at the southernmost corner of said Lot 1-A, being in the southeast line of said Lot 1, same being in the northwest line of Lot 10, Sendera Subdivision, a subdivision recorded in Volume 6, Page 77, Plat Records of Hays County, Texas, for an eastern corner of the herein described tract of land,

4.217 ACRES  
BENJAMIN J. WHITE SURVEY NO. 13, ABSTRACT NO. 469  
ROBERT H. WILLIAMS SURVEY NO. 12, ABSTRACT NO. 470  
THOMAS H.W. FORSITH SURVEY, ABSTRACT NO. 173  
ELIJAH CLARK SURVEY, ABSTRACT NO. 83  
HAYS COUNTY, TEXAS

**THENCE**, with the southeast line of said Lot 1 and the northwest line of said Sendera Subdivision, the following seven (7) courses and distances, numbered 1 through 7,

- 1) S44°19'24"W, a distance of 65.04 feet to a 1/2 inch iron rod found for corner,
- 2) S44°26'40"W, a distance of 224.88 feet to a 1/2 inch iron rod found for corner,
- 3) S44°09'10"W, a distance of 74.89 feet to a 1/2 inch iron rod found for corner,
- 4) S44°42'57"W, a distance of 74.98 feet to a 1/2 inch iron rod found for corner,
- 5) S45°16'00"W, a distance of 74.92 feet to a 1/2 inch iron rod found for corner,
- 6) S44°18'32"W, a distance of 211.90 feet to a 1/2 inch iron rod found for corner, and
- 7) S44°13'10"W, a distance of 20.05 feet to a 1/2 inch iron rod found at the southernmost corner of said Lot 1, being in the northwest line of Lot 20, said Sendera Subdivision, and being at the easternmost corner of a called 1.00 acre tract of land (Tract 3) conveyed to Kali Kate Services, Inc. in Document Number 20000174, Official Public Records of Hays County, Texas, for the southernmost corner of the herein described tract of land,

**THENCE**, N47°21'31"E, along the southwest line of said Lot 1, the northeast line of said 1.00 acre tract, and the northeast line of a called 56.6098 acre tract of land (Tract 1) conveyed to Kali Kate Services, Inc. in Document Number 20000174, Official Public Records of Hays County, Texas, a distance of 226.19 feet to a 1/2 inch iron rod in the northeast line of said 46.54 acre tract, being at the westernmost corner of said Lot 1, same being at the southernmost corner of a called 6.8036 acre tract of land conveyed to Barbara Edwards in Volume 4241, Page 225, Official Public Records of Hays County, Texas,

**THENCE**, N44°55'26"E, with the northwest line of said Lot 1 and the southeast line of said 6.8036 acre tract, passing the easternmost corner of said 6.8036 acre tract and the southernmost corner and continuing for a total distance of 756.72 feet to a 1/2 inch iron rod found at the beginning of a curve to the left, being at the westernmost corner of the aforementioned 0.224 acre tract of land, for a northwestern corner of the herein described tract of land,

**THENCE**, with the common line of said 2.768 acre tract and said 0.224 acre tract, the following three (3) courses and distances, numbered 1 through 3,

- 1) Along said curve to the left, having a radius of 270.00 feet, an arc length of 169.93 feet, and a chord that bears N26°24'25"E, a distance of 167.14 feet to a cotton spindle found in asphalt,
- 2) N08°21'13"E, a distance of 36.49 feet to a cotton spindle found in asphalt, and
- 3) N36°00'29"W, a distance of 42.88 feet to the **POINT OF BEGINNING**, and containing 4.217 acres of land.

Surveyed by: \_\_\_\_\_

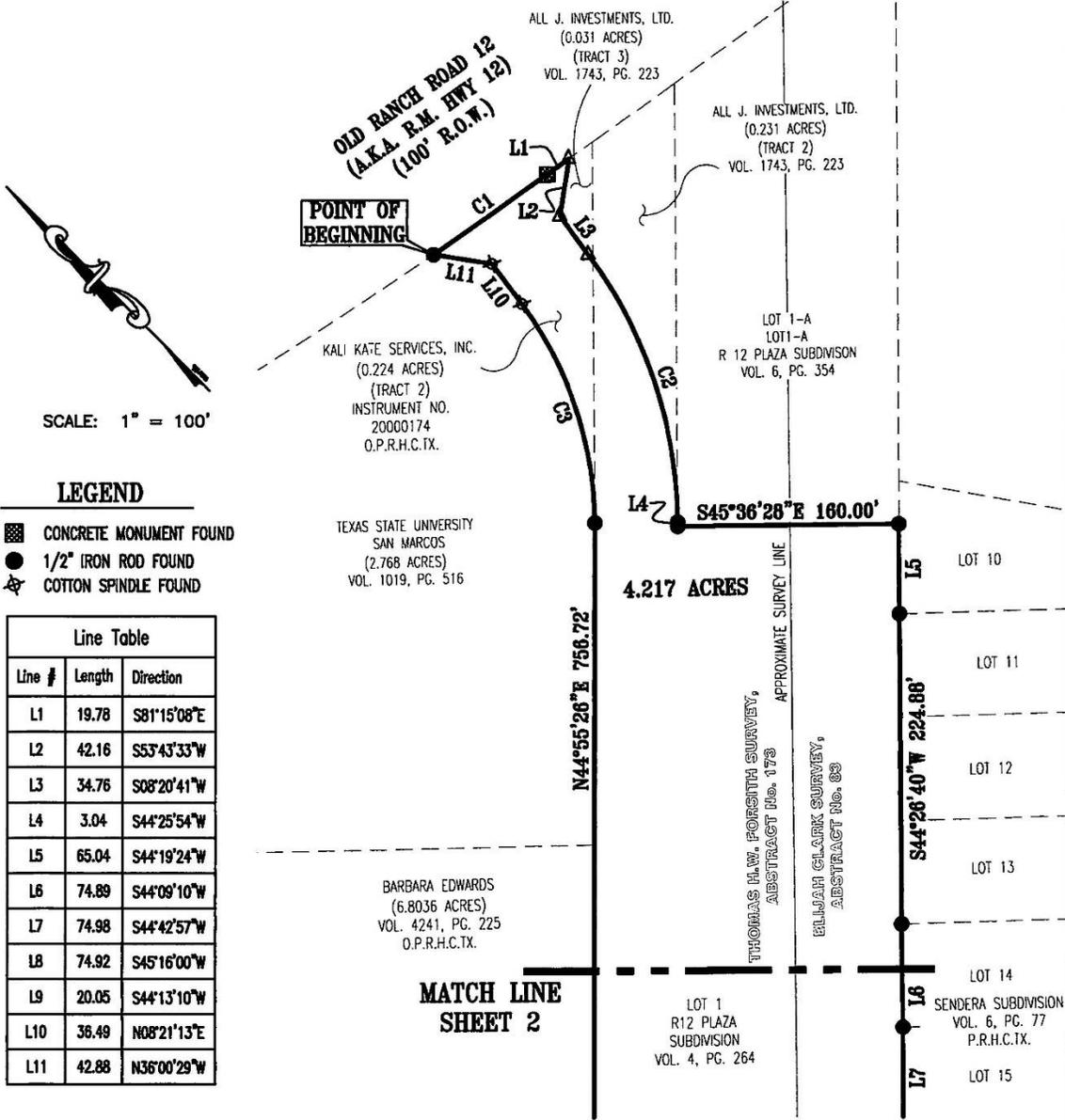
  
Derrick L. Mayfield, R.P.L.S. NO. 6456  
**Carlson, Brigance and Doering, Inc.**  
5501 West William Cannon  
Austin, TX 78749  
Ph: 512-280-5160 Fax: 512-280-5165  
dlmayfield@cbdeng.com



BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD83

J: AC3D\5130\SURVEY\FIELD NOTES\FN - ZONING.DOC

# SKETCH TO ACCOMPANY FIELD NOTES



SCALE: 1" = 100'

## LEGEND

- CONCRETE MONUMENT FOUND
- 1/2" IRON ROD FOUND
- COTTON SPINDLE FOUND

Line Table		
Line #	Length	Direction
L1	19.78	S81°15'08"E
L2	42.16	S53°43'33"W
L3	34.76	S08°20'41"W
L4	3.04	S44°25'54"W
L5	65.04	S44°19'24"W
L6	74.89	S44°08'10"W
L7	74.98	S44°42'57"W
L8	74.92	S45°16'00"W
L9	20.05	S44°13'10"W
L10	36.49	N08°21'13"E
L11	42.88	N36°00'29"W

Curve Table						
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C1	100.25	3869.99	S80°10'37"E	100.25	50.13	1°29'03"
C2	207.85	330.00	S26°23'17"W	204.43	107.50	36°05'13"
C3	169.93	270.00	N26°24'25"E	167.14	87.89	36°03'37"

## SHEET 1 OF 2

BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD83

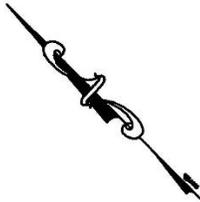
**Carlson, Brigançe & Doering, Inc.**  
 FIRM ID #F3791    REG. # 10024900

Civil Engineering    Surveying  
 5501 West William Cannon    Austin, Texas 78749  
 Phone No. (512) 280-5160    Fax No. (512) 280-5165

PATH: - J:\AC30\5130\SURVEY\FN - ZONING.DWG

# SKETCH TO ACCOMPANY FIELD NOTES

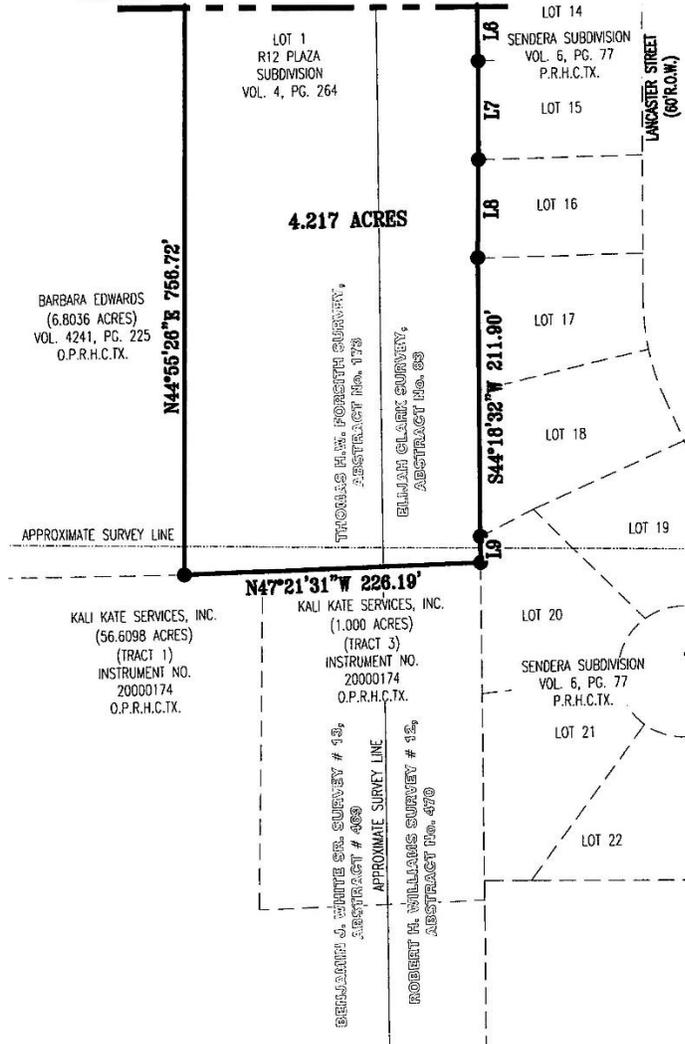
MATCH LINE  
SHEET 1



SCALE: 1" = 100'

### LEGEND

- CONCRETE MONUMENT FOUND
- 1/2" IRON ROD FOUND
- ⊕ COTTON SPINDLE FOUND



SHEET 2 OF 2

BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD83

**Carlson, Brigrance & Doering, Inc.**

FIRM ID #F9791    REG. # 10024900

Civil Engineering    Surveying  
5501 West Williams Cannon    Austin, Texas 78749  
Phone No. (512) 280-5160    Fax No. (512) 280-5165

PATH:-- J:\AC3D\5130\SURVEY\FN-- ZONING.DWG



<b>Zoning Request</b>	<b>Mystic Canyon</b>
<b>ZC-20-04</b>	



**Summary**

<b>Request:</b>	Zoning change from FD, CC, & P to SF-6		
<b>Applicant:</b>	Bill E. Couch Carson Brigrance and Doering, Inc. 5501 W William Cannon Dr Austin, TX 78749	<b>Property Owner:</b>	Kali Kate Services, Inc. 4550 FM 967 Buda, TX 78610

**Notification**

<b>Application:</b>	January 7, 2020	<b>Neighborhood Meeting:</b>	April 7, 2020
<b>Published:</b>	March 8, 2020	<b># of Participants</b>	1
<b>Posted:</b>	March 6, 2020	<b>Personal:</b>	March 6, 2020
<b>Response:</b>	General inquiries: 1 Opposition: 2 Support: 1		

**Property Description**

<b>Legal Description:</b>	5.217 out of the Benjamin J. White Survey		
<b>Location:</b>	East of Old Ranch Road 12 and Craddock		
<b>Acreage:</b>	5.217	<b>PDD/DA/Other:</b>	N/A
<b>Existing Zoning:</b>	FD, CC, P	<b>Proposed Zoning:</b>	SF-6
<b>Existing Use:</b>	Vacant	<b>Proposed Use:</b>	Single-family
<b>Existing Occupancy:</b>	Do not apply	<b>Occupancy:</b>	Apply
<b>Preferred Scenario:</b>	Existing Neighborhood	<b>Proposed Designation:</b>	Same
<b>CONA Neighborhood:</b>	Castle Forest	<b>Sector:</b>	2
<b>Utility Capacity:</b>	Adequate	<b>Floodplain:</b>	No
<b>Historic Designation:</b>	N/A	<b>My Historic SMTX Resources Survey</b>	No

**Surrounding Area**

	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Preferred Scenario</b>
<b>North of Property:</b>	MF-24	Multifamily	Existing Neighborhood
<b>South of Property:</b>	SF-6	Vacant	Existing Neighborhood
<b>East of Property:</b>	SF-6	Single Family	Existing Neighborhood
<b>West of Property:</b>	ETJ / SF6	Vacant	Existing Neighborhood

<b>Zoning Request</b>	<b>Mystic Canyon</b>
<b>ZC-20-04</b>	



**Staff Recommendation**

<input checked="" type="checkbox"/> <b>Approval as Submitted</b>	<input type="checkbox"/> <b>Alternate Approval</b>	<input type="checkbox"/> <b>Denial</b>
<b>Staff:</b> Tory Carpenter, AICP, CNU-A	<b>Title :</b> Planner	<b>Date:</b> May 13, 2020

**Commission Recommendation**

Approval as Submitted
<b><u>Planning and Zoning Commission Meeting: April 28, 2020</u></b>
<b>Speakers in favor or opposed:</b>
None.
<b>Recommendation from the Planning and Zoning Commission meeting held April 28, 2020:</b>
A motion was made by Commissioner Dillon, seconded by Commissioner Rand, to approve ZC-20-04. The motion carried 6-0.
<ul style="list-style-type: none"> <li>• <b>For:</b> (6) Chairperson Gleason, Commissioner Rand, Commissioner McCarty, Commissioner Dillon, Commissioner Moore, Commissioner Agnew, Commissioner Spell.</li> <li>• <b>Against:</b> 0</li> </ul>
<b>Recused:</b> (1) Commissioner Haverland
<b>Absent:</b> (1) Vice Chairperson Kelsey

**History**

The request is associated with the Mystic Canyon development which includes 127 single-family lots. In 2018, the applicant was granted a zoning change from FD to SF-6 for 56.6 acres of the surrounding property. While the developer also had the subject property under contract, it was not included with the application materials for the original zoning change.

**Additional Analysis**

**Comments from Other Departments**

<b>Police</b>	No Comment
<b>Fire</b>	No Comment
<b>Public Services</b>	No Comment
<b>Engineering</b>	No Comment

Zoning Request	<b>Mystic Canyon</b>
ZC-20-04	



Evaluation			Compatibility of Uses & Density Criteria (Sec.4.1.2.5)
Consistent	Inconsistent	Neutral	
<u>X</u>			Helps prevent the impacts of high density uses on low density areas
		<u>N/A</u>	Limits changes in neighborhood density categories unless directed by a small area plan or neighborhood character study <b><i>Studies were not complete at the time of this request.</i></b>
<u>X</u>			Encourages more opportunities for home ownership <b><i>More single-family detached homes allows for more opportunities for home ownership.</i></b>
		<u>X</u>	Ensures a diversity of housing to serve citizens with varying needs and interests

Evaluation			Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	Neutral	
<u>X</u>			Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan and preferred scenario map <b><i>SF-6 is a "Considered" zoning district per table 4.1</i></b>
		<u>N/A</u>	Whether the proposed zoning map amendment is consistent with any adopted small area plan or neighborhood character study for the area <b><i>Studies were not complete at the time of this request.</i></b>
		<u>N/A</u>	Whether the proposed zoning map amendment is consistent with any applicable development agreement in effect
<u>X</u>			Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses shall be appropriate in the immediate area of the land to be reclassified <b><i>This use is consistent with surrounding development.</i></b>
<u>X</u>			Whether the proposed zoning will reinforce the existing or planned character of the area <b><i>The predominant surrounding zoning is also SF-6. This zoning change should reinforce the existing character of the area as it is consistent.</i></b>

# Zoning Request

ZC-20-04

# Mystic Canyon



Evaluation			Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	Neutral	
<u>X</u>			Whether the site is appropriate for the development allowed in the proposed district <b>While this site is over the Edwards Aquifer Recharge Zone, it can be developed with no more than 20% impervious cover.</b>
<u>X</u>			Whether there are substantial reasons why the property cannot be used according to the existing zoning <b>Since the property is currently zoned FD, it allows for two-acre single-family lots. These would be much larger than those of the surrounding area and would limit the ability to provide for a more compact development.</b>
<u>X</u>			Whether there is a need for the proposed use at the proposed location <b>The rezoning would increase housing availability.</b>
<u>X</u>			Whether the City and other service providers will be able to provide sufficient public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, public safety, and emergency services, while maintaining sufficient levels of service to existing development <b>Roads and utility infrastructure will be required to extend into and through the development at the developer's cost.</b>
<u>X</u>			Whether the proposed rezoning will have a significant adverse impact on property in the vicinity of the subject property <b>The proposed use is consistent with adjacent uses.</b>

Evaluation			Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	Neutral	
		<u>N/A</u>	For requests to a Neighborhood Density District, whether the proposed amendment complies with the compatibility of uses and density in Section 4.1.2.5 <b>This is not a request for a Neighborhood Density District.</b>
<u>X</u>			The impact the proposed amendment has with regard to the natural environment, including the quality and quantity of water and other natural resources, flooding, and wildlife management <b>While this site is over the Edwards Aquifer Recharge Zone, it can be developed with no more than 20% impervious cover.</b>
<u>X</u>			Any other factors which shall substantially affect the public health, safety, morals, or general welfare <b>None noted.</b>

Future Development (FD) VS. Single Family (SF-6)

Section 5.1.1.2 Land Use Matrix

TABLE 5.1 LAND USE MATRIX

TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS					DEFINITION USE STANDARDS
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH	EC	
<b>AGRICULTURAL USES</b>																				
Barns or agricultural buildings	P	L	--	--	--	--	--	--	P	P	L	--	--	--	P	--	--	--	--	Section 5.1.2.1
Stables	P	L	--	--	--	--	--	--	--	P	L	--	--	--	P	--	--	--	--	Section 5.1.2.2
Community Garden	P	P	L	L	L	L	L	--	P	P	L	L	L	L	P	P	P	P	P	Section 5.1.2.3
Urban Farm	P	C	C	C	C	L	L	C	P	P	L	L	C	C	P	P	--	P	C	Section 5.1.2.4
Plant Nursery	L	--	--	--	--	--	--	P	--	L	--	--	P	P	P	P	P	--	P	Section 5.1.2.5
<b>ACCESSORY USES AND STRUCTURES</b>																				
Accessory Building/Structure	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.3.1
Accessory Dwelling Unit	L	L	L	L	L	L	P	P	--	P	L	P	P	P	--	--	--	--	--	Section 5.1.3.1
Accessory Use, except as listed below:	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.3.2
Outdoor Storage	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	L	P	--	L	Section 5.1.3.2
Outdoor Display	--	--	--	--	--	--	--	L	--	--	--	--	L	L	P	--	--	--	L	Section 5.1.3.2
Food Truck	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.3.1
Drive-thru or Drive-in	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.3.2
Home Occupation	L	L	L	L	L	L	L	--	--	L	L	L	--	--	--	--	--	--	--	Section 5.1.3.4
Family Home Care	P	P	P	P	P	P	P	--	--	P	P	P	--	--	--	--	--	--	--	Section 5.1.3.5
Short Term Rental	L	L	L	L	L	L	L	P	--	L	L	P	P	P	--	--	--	L	P	Section 5.1.3.6
<b>RESIDENTIAL USES</b>																				
Single Family Detached	P	L	L	L	L	L	L	--	--	P	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Cottage Court	--	--	--	--	--	L	L	--	--	--	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Two Family	--	--	--	--	--	L	L	--	--	--	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Single Family Attached	--	--	--	--	L	L	L	L	--	--	P	P	P	P	--	--	--	--	--	Section 5.1.4.1
Small Multi-Family (up to 9 units)	--	--	--	--	--	L	L	L	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Courtyard Housing (up to 24 units)	--	--	--	--	--	--	L	L	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Multi-family (10 or more units)	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Purpose Built Student Housing	--	--	--	--	--	--	--	--	--	--	--	--	C	C	--	--	--	--	--	Section 5.1.4.1
Manufactured Home	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	Section 5.1.4.1
Mobile Home Community	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	Section 5.1.4.1

TABLE 5.1 LAND USE MATRIX

TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS					DEFINITION USE STANDARDS
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH	EC	
Community Home	L	L	L	L	L	L	P	P	--	P	P	P	P	P	--	--	--	L	--	Section 5.1.4.12
Fraternity or Sorority Building	--	--	--	--	--	--	C	C	--	--	--	C	P	P	--	--	--	--	--	Section 5.1.4.12
<b>COMMERCIAL USES</b>																				
Professional Office	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	P	--	--	P	Section 5.1.5.1
Medical, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.2
Urgent care, emergency clinic, or hospital	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	--	--	P	Section 5.1.5.2
Nursing/ retirement home	--	--	--	--	--	--	P	P	--	--	--	P	P	P	P	--	--	--	P	Section 5.1.5.2
Personal Services, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.3
Animal care (indoor)	C	--	--	--	--	--	--	P	--	--	--	--	P	P	P	--	--	--	P	Section 5.1.5.3
Animal care (outdoor)	C	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	C	Section 5.1.5.3
Funeral Home	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.3
Adult Oriented Businesses	See Section 18, Article 6 of the City Code																			
All Retail Sales, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.4
Gasoline Sales	--	--	--	--	--	--	--	L	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.4
Truck stop	--	--	--	--	--	--	--	--	--	--	--	--	--	--	L	--	--	--	L	Section 5.1.5.4
Tattoo, body piercing	--	--	--	--	--	--	C	C	--	--	--	C	P	P	P	--	--	--	P	Section 5.1.5.4
Building material sales	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	P	P	--	P	Section 5.1.5.4
Vehicle Sales/ Rental	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.4
Pawnshop	--	--	--	--	--	--	--	C	--	--	--	C	P	P	P	--	--	--	P	Section 5.1.5.4
Restaurant/ Bar, as listed below:																				
Eating Establishment	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.5
Bar	--	--	--	--	--	--	--	C	--	--	--	--	C	C	C	--	--	--	C	Section 5.1.5.5
Mobile Food Court	--	--	--	--	--	--	--	C	--	--	--	--	P	P	--	--	--	--	--	Section 5.1.5.5
Sale of Alcohol for on premise consumption	--	--	--	--	--	--	C	C	--	--	--	C	C	C	C	--	--	--	C	Section 5.1.5.5
Overnight Lodging, as listed below:																				
Bed and Breakfast (up to 8 rooms)	L	C	C	C	C	L	L	P	--	P	C	P	P	P	--	--	--	--	P	Section 5.1.5.6
Boutique Hotel (9 - 30 rooms)	--	--	--	--	--	--	C	P	--	--	--	P	P	P	--	--	--	--	P	Section 5.1.5.6

TABLE 5.1 LAND USE MATRIX

TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS					DEFINITION USE STANDARDS
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH	EC	
Hotel/ Motel (more than 30 rooms)	--	--	--	--	--	--	--	P	--	--	--	--	P	P	--	--	--	--	P	Section 5.1.5.6
Outdoor Recreation, except as listed below:	--	--	--	--	--	--	--	C	--	--	--	--	P	C	P	--	--	--	P	Section 5.1.5.7
Golf Course	C	C	C	C	C	C	C	C	C	C	C	C	C	C	--	--	--	C	C	Section 5.1.5.7
Traveler Trailers/ RVs Short Term stays	P	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	P	--	Section 5.1.5.7
Shooting Range	C	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	C	Section 5.1.5.7
Indoor Recreation, except as listed below:	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.5.8
Gym/ Health club	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	P	P	--	P	Section 5.1.5.8
Smoking Lounge	--	--	--	--	--	--	--	C	--	--	--	--	P	C	--	--	--	--	P	Section 5.1.5.8
Charitable Gaming Facility	--	--	--	--	--	--	--	--	--	--	--	--	C	--	C	--	--	--	C	Section 5.1.5.8
<b>PUBLIC &amp; INSTITUTIONAL</b>																				
Civic, except as listed below:	P	L	L	L	L	L	P	P	L	L	L	P	P	P	P	P	P	P	P	Section 5.1.6.1
Day Care Center	C	--	--	--	C	C	L	P	--	C	C	L	P	P	P	--	--	--	P	Section 5.1.6.1
Parks, Open Space, and Greenways	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.6.2
Minor Utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.6.3
Major Utilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	--	--	Section 5.1.6.3
Antenna	See Section 5.1.6.3D																			
<b>INDUSTRIAL</b>																				
Light Industrial	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	P	P	--	C	Section 5.1.7.1
Light Manufacturing	--	--	--	--	--	--	--	C	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.7.2
Vehicle Service, as listed below:																				Section 5.1.7.3
Car Wash	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	C	Section 5.1.7.3
Vehicle repair (minor)	--	--	--	--	--	--	--	C	--	--	--	--	P	P	P	P	P	--	C	Section 5.1.7.3
Vehicle repair (major)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	--	C	Section 5.1.7.3
Warehouse & Distribution	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	P	P	--	P	Section 5.1.7.4
Waste-Related service	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	P	P	--	--	Section 5.1.7.5
Wholesale trade	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	P	Section 5.1.7.6
Self Storage	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	C	Section 5.1.7.7
Research and Development	--	--	--	--	--	--	--	--	--	--	--	--	C	C	P	P	P	--	C	Section 5.1.7.8
Wrecking/Junk Yard	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	Section 5.1.7.9

Section 9.3.1.2 Land Use Matrix

TABLE 9.1 LAND USE MATRIX

TYPES OF LAND USES	AR	SF-11	D	DR	TH	PHZL	MF12	MF18	MF24	MR	MU	VMU	P	NC	OP	CC	GC
<b>Agricultural Uses</b>																	
Barns and Farm Equipment Storage	P																
Bulk Grain and/or Feed Storage/ Processing	P																
Farmers Market											P	P	P	C		C	C
Farms, General (Crops)	P										P	P					
Farms, General (Livestock/Ranch)	P																
Hay, Grain, and/or Feed Sales (Wholesale)	C																
Livestock Sales/Auction	C																
Plant Nursery (growing for commercial purposes but no retail sales on site)	P																
Stables	P																
Stables (Private, Accessory Use)	P	C										C					
<b>Residential Uses</b>																	
Accessory Building/Structure (No larger than 625 s.f. in size and 12' in height)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Accessory Building/Structure (Larger than 625 s.f. in size OR 12' in height)	P	C					P	P	P		C	C	P	C	C	P	P
Accessory Dwelling (One Accessory Dwelling Per Lot)	P	C									C	C	P	C	C	C	C
Bed and Breakfast Inn	C	C	C	C	C	C	P	P	P	P	P	P	C	P		P	P
Caretaker's/Guard's Residence											P	P	P	C	C	P	P
Community Home	P	P	P	P	P	P	P	P	P	P	P	P	P				
Residential Hall or Boarding House							P	P	P		C	C		C			
Duplex/Two-Family/Duplex Condominiums			P	P	P		P	P	P		C	C					
Family Home Child Care	P	P	P	P	P	P	P	P	P	P	P	P					
Four Family (Quadraplex) or Three Family (Tri-Plex)							P	P	P		C	C					
Fraternity or Sorority Building							C	C	C		C	C					
Home Occupation							See Section 5.1.3.4										
HUD code-Manufactured Home											P						
Loft Apartments							P	P	P		P	P		C	C	C	C
Multifamily (Apartments)							P	P	P		C	C	C				

**TABLE 9.1 LAND USE MATRIX**

TYPES OF LAND USES	AR	SF-11	D	DR	TH	PHZL	MF12	MF18	MF24	MR	MU	VMU	P	NC	OP	CC	GC
Purpose Built Student Housing							C	C	C		C	C					
Senior Housing Community							P	P	P							P	P
Single Family Detached House	P	P	P	P	P	P	P	P	P	P	P	P	C	C			
Single Family Industrialized Home	P	P	P	P	P	P	P	P	P	P	P	P	C	C			
Single Family Townhouse (Attached)				P	P		P	P	P		P	P					
Single Family Zero Lot Line/Patio Homes					C	P	P	P	P		C	C					
<b>Office Service Type Uses</b>																	
Armed Services Recruiting Center											P	P	P	P	P	P	P
Bank or Savings and Loan (w/o Drive-thru)											P	P		C	P	P	P
Bank or Savings and Loan (w Drive-thru)											C	C		C	C	P	P
Check Cashing Service											C	C		P		P	P
Offices (Health Services)											P	P		P	P	P	P
Offices (Medical Office)											P	P		P	P	P	P
Offices (Professional)											P	P	C	P	P	P	P
Call Service Center																P	P
<b>Personal and Business Service Uses</b>																	
Appliance Repair											C	C		C		P	P
Artist or Artisans Studio	P										P	P	C	P		P	P
Ambulance Service (Private)													P	C		C	P
Automobile Driving School (including Defensive Driving)											P	P	P	C	C	P	P
Automatic Teller Machines (ATM's)											P	P	P	P		P	P
Barber/Beauty College (barber or cosmetology school or college)													P	C	C	P	P
Barber/Beauty Shop, Haircutting (non-college)											P	P		P	C	P	P
Bed and Breakfast (No Permanent Residence)	C						P	P	P	P	P	P		C		P	P
Communication Equipment (Installation and/or Repair - No outdoor sales or storage)																C	P
Dance/Drama/Music Schools (Performing Arts)											P	P	P	P	C	P	P
Extended Stay Hotels/Motels (Residence hotels)											C	C				C	P

**TABLE 9.1 LAND USE MATRIX**

TYPES OF LAND USES	AR	SF-11	D	DR	TH	PHZL	MF12	MF18	MF24	MR	MU	VMU	P	NC	OP	CC	GC
Exterminator Service (No outdoor sales or storage)											P	P					P
Funeral Home																	P
Hotel/Motel											P	P				C	P
Kiosk (Providing A Retail Service)											P			C		P	P
Laundry/Dry Cleaning (Drop Off/Pick Up)											P	P		C		P	P
Martial Arts School											P	P	P	C	C	P	P
Medical Supplies and Equipment											P	P		P		P	P
Mini-Warehouse/Self Storage Units											C						C
Off-Premises Freestanding Sign																P	P
Photocopying/Duplicating/Copy Shop											P	P		C		P	P
Sexually Oriented Business																	(See San Marcos City Code)
Studio for Radio or Television (without tower)											P	P	P			P	P
Tool Rental (Indoor Storage only)											P			C		C	P
Tool Rental (with Outdoor Storage)																	C
Washateria/Laundry (Self Serve)														C		P	P
<b>Retail and Service Type Uses</b>																	
All Terrain Vehicle (go-carts) Dealer/Sales																C	P
Antique Shop (with outside storage)											C	C		C		C	P
Auto Dealer (Primarily New/Used Auto Sales as accessory use only)																	P
Auto Dealer, Used Auto Sales																C	P
Auto Supply Store for New and Rebuilt Parts											C	C				P	P
Bike Sales and/or Repair											P	P				P	P
Building Material Sales																	P
Cabinet Shop (Manufacturing)																	P
Convenience Store Without Gas Sales											P	P		C		P	P
Convenience Store With Gas Sales											C			C		C	P
Department Store																P	P
Food or Grocery Store with Gasoline Sales											C			C		C	P
Food or Grocery Store without Gasoline Sales											P	P		C		P	P

**TABLE 9.1 LAND USE MATRIX**

<b>TYPES OF LAND USES</b>	<b>AR</b>	<b>SF-11</b>	<b>D</b>	<b>DR</b>	<b>TH</b>	<b>PHZL</b>	<b>MF12</b>	<b>MF18</b>	<b>MF24</b>	<b>MR</b>	<b>MU</b>	<b>VMU</b>	<b>P</b>	<b>NC</b>	<b>OP</b>	<b>CC</b>	<b>GC</b>
Gravestone/Tombstone Sales																	C
Gun Smith																	C
Home Improvement Center (10,000 s.f. or more)											C	C				P	P
Lawnmower Sales and/or Repair											C	C				C	P
Liquor Sales (retail)																P	P
Market (Public, Flea)											C	C		C			C
Pharmacy											P	P		C		P	P
Plant Nursery (Retail Sales/Outdoor Storage)	P										C	C	C	C	C	P	P
Recycling Kiosk											P	P	P	C	C	P	P
Restaurant/Prepared Food Sales											P	P	C	C		P	P
Restaurant/Prepared Food Sales with beer/wine off-premises consumption																C	C
Restaurant/Prepared Food Sales with drive thru											C	C				P	P
Retail Store (Misc.) with Drive Thru Service											C	C				C	P
Retail Store (Misc.) without Drive Thru Service (Under 100,000 s.f. Bldg.)											C	C				P	P
Retail Store (100,000 s.f. or more Bldg.)																C	P
Retail Store (over 10,000 s.f. or more Bldg.) outside sales											C	C		C		C	P
Retail Store (under 10,000 s.f. or more Bldg.) outside sales											C	C		C		P	P
Retail Store (under 10,000 s.f. or more Bldg.) no outside sales											P	P		C		P	P
Security Systems Installation Company																	P
Shopping Center (Over 5 Acres)																P	P
Studio Tattoo or Body Piercing											C	C		C		P	P
Temporary Outdoor Retail Sales / Commercial Promotion (4 day time limit; Permit Required by Building Official)											P	P		C		P	P
Upholstery Shop (Non-Auto)																	P
Veterinarian (Indoor Kennels)											C	C				C	P
Woodworking Shop (Ornamental)											P	P		P		P	P

**Transportation and Automotive Uses**

**TABLE 9.1 LAND USE MATRIX**

TYPES OF LAND USES	AR	SF-11	D	DR	TH	PHZL	MF12	MF18	MF24	MR	MU	VMU	P	NC	OP	CC	GC
General Vehicular Sales and Service											C	C				P	P
Auto Body Repair																	C
Auto Muffler Shop																P	P
Auto Paint Shop																	C
Auto Repair (General)											C	C				C	P
Auto Repair as an Accessory Use to Retail Sales											C	C				P	P
Auto Tire Repair/Sales (Indoor)											C	C				P	P
Auto Wrecker Service/Tow Yard																	
Car Wash (Self Service; Automated)											C	C				C	P
Full Service Car Wash (Detail Shop)											C	C				P	P
Heavy Load Vehicle Sales/Repair																	
Limousine/Taxi Service											C	C				P	P
Public Garage/Parking Structure											C	C	C		C	C	C
Tire Sales (Outdoors/Storage)																C	P
Transit Terminal																C	C
Truck Terminal																	C
<b>Amusement and Recreational Uses</b>																	
Amusement Services or Venues (Indoors)											C	C				C	P
Amusement Services or Venues (Outdoors)	C	C	C	C	C	C	C	C	C		C	C	C				P
Bar											C	C				C	C
Billiard/Pool Facility/Nightclub (Three or More Tables) No alcohol consumption																C	P
Smoking Lounge											C	C		C		C	P
Broadcast Station (with Tower)													P				
Charitable Gaming Facility																	C
Civic/Conference Center											P	P	P			C	P
Country Club (Private)	C	C	C	C	C	C	C	C	C		C	C		C		C	C
Dance Hall/Dancing Facility																C	P
Day Camp	C												C				P
Driving Range																	P
Fair Ground													P				

**TABLE 9.1 LAND USE MATRIX**

TYPES OF LAND USES	AR	SF-11	D	DR	TH	PHZL	MF12	MF18	MF24	MR	MU	VMU	P	NC	OP	CC	GC
Health Club (Physical Fitness; Indoors Only)											P	P		P		P	P
Motion Picture Theater (Indoors)											C	C				C	P
Motion Picture Studio, Commercial Film																	P
Museum (Indoors Only)											P	P	P	P		P	P
On-Premises Consumption of Alcohol											C	C		C		C	C
Park and/or Playground	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P
Travel Trailers/RVs (Short Term Stays)																	P
Rodeo Grounds													C				
RV/Travel Trailer Sales																	P
Tennis Court (Lighted)	C	C	C	C	P	C	P	P	P	P	C	C	P			C	C
Theater (Non-Motion Picture; Live Drama)											C	C	P			C	P
<b>Institutional/Governmental Uses</b>																	
Adult Day Care (No Overnight Stay)											P	P	P	C		P	P
Antenna (Non-Commercial)																	See Section 5.1.6.3
Antenna (Commercial)																	See Section 5.1.6.3
Assisted Living Facility/Hospice							P	P	P		P	P		C		P	P
Broadcast Towers (Commercial)																	See Section 5.1.6.3
Cellular Communications Tower/PSS																	See Section 5.1.6.3
Cemetery and/or Mausoleum	C												P				
Child Day Care (Business)											P	P	C	C		P	P
Meeting Place/Nonreligious			C	C	C	C					P	P		C		P	P
Place of Religious Assembly/Church	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Clinic (Medical)											P	P	P	C	P	P	P
Electrical Generating Plant													C				
Electrical Substation	C	C	C	C	C	C	C	C	C	C	C	C	C	C		C	C
Emergency Care Clinic											P	P		C		P	P
Franchised Private Utility (not listed)																	See Section 5.1.6.3
Fraternal Organization/Civic Club											P	P		C		P	P
Governmental Building or Use (Municipal, State or Federal)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Heliport											C	C	C				C

**TABLE 9.1 LAND USE MATRIX**

TYPES OF LAND USES	AR	SF-11	D	DR	TH	PHZL	MF12	MF18	MF24	MR	MU	VMU	P	NC	OP	CC	GC
Helistop (Non-Emergency)													C				
Household Care Facility	C	C	C	C	C	C	C	C	C	C	C	C	P				
Hospital (Acute Care/Chronic Care)							C	C	C		C	C	P	C	C	C	P
Nursing/Convalescent Home							P	P	P		P	P		C		P	P
Philanthropic organization											P	P		C	P	P	P
Post Office (Private)											P	P	P	P	P	P	P
Post Office (Governmental)	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P	P
Radio/Television Tower (Commercial)	See Section 5.1.6.3																
Rectory/Parsonage with Place of Worship	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P
Retirement Home/Home for the Aged							P	P	P		P	P				P	P
School, K through 12 (Private)	C	C	C	C	C	C	C	C	C	C	C	C	P	P		P	P
School, K through 12 (Public)	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P
School, Vocational (Business/Commercial Trade)											C	C	P	C		P	P
University or College													P				
<b>Commercial and Wholesale Trade Uses</b>																	
Auction Sales (Non-Vehicle)																	P
Bio-Medical Facilities																	
Caterer											P	P		C		C	C
Extermination Service																	P
Feed and Grain Store																	P
Furniture Manufacture																	
Maintenance/Janitorial Service											C	C		C			P
Manufactured Home Sales																	
Metal Fabrication Shop																	C
Moving Storage Company																	C
Portable Building Sales																	P
Taxidermist																	P
Transfer Station (Refuse/Pick-up)																	
Veterinarian (Outdoor Kennels or Pens)	C																
Warehouse/Office and Storage																	C
Welding Shop																	

**TABLE 9.1 LAND USE MATRIX**

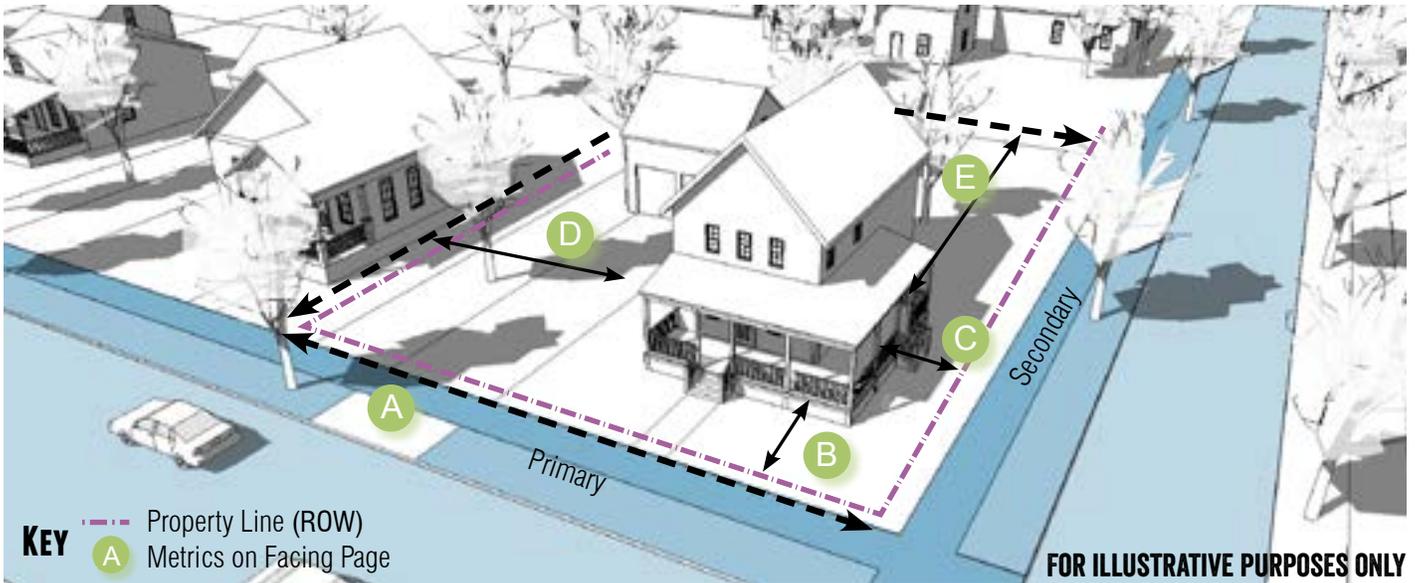
TYPES OF LAND USES	AR	SF-11	D	DR	TH	PHZL	MF12	MF18	MF24	MR	MU	VMU	P	NC	OP	CC	GC
<b>Industrial/Manufacturing Uses</b>																	
Aircraft Support and Related Services													P				
Airport													P				
Manufacturing																	
Contractor's Office/Sales, With Outside Storage including Vehicles																	
Contractor's Temporary On-Site Construction Office (only with permit)																	Issued by Building Official
Distribution Center																	
Electronic Assembly/High Tech Manufacturing																	P
Engine Repair/Motor Manufacturing Re-Manufacturing and/or Repair																	
Food Processing (no Outside Public Consumption)																	
Laboratory Equipment Manufacturing																	
Leather Products Manufacturing																	
Machine Shop																	
Manufacturing Processes not Listed																	
Marble or Stone Finishing																	
Micro Brewery (onsite mfg. and sales)											C	C				C	C
Motor Freight Terminal																	
Outside Storage (as primary use)																	C
Paint Manufacturing																	
Petroleum Bulk Storage																	
Plastic Products Molding/Reshaping																	
Research Lab (Non-Hazardous)															C		C
Sand/Gravel Sales (Storage or Sales)																	
Sign Manufacturing																	
Stone/Clay/Glass Manufacturing																	
Wrecking/Junk Yard																	

## Zoning District Comparison Chart

<b>Topic</b>	<b>Existing Zoning: Future Development (FD)</b>	<b>Existing Zoning: Community Commercial (CC)</b>	<b>Proposed Zoning: Single Family (SF-6)</b>
<b>Zoning Description</b>	The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.	The CC, Community Commercial is established to provide areas for quality larger general retail establishments and services facilities for the retail sale of goods and services. The district should generally consist of retail nodes located along or at the intersection of major collectors or thoroughfares to accommodate high traffic volumes generated by general retail uses.	The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet. Characterized by smaller landscaped areas with moderate setbacks and more frequent pedestrian use. Uses that would substantially interfere with the residential nature of the district are not allowed.
<b>Uses</b>	Residential ( <i>See Land Use Matrix</i> )	Commercial. ( <i>See Land Use Matrix</i> )	Single-family residential. ( <i>See Land Use Matrix</i> )
<b>Parking Location</b>	No location standards	No location standards	No location standards
<b>Parking Standards</b>	2 spaces per dwelling unit (if single family detached)	Varies based on use.	1 space per dwelling unit.
<b>Max Residential Units / acre</b>	0.4 units per acre (max)	N/A	5.5 units per acre (max)
<b>Occupancy Restrictions</b>	N/A	N/A	N/A
<b>Landscaping</b>	Tree and shrub requirements	10% - 15%	Tree and shrub requirements
<b>Building Height (max)</b>	2 stories	N/A	2 stories
<b>Setbacks</b>	50' front setback, 20 ft side setback, . Rear setback: 20% of the lot depth	20' front setback, 5 ft side setback, 5 ft rear setback	25' front Setback, 5' side setback, 20' rear set back.
<b>Impervious Cover (max)</b>	30%	80% (20% for Mystic Canyon due to location within Edwards Aquifer Recharge Zone).	50% (20% for Mystic Canyon due to location within Edwards Aquifer Recharge Zone).
<b>Lot Sizes</b>	Allows a variety of lot sizes depending on Building Type.	Allows a variety of lot sizes depending on Building Type.	Allows a variety of lot sizes depending on Building Type.
<b>Streetscapes</b>	Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area.	Conventional.	Residential, and Conventional.
<b>Blocks</b>	No Block Perimeter Required	3,000 ft. Block Perimeter max.	3,000 ft. Block Perimeter max.

SF-6

SECTION 4.4.1.3 SINGLE FAMILY - 6



**GENERAL DESCRIPTION**

The SF-6 district is intended to accommodate single family detached houses with a minimum lot size of 6,000 square feet. Characterized by smaller landscaped areas with moderate setbacks and more frequent pedestrian use. Uses that would substantially interfere with the residential nature of the district are not allowed.

**DENSITY**

Units Per Gross Acre	5.5 max.
Impervious Cover	50% max.
Occupancy Restrictions	Section 5.1.4.1

**TRANSPORTATION**

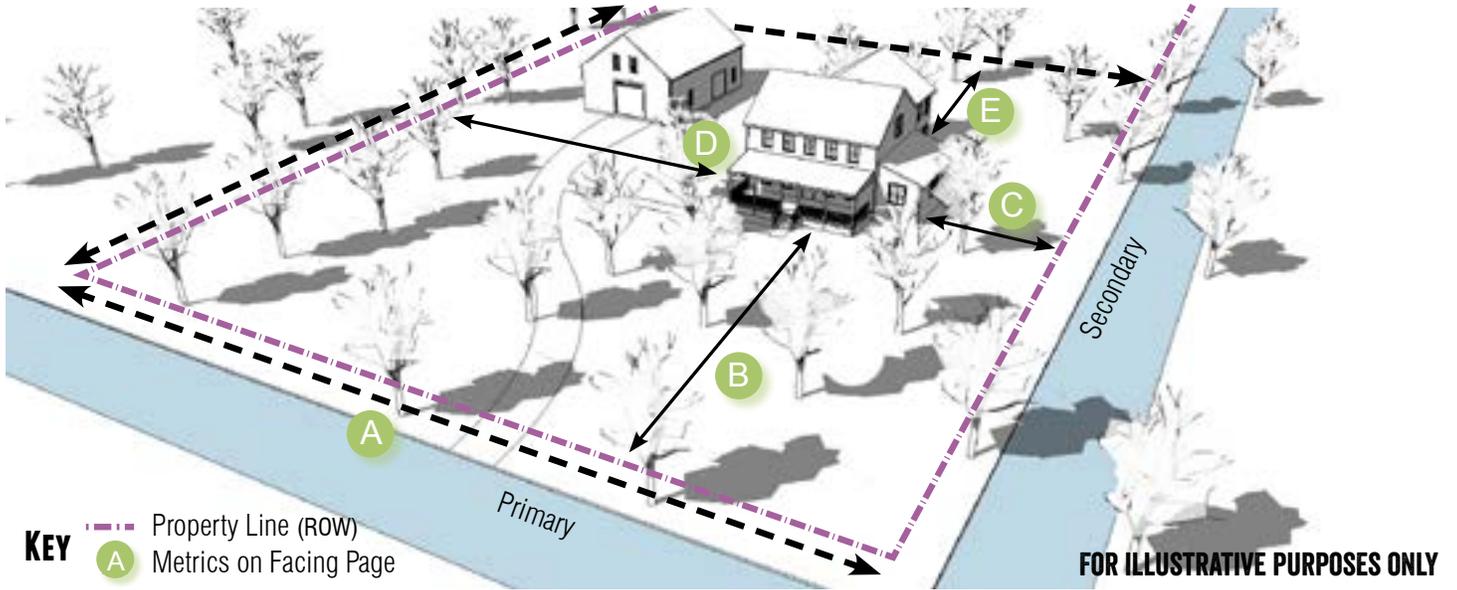
Block Perimeter	3,000 ft. max	Section 3.6.2.1
Streetscape Type	Residential	Section 3.8.1.10
Sidewalks are not required for lots greater than 1 acre		

**BUILDING TYPES ALLOWED**

Accessory Dwelling	Section 4.4.6.1
House	Section 4.4.6.2
Cottage	Section 4.4.6.3
Civic	Section 4.4.6.15

**FD**

**SECTION 4.4.1.1 FUTURE DEVELOPMENT DISTRICT**



**GENERAL DESCRIPTION**

The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.

**DENSITY**

Units Per Gross Acre	.4 max.
Impervious Cover	30% max.

**TRANSPORTATION**

Streetscape Type	Residential	Section 3.8.1.10
Sidewalks are not required for lots greater than 1 acre		

**BUILDING TYPES ALLOWED**

Accessory Dwelling	Section 4.4.6.1
House	Section 4.4.6.2
Civic	Section 4.4.6.15

**ZC-20-04 (Mystic Canyon) Zoning Change Review (By Comp Plan Element)**

**LAND USE – Preferred Scenario Map / Land Use Intensity Matrix**

	YES	NO (map amendment required)
Does the request meet the intent of the Preferred Scenario Map and the Land Use Intensity Matrix?	X	

**ECONOMIC DEVELOPMENT – Furthering the goal of the Core 4 through the three strategies**

STRATEGY	SUMMARY	Supports	Contradicts	Neutral
Preparing the 21 <sup>st</sup> Century Workforce	Provides / Encourages educational opportunities			Applicant has not indicated that educational facilities will be included.
Competitive Infrastructure & Entrepreneurial Regulation	Provides / Encourages land, utilities and infrastructure for business			Applicant will extend utilities to the site in order to develop.
The Community of Choice	Provides / Encourages safe & stable neighborhoods, quality schools, fair wage jobs, community amenities, distinctive identity			Applicant has not indicated that opportunities for jobs and services will be included.

**ENVIRONMENT & RESOURCE PROTECTION – Land Use Suitability & Development Constraints**

	1 (least)	2	3 (moderate)	4	5 (most)
Level of Overall Constraint				X	X
Constraint by Class					
Cultural	X				
Edwards Aquifer					X
Endangered Species	X				
Floodplains	X				
Geological	X				
Slope		X			
Soils		X			
Vegetation	X				
Watersheds					
Water Quality Zone	X				

**ENVIRONMENT & RESOURCE PROTECTION – Water Quality Model Results**

Located in Subwatershed:	<b>Purgatory Creek</b>				
	0-25%	25-50%	50-75%	75-100%	100%+
Modeled Impervious Cover Increase Anticipated for watershed		<b>X</b>			
Notes: <b>The change in impervious cover under the Preferred Scenario is attributed to portions of the Paso Robles development, the Government Center, and downtown development. Purgatory Creek is a direct tributary of the San Marcos River, home of several endangered species. The Plan emphasizes the need to identify potential pollution from redevelopment as construction runoff and debris can wash into the creek during storm events.</b>					

**NEIGHBORHOODS – Where is the property located**

CONA Neighborhood(s):	<b>Castle Forest</b>
Neighborhood Commission Area(s):	<b>Sector 2</b>

**PARKS, PUBLIC SPACES AND FACILITIES –Availability of parks and infrastructure**

	YES	NO
Will Parks and / or Open Space be Provided?	<b>X</b>	
Will Trails and / or Green Space Connections be Provided?	<b>X</b>	
<b>The developer intends to dedicate more parkland than required due to impervious cover restrictions in the area.</b>		
<b>Maintenance / Repair Density</b>	Low (maintenance)	High (maintenance)
Wastewater Infrastructure	<b>X</b>	
Water Infrastructure	<b>X</b>	
Public Facility Availability		
	YES	NO
Parks / Open Space within ¼ mile (walking distance)? <b>Upper Purgatory is adjacent to this property.</b>	<b>X</b>	
Wastewater service available? <b>The developer will be required to extend wastewater service through the site.</b>	<b>X</b>	
Water service available? <b>The developer will be required to extend water service through the site.</b>	<b>X</b>	

**TRANSPORTATION – Level of Service (LOS), Access to sidewalks, bicycle lanes and public transportation**

		A	B	C	D	F
Existing Daily LOS	Wonder World Drive Old Ranch Road 12	X				X
Existing Peak LOS	Wonder World Drive Old Ranch Road 12	X				X
Preferred Scenario Daily LOS	Wonder World Drive Old Ranch Road 12	X				X
Preferred Scenario Peak LOS	Wonder World Drive Old Ranch Road 12			X		X
			N/A	Good	Fair	Poor
Sidewalk Availability		X				
<b>Sidewalks are required to be built as part of the development.</b>						
		YES			NO	
Adjacent to existing bicycle lane?						X
Adjacent to existing public transportation route?						X
Notes: <b>The closest CARTS bus route is Route 5 which is the Texas State/Outlet Malls route.</b>						



## PLANNING AND DEVELOPMENT SERVICES

4/14/2020

ZC-20-04

**UPDATE:**  
**Virtual Meeting Information**  
**Notice of Public Hearing**  
**Zoning Change Request**  
**Mystic Canyon Single Family**

*Hold a public hearing and consider a request by Bill E. Couch, on behalf of Kali Kate Services Inc., for an amendment to the City's Official Zoning Map rezoning 5.217 acres, more or less, Benjamin J. White, Thomas Forsith, Elijah Clark, and Robert H. Williams Surveys, generally located west of the intersection of Old Ranch Road 12 and Craddock Avenue, from "FD" Future Development, "CC" Community Commercial, and "P" Public and Institutional to "SF-6" Single Family or such other less intense zoning district classification as the City Council may approve.*

The San Marcos Planning and Zoning Commission will consider the above request at an upcoming public hearing and will either approve or deny the request. This recommendation will be forwarded to the San Marcos City Council. Before making a decision, the Commission and Council will hold public hearings to obtain citizen comments. Because you are listed as the owner of property located within 400 feet of the subject property, we would like to notify you of the following public hearings and seek your opinion of the request:

- A public hearing will be conducted by the Planning and Zoning Commission via virtual meeting on **Tuesday, April 28, 2020** at **6:00 p.m.** You may join and participate in the public hearing using the following link: <http://sanmarcostx.gov/541/PZ-Video-Archives>
- A public hearing will be held at the City Council Meeting on **Tuesday, May 19, 2020** at **6:00 p.m.** If current orders related to COVID-19 are extended, virtual meeting information will be provided at the following website: <https://sanmarcostx.gov/421/City-Council-Videos-Archives>

All interested citizens are invited to attend and participate in the public hearing. If you cannot participate in the virtual public hearing of the Planning and Zoning Commission or the City Council meeting, but wish to comment, you may write to the below address. Your written comments will be given to the Planning & Zoning Commission and City Council if they are received before 5 PM on the day of the meeting.

Development Services-Planning  
630 East Hopkins  
San Marcos, TX 78666  
[planninginfo@sanmarcostx.gov](mailto:planninginfo@sanmarcostx.gov)

For more information regarding this request, contact the case manager, **Tory Carpenter**, at **512.393.8234**. When calling, please refer to case number **ZC-20-04**.

As of the date of this notice, there are no other means of participating in the public hearing. However, please check for updates on the City's website at: [www.sanmarcostx.gov](http://www.sanmarcostx.gov) to see if other means of participating in the public hearing become available.

*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 512-393-8074 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov)*

PLANNING AND DEVELOPMENT SERVICES

Enclosure: Map (See Reverse)

CITY HALL • 630 EAST HOPKINS • SAN MARCOS, TEXAS 78666 • 512.393.8230 • FACSIMILE 855.759.2843  
SANMARCOSTX.GOV

# ZONING CHANGE, OVERLAY OR ESTABLISHMENT OF A HISTORIC DISTRICT/LANDMARK APPLICATION



Updated: October, 2019

## CONTACT INFORMATION

Applicant's Name		Property Owner	
Company		Company	
Applicant's Mailing Address		Owner's Mailing Address	
Applicant's Phone #		Owner's Phone #	
Applicant's Email		Owner's Email	

## PROPERTY INFORMATION

Subject Property Address(es): \_\_\_\_\_

Legal Description: Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_

Total Acreage: \_\_\_\_\_ Tax ID #: R \_\_\_\_\_

Preferred Scenario Designation: \_\_\_\_\_ Existing Zoning: \_\_\_\_\_

Existing Land Use(s): \_\_\_\_\_

## DESCRIPTION OF REQUEST

Proposed Zoning District(s): \_\_\_\_\_

Proposed Land Uses / Reason for Change: \_\_\_\_\_

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee\* \$1,057 plus \$100 per acre Technology Fee \$13 **MAXIMUM COST \$3,013**

\*Existing Neighborhood Regulating Plan Included.

Submission of this digital Application shall constitute as acknowledgement and authorization to process this request.

**APPLY ONLINE – [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

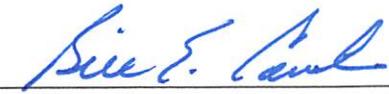
PROPERTY OWNER AUTHORIZATION

I, David Tidwell (owner name) on behalf of  
K&K Kate Services, Inc (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
455 Old Ranch Rd 12 San Marcos TX (address).

I hereby authorize Bill E. Couch (agent name) on behalf of  
Carlson, Brigrance and Doering, Inc. (agent company) to file this application for  
Zoning, Subdivision & PICP (application type), and, if necessary, to work with  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner:  Date: 1/6/20

Printed Name, Title: DAVID TIDWELL PRESIDENT  
K&K KATE SERVICES INC.

Signature of Agent:  Date: 1/6/2020

Printed Name, Title: Bill E. Couch, Senior Project Manager

**AGREEMENT TO THE PLACEMENT OF NOTIFICATION SIGNS  
AND ACKNOWLEDGEMENT OF NOTIFICATION REQUIREMENTS**

The City of San Marcos Development Code requires public notification in the form of notification signs on the subject property, published notice, and / or personal notice based on the type of application presented to the Planning Commission and / or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. ***It shall be the responsibility of the applicant to periodically check sign locations to verify that the signs remain in place had have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.***
- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be \$91 plus a \$13 technology fee.***
- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be \$91 plus a \$13 technology fee.***

*I have read the above statements and agree to the required public notification, as required, based on the attached application. The City's Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.*

Signature: 

Date: 1-6-2020

Print Name: Bill E. Couch

**FIELD NOTES**

**BEING ALL OF THAT CERTAIN 0.999 ACRE (43,532 S.F.) TRACT OF LAND, SITUATED THE BENJAMIN J. WHITE SURVEY NUMBER 13, ABSTRACT NUMBER 469, & THE ROBERT H. WILLIAMS SURVEY NUMBER 12, ABSTRACT NUMBER 470, HAYS COUNTY, TEXAS, BEING ALL OF A CALLED 1.00 ACRE TRACT OF LAND CONVEYED TO THAD WHELOCK IN VOLUME 1453, PAGE 542, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, SAID 0.999 ACRE (43,532 S.F.) TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING**, at a 1/2 inch iron rod found at the southernmost corner of said 1.00 acre tract, being in the northwest line of Lot 24, Sendera Subdivision, recorded in Volume 6, Page 77, Plat Records of Hays County, Texas, same being at an eastern corner of a called 46.54 acre tract of land conveyed to Debra and Michael Moffitt in Volume 4252, Page 477, Official Public Records of Hays County, Texas, for the southernmost corner and the **POINT OF BEGINNING** of the herein described tract of land,

**THENCE**, along the common line of said 1.00 acre tract and said 46.54 acre tract, the following two (2) courses and distances, numbered 1 and 2,

- 1) N47°25'01"W, a distance of 172.16 feet to a 1/2 inch iron rod found at the westernmost corner of said 1.00 acre tract, being an interior corner of said 46.54 acre tract, for the westernmost corner of the herein described tract of land, and
- 2) N45°30'03"E, a distance of 257.58 feet to a calculated point at the northernmost corner of said 1.00 acre tract, being at an easternmost corner of said 46.54 acre tract, same being in the southwest line of Lot 1, R12 Plaza Subdivision, recorded in Volume 4, Page 264, Plat Records of Hays County, Texas, for the northernmost corner of the herein described tract of land,

**THENCE**, S47°21'31"E, along the southwest line of said Lot 1 and the northeast line of said 1.00 acre tract, a distance of 166.39 feet to a 1/2 inch iron rod found at the easternmost corner of said 1.00 acre tract, being in the northwest line of Lot 20, of said Sendera Subdivision, for the easternmost corner of the herein described tract of land,

**THENCE**, S44°13'10"W, along the northwest line of said Sendera Subdivision and the southeast line of said 1.00 acre tract, a distance of 257.18 feet to the **POINT OF BEGINNING** and containing 0.999 acres (43,532 S.F.) of land.

Surveyed by:  05 DEC 2019

Aaron Thomason, R.P.L.S. NO. 6214  
**Carlson, Brigance and Doering, Inc.**  
5501 West William Cannon  
Austin, TX 78749  
Ph: 512-280-5160 Fax: 512-280-5165  
[Aaron@cbdeng.com](mailto:Aaron@cbdeng.com)



BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD83

# SKETCH TO ACCOMPANY FIELD NOTES



SCALE: 1" = 100'

## LEGEND

- 1/2" IRON ROD FOUND (UNLESS OTHERWISE NOTED)
- △ CALCULATED POINT

BARBARA EDWARDS  
(6.8036 ACRES)  
VOL. 4241, PG. 225  
O.P.R.H.C.TX.

LOT 1  
R12 PLAZA  
SUBDIVISION  
VOL. 4, PG. 264  
P.R.H.C.TX.

S47°21'31"E 166.39'

0.999 ACRES  
(43,532 S.F.)

THAD WHELOCK  
(1.00 ACRE)  
VOL. 1453, PG. 542

N45°30'03"E 257.58'

S44°13'10"W 257.16'

N47°25'01"W 172.16'

**POINT OF BEGINNING**

DEBRA MOFFITT AND  
HUSBAND MICHAEL L. MOFFITT  
(46.54 ACRES)  
VOL. 4252, PAGE 477  
O.P.R.H.C.TX.

BENJAMIN J. WHITE SR. SURVEY # 13,  
ABSTRACT # 469

ROBERT H. WILLIAMS SURVEY # 12,  
ABSTRACT No. 470

APPROXIMATE SURVEY LINE

SENDERA SUBDIVISION  
VOL. 6, PG. 77  
P.R.H.C.TX.

LOT 24



*ASDC*  
2019

BEARING BASIS: TEXAS COORDINATE SYSTEM SOUTH CENTRAL ZONE (4204), NAD83



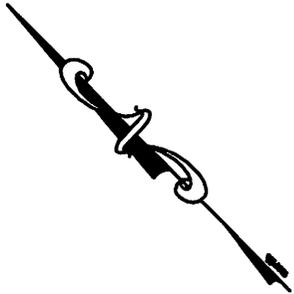
Carlson, Brigrance & Doering, Inc.

FIRM ID #F3791    ●    REG. # 10024900

Civil Engineering    ●    Surveying  
5501 West William Cannon    ●    Austin, Texas 78749  
Phone No. (512) 280-5160    ●    Fax No. (512) 280-5165

PATH:- J:\AC3D\5130\SURVEY\FN - ZONING & ANNEXATION.DWG

# SKETCH TO ACCOMPANY FIELD NOTES



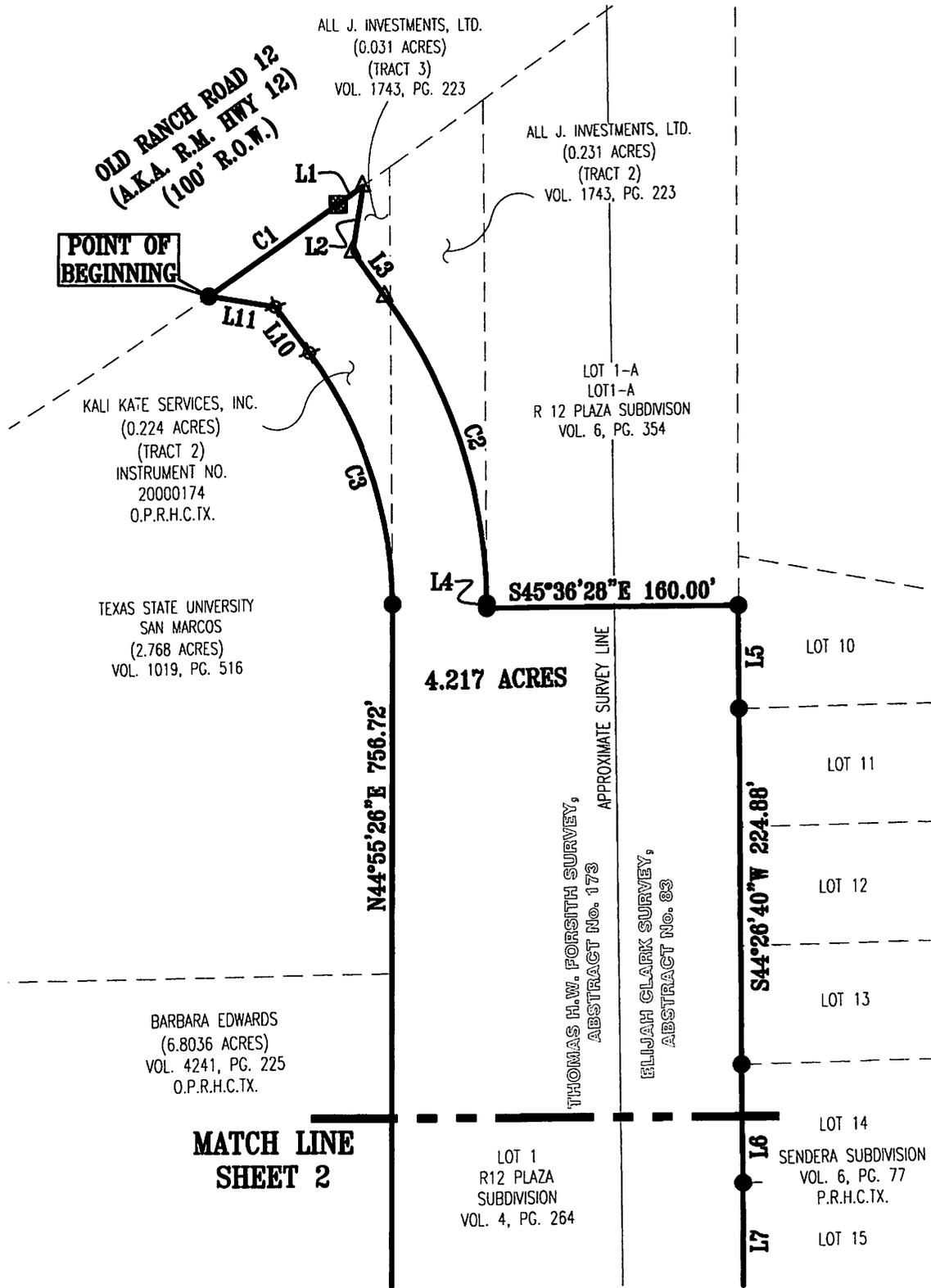
SCALE: 1" = 100'

## LEGEND

- CONCRETE MONUMENT FOUND
- 1/2" IRON ROD FOUND
- COTTON SPINDLE FOUND

Line Table		
Line #	Length	Direction
L1	19.78	S81°15'08"E
L2	42.16	S53°43'33"W
L3	34.76	S08°20'41"W
L4	3.04	S44°25'54"W
L5	65.04	S44°19'24"W
L6	74.89	S44°09'10"W
L7	74.98	S44°42'57"W
L8	74.92	S45°16'00"W
L9	20.05	S44°13'10"W
L10	36.49	N08°21'13"E
L11	42.88	N36°00'29"W

Curve Table						
Curve #	Length	Radius	Chord Direction	Chord Length	Tangent	DELTA
C1	100.25	3869.99	S80°10'37"E	100.25	50.13	1°29'03"
C2	207.85	330.00	S26°23'17"W	204.43	107.50	36°05'13"
C3	169.93	270.00	N26°24'25"E	167.14	87.89	36°03'37"



## SHEET 1 OF 2

BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD83

**Carlson, Brigance & Doering, Inc.**

FIRM ID #F3791    REG. # 10024900

Civil Engineering  
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PATH:- J:\AC3D\5130\SURVEY\FN- ZONING.DWG



4.217 ACRES  
BENJAMIN J. WHITE SURVEY NO. 13, ABSTRACT NO. 469  
ROBERT H. WILLIAMS SURVEY NO. 12, ABSTRACT NO. 470  
THOMAS H.W. FORSITH SURVEY, ABSTRACT NO. 173  
ELIJAH CLARK SURVEY, ABSTRACT NO. 83  
HAYS COUNTY, TEXAS

**FIELD NOTES**

**BEING ALL OF THAT CERTAIN 4.217 ACRE TRACT OF LAND, SITUATED IN THE BENJAMIN J. WHITE SURVEY NUMBER 13, ABSTRACT NUMBER 469, THE ROBERT H. WILLIAMS SURVEY NUMBER 12, ABSTRACT NUMBER 470, THE THOMAS H. W. FORSITH SURVEY, ABSTRACT NO. 173, AND THE ELIJAH CLARK SURVEY, ABSTRACT NUMBER 83, HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CALLED 0.224 ACRE TRACT OF LAND (TRACT 2) CONVEYED TO KALI KATE SERVICES, INC. IN DOCUMENT NUMBER 20000174, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND A PORTION OF LOT 1, R12 PLAZA SUBDIVISION, RECORDED IN VOLUME 4, PAGE 264, PLAT RECORDS OF HAYS COUNTY, TEXAS, SAID 4.217 ACRE TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING**, at a 1/2 inch iron rod found at the northwest corner of said 0.224 acre tract, being at a northeast corner of a called 2.768 acre tract of land conveyed to Texas State University at San Marcos in Volume 1019, Page 516, Official Public Records of Hays County, Texas, same being at a point of beginning of a curve to the left in the south right-of-way line of Old Ranch Road 12 (100' R.O.W.), for a northwest corner and the **POINT OF BEGINNING** of the herein described tract of land,

**THENCE**, with the common boundary line of said Old Ranch Road 12 and said 0.224 acre tract, the following two (2) courses and distance numbered 1 and 2,

- 1) Along said curve to the left, having a radius of 3869.99 feet, an arc length of 100.25 feet, and a chord that bears S80°10'37"E, a distance of 100.25 feet to a TXDOT concrete highway monument,
- 2) S81°15'08"E, a distance of 19.78 feet to a calculated point at the northeast corner of a called 0.031 acre tract of land conveyed to All J. Investments, Ltd. in Volume 1743, Page 223, Official Public Records of Hays County, Texas, being in the north line of said 0.224 acre tract, for a northeast corner of the herein described tract of land,

**THENCE**, with the west line of said 0.031 acre tract, the west line of a called 0.231 acre tract of land conveyed to All J. Investments, Ltd. in Volume 1743, Page 223, Official Public Records of Hays County, Texas, over and across said 0.224 acre tract of land, and over and across said Lot 1, the following three (3) courses and distances, numbered 1 through 3,

- 1) S53°43'33"W, a distance of 42.16 feet to a calculated point at a western corner of said 0.031 acre tract, and
- 2) S08°20'41"W, a distance of 34.76 feet to a calculated point at the beginning of a curve to the right, and
- 3) Along said curve to the right, having a radius of 330.00, an arc length of 207.85 feet, and a chord that bears S26°23'17"W, a distance of 204.43 feet to a 1/2 inch iron rod found at a south corner of said 0.231 acre tract of land, being in the northwest line of Lot 1A, Lot 1-A R 12 Plaza Subdivision, a subdivision recorded in Volume 6, Page 354, Plat Records of Hays County, Texas, for an interior corner of the herein described tract of land,

**THENCE**, S44°25'54"W, with the northwest line of said Lot 1-A, and over and across said Lot 1, a distance of 3.04 feet to a 1/2 inch iron rod found at the westernmost corner of said Lot 1-A, for an interior corner of the herein described tract of land,

**THENCE**, S45°36'28"E, with the southwest line of said Lot 1-A and over and across said Lot 1, a distance of 160.00 feet to a 1/2 inch iron rod found at the southernmost corner of said Lot 1-A, being in the southeast line of said Lot 1, same being in the northwest line of Lot 10, Sendera Subdivision, a subdivision recorded in Volume 6, Page 77, Plat Records of Hays County, Texas, for an eastern corner of the herein described tract of land,

4.217 ACRES  
BENJAMIN J. WHITE SURVEY NO. 13, ABSTRACT NO. 469  
ROBERT H. WILLIAMS SURVEY NO. 12, ABSTRACT NO. 470  
THOMAS H.W. FORSITH SURVEY, ABSTRACT NO. 173  
ELIJAH CLARK SURVEY, ABSTRACT NO. 83  
HAYS COUNTY, TEXAS

**THENCE**, with the southeast line of said Lot 1 and the northwest line of said Sendera Subdivision, the following seven (7) courses and distances, numbered 1 through 7,

- 1) S44°19'24"W, a distance of 65.04 feet to a 1/2 inch iron rod found for corner,
- 2) S44°26'40"W, a distance of 224.88 feet to a 1/2 inch iron rod found for corner,
- 3) S44°09'10"W, a distance of 74.89 feet to a 1/2 inch iron rod found for corner,
- 4) S44°42'57"W, a distance of 74.98 feet to a 1/2 inch iron rod found for corner,
- 5) S45°16'00"W, a distance of 74.92 feet to a 1/2 inch iron rod found for corner,
- 6) S44°18'32"W, a distance of 211.90 feet to a 1/2 inch iron rod found for corner, and
- 7) S44°13'10"W, a distance of 20.05 feet to a 1/2 inch iron rod found at the southernmost corner of said Lot 1, being in the northwest line of Lot 20, said Sendera Subdivision, and being at the easternmost corner of a called 1.00 acre tract of land (Tract 3) conveyed to Kali Kate Services, Inc. in Document Number 20000174, Official Public Records of Hays County, Texas, for the southernmost corner of the herein described tract of land,

**THENCE**, N47°21'31"E, along the southwest line of said Lot 1, the northeast line of said 1.00 acre tract, and the northeast line of a called 56.6098 acre tract of land (Tract 1) conveyed to Kali Kate Services, Inc. in Document Number 20000174, Official Public Records of Hays County, Texas, a distance of 226.19 feet to a 1/2 inch iron rod in the northeast line of said 46.54 acre tract, being at the westernmost corner of said Lot 1, same being at the southernmost corner of a called 6.8036 acre tract of land conveyed to Barbara Edwards in Volume 4241, Page 225, Official Public Records of Hays County, Texas,

**THENCE**, N44°55'26"E, with the northwest line of said Lot 1 and the southeast line of said 6.8036 acre tract, passing the easternmost corner of said 6.8036 acre tract and the southernmost corner and continuing for a total distance of 756.72 feet to a 1/2 inch iron rod found at the beginning of a curve to the left, being at the westernmost corner of the aforementioned 0.224 acre tract of land, for a northwestern corner of the herein described tract of land,

**THENCE**, with the common line of said 2.768 acre tract and said 0.224 acre tract, the following three (3) courses and distances, numbered 1 through 3,

- 1) Along said curve to the left, having a radius of 270.00 feet, an arc length of 169.93 feet, and a chord that bears N26°24'25"E, a distance of 167.14 feet to a cotton spindle found in asphalt,
- 2) N08°21'13"E, a distance of 36.49 feet to a cotton spindle found in asphalt, and
- 3) N36°00'29"W, a distance of 42.88 feet to the **POINT OF BEGINNING**, and containing 4.217 acres of land.

Surveyed by: *Derrick L. Mayfield*  
Derrick L. Mayfield, R.P.L.S. NO. 6456  
**Carlson, Brigrance and Doering, Inc.**  
5501 West William Cannon  
Austin, TX 78749  
Ph: 512-280-5160 Fax: 512-280-5165  
dlmayfield@cbdeng.com



BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE (4204), NAD83



## Legislation Text

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**File #:** Ord. 2020-32(b), **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-32, on the second of two readings, annexing into the City approximately 9.61 acres of land, generally located in the 400 Block of Centerpoint Road; including procedural provisions; and providing an effective date.

**Meeting date:** June 2, 2020

**Department:** Planning and Development Services

**Amount & Source of Funding**

**Funds Required:** n/a

**Account Number:** n/a

**Funds Available:** n/a

**Account Name:** n/a

**Fiscal Note:**

**Prior Council Action:** n/a

**City Council Strategic Initiative:** n/a

**Comprehensive Plan Element (s):**

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Direct Growth, Compatible with Surrounding Uses
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** n/a

Choose an item.

**Background Information:**

This is a request for a voluntary annexation submitted by Benjamin Green on behalf of Outlet West Investors Limited for approximately 9.610 +/- acres of land out of the Edward Burleson Survey No. 18, Abstract No. 63, Hays County, generally located generally located in the 400 Block of Centerpoint Road.

The City of San Marcos will provide water and wastewater services at the site. The developer will be responsible for extending water and wastewater facilities through the site. Pedernales Electric will provide electric service for this development.

The City of San Marcos will provide Police, Fire, and EMS services to the site.

Below is a proposed schedule for this annexation, which complies with the Texas Local Government Code requirements:

- **City Council Resolution (Approval of Service Agreement and set a public hearing date):** April 21, 2020 (Approved)
- **City Council Ordinance 1<sup>st</sup> Reading (Public Hearing):** May 19, 2020 (Today)
- **City Council Ordinance 2<sup>nd</sup> Reading:** June 2, 2020

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

n/a

**Alternatives:**

n/a

**Recommendation:**

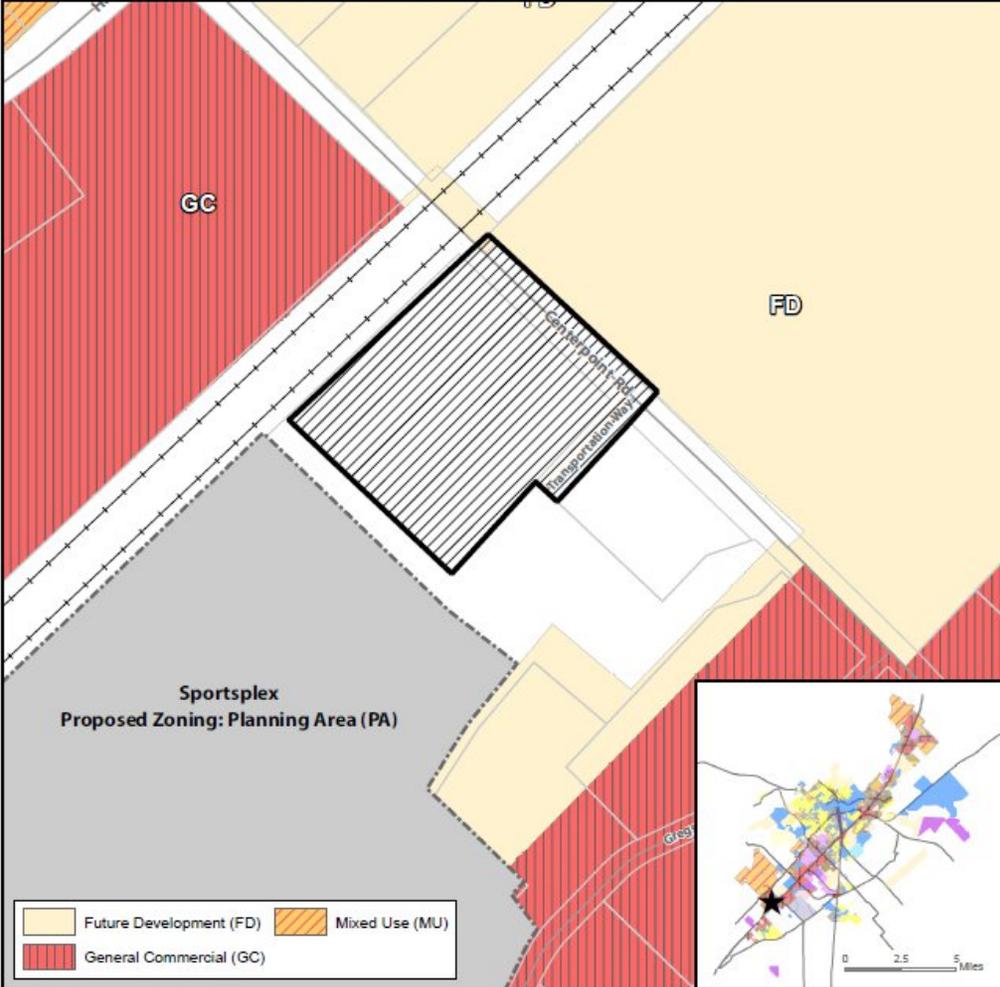
Staff recommends **approval** of the voluntary annexation request.

## AN-20-04 (Centerpoint Annexation)

Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-XX, annexing into the City approximately 9.61 acres out of the Edward Burleson Survey No. 18, Abstract No. 63, Hays County, generally located in the 400 Block of Centerpoint Road; including procedural provisions; and providing an effective date; and consider approval of Ordinance 2020-XX on the first of two readings.



**AN-20-04  
Existing Zoning Map  
Annexation — 400 Block of Centerpoint Road**



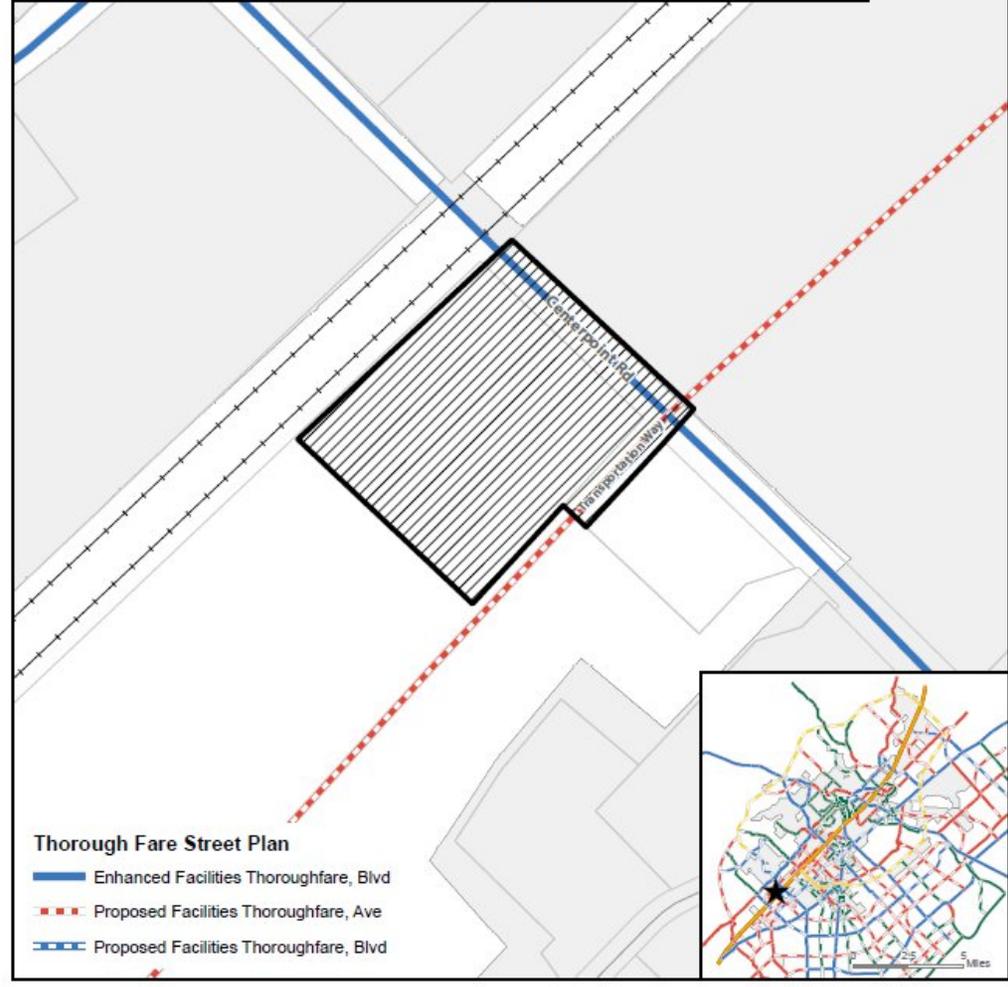
- Site Location**
- Subject Property**
- Parcels**
- City Limit**



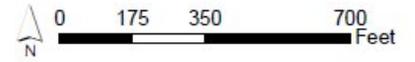
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/25/2020

**AN-20-04  
Transportation Master Plan  
Annexation - 400 Block of Centerpoint Road**



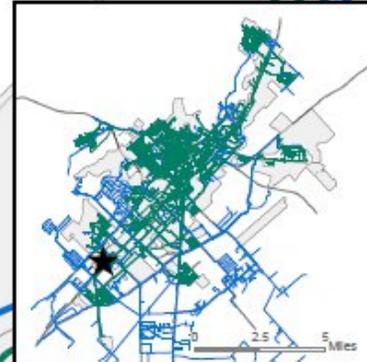
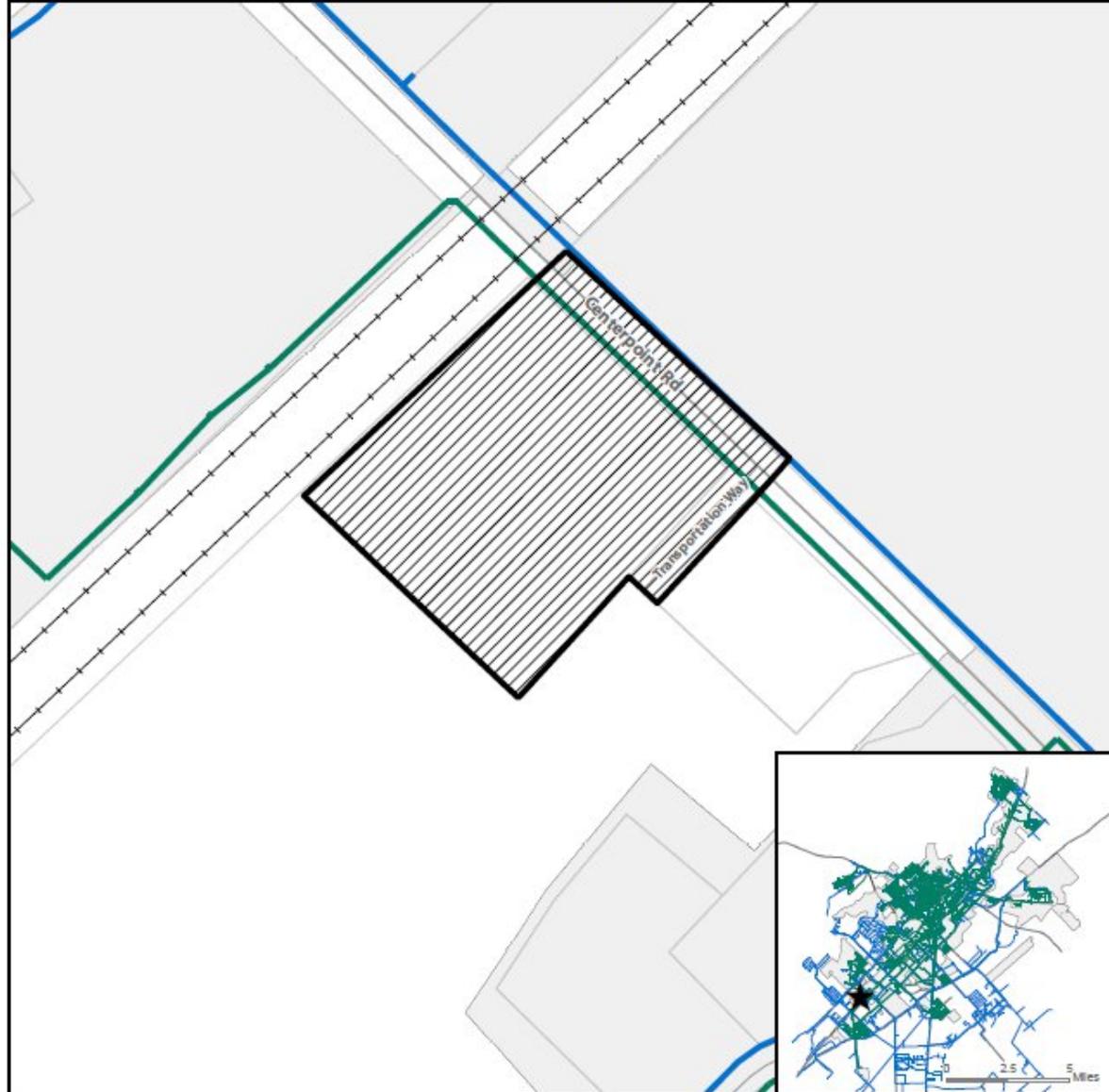
- Subject Property**
- Parcels**
- City Limit**



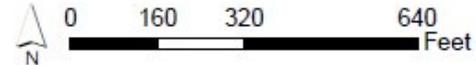
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/25/2020

**AN-20-04**  
**Water/Wastewater Lines**  
**Annexation — 400 Block of Centerpoint Road**



- ★ Site Location
- ▨ Subject Property
- Parcels
- City Limit
- Sanitary Main
- Water Main



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/25/2020



## Annexation & Zoning Schedules:

\*This schedule reflects the new annexation schedule per Texas House Bill 347

### Annexation Schedule

- **City Council Resolution (Approval of Service Agreement and set a public hearing date):** April 21, 2020 (*Approved*)
  - **City Council Ordinance 1<sup>st</sup> Reading (Public Hearing):** May 19, 2020 (*Today*)
  - **City Council Ordinance 2<sup>nd</sup> Reading:** June 2, 2020
- 

### Zoning Schedule

- **Planning and Zoning Commission (Public Hearing):** April 28, 2020
- **City Council Ordinance 1<sup>st</sup> Reading (Public Hearing):** May 19, 2020 (*Today*)
- **City Council Ordinance 2<sup>nd</sup> Reading:** June 2, 2020

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS ANNEXING INTO THE CITY APPROXIMATELY 9.61 ACRES OF LAND, GENERALLY LOCATED IN THE 400 BLOCK OF CENTERPOINT ROAD; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

1. The owner of approximately 9.61 acres of land generally located in the 400 Block of Centerpoint Road, as further described by metes and bounds in Exhibit "A," attached hereto and incorporated herein for all purposes (the "Property"), made a request for the City to annex the Property.
2. Said owner of the Property has declined the offer of a development agreement from the City concerning the Property.
3. Said owner and the City have entered into a written agreement for the provision of services to the Property.
4. The Property is contiguous and adjacent to the current boundaries of the City.
5. The City Council held a public hearing regarding the request.
6. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

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

**SECTION 1.** The recitals of this ordinance are approved and adopted.

**SECTION 2.** The Property is annexed to and is a part of the City of San Marcos, Texas and subject to the acts, ordinances, resolutions and regulations of the City.

**SECTION 3.** Services to the Property will be provided under the terms of the written agreement for the provision of services entered into between the owner of the Property and the City as noted in Recital 3.

**SECTION 4.** The corporate limits of the City are extended to include the Property.

**SECTION 5.** The inhabitants of the Property are entitled to all the rights and privileges of other citizens of the City, and are bound by the acts, ordinances, resolutions and regulations of the City.

**SECTION 6.** If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

**SECTION 7.** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 8.** This ordinance shall not be effective unless and until the date (the “Effective Date”) that all of the following conditions (the “Conditions”) have been satisfied: (i) this ordinance is finally passed, approved and adopted on second reading, and (ii) Outlet West Investors, Ltd. has conveyed fee title to the Property to CBTX Capital, LLC, or its permitted assigns, pursuant to that certain Commercial Contract – Unimproved Property between Outlet West Investors, Ltd. and CBTX Capital, LLC with an effective date of November 22, 2019, as such contract may be amended. In the event that all the Conditions have not been fully satisfied by April 2, 2021, then this ordinance shall be null and void and of no further force or effect.

**PASSED AND APPROVED** on first reading on May 19, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Approved:

Tammy K. Cook  
Interim City Clerk

Michael Cosentino  
City Attorney

**EXHIBIT "A"**  
Property Description



**STATE OF TEXAS**  
**COUNTY OF HAYS**

**9.610 ACRES**  
**EDWARD BURLESON SURVEY**  
**NO. 18 - ABSTRACT # 63**

**BEING 9.610 ACRES OF LAND SITUATED IN THE EDWARD BURLESON SURVEY NO. 18, ABSTRACT NO. 63, HAYS COUNTY, TEXAS, SAME BEING A 7.959 ACRE PORTION OF THAT CALLED 109.22 ACRE TRACT OF LAND CONVEYED TO OUTLET WEST INVESTORS, LTD., A TEXAS LIMITED PARTNERSHIP, BY DEED DATED DECEMBER 21, 1998 AND RECORDED IN VOLUME 1486, PAGE 887, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, AND BEING A 1.153 ACRE PORTION OF CENTERPOINT ROAD, A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY, AND ALSO BEING ALL THAT 0.498 ACRE PORTION OF TRANSPORTATION WAY, A DEDICATED 76 FOOT PUBLIC RIGHT-OF-WAY AS SHOWN BY PLAT OF LOT 2, LOWMAN RANCH SUBDIVISION, SECTION TWO, AN ADDITION TO HAYS COUNTY, TEXAS ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 18, PAGE 17, HAYS COUNTY PLAT RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING** at a 1/2" iron rod found with cap marked "BYRN" at the intersection of the southwest line of Centerpoint Road, a variable width public right-of-way, as widened and described in Exhibit 'A' in Lis Pendens Notice recorded in Volume 2571, Page 69, Official Public Records, Hays County, Texas, with the southeast line of said Transportation Way, for the east corner of the 9.611 acre herein described tract of land;

**THENCE South 43°34'30" West** (S 45°34'23" W Record), at a distance of 10.30 feet passing the north corner of said Lot 2, Lowman Ranch Section Two, and a common corner of the right-of-way of said Centerpoint Road, and continuing on for a total distance of **285.43 feet** (285.35' Record) to a 1/2" iron rod found with cap marked "BYRN" at the west corner of said Lot 2 and a common south corner of said Transportation Way, for a south corner of the herein described tract of land;

**THENCE North 46°26'02" West** (N 46°25'37" W Record), a distance of **75.99 feet** (76.00' Record) to a 1/2" iron rod found with cap marked "BYRN" at the west corner of said Transportation Way, for an interior corner of the herein described tract of land;

**THENCE South 43°34'33" West** (S 43°34'23" W Record), with the projection of the northwest line of said proposed Transportation Way, at a distance of 250.54 feet passing a 1/2" iron rod set with cap marked "RPLS 5687" set at the intersection of said proposed Transportation Way with the northeast line of a drainage easement described in Exhibit 'A' of the Instrument recorded in Volume 4389, Page 592 of the Hays County Real Property Records, and continuing on in all a total distance of **330.51 feet** to the approximate centerline of said drainage easement, for the south corner of the herein described tract of land;

**THENCE North 46°29'00" West** (N 45°58'03" W Record), with the approximate centerline of said drainage easement, a distance of **577.62 feet** to the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, for the west corner of the herein described tract of land, and from which a 1/2" iron rod found with cap marked "BYRN" at a west corner of said drainage easement bears South 46°38'05" West (S 47°09'14" W Record), a distance of 80.09 feet (80.12' Record);

**THENCE** with the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, the following courses and distances numbered (1) and (2):

**1) North 46°38'05" East** (N 47°09'14" E Record), a distance of **80.09 feet** (80.12' Record) to a 1/2" iron rod found with cap marked "BYRN" at a north corner of said drainage easement;

**2) North 46°39'10" East** (N 47°08'53" E Record), a distance of **540.99 feet** to a 1/2" iron rod set with cap marked "RPLS 5687" set at the intersection of the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract with the southwest line of aforesaid Centerpoint Road, as widened, and from which the north corner of said Outlet West Investors, Ltd. called 109.22 acre tract bears North 46°39'10" East (N 47°08'53" E Record), a distance of 27.30 feet;

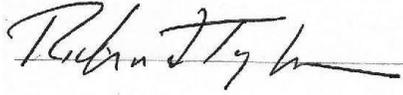
**THENCE North 46°39'10" East** (N 47°08'53" E Record), with the projection of the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, at a distance of 27.30 feet passing the record north corner of said Outlet West Investors, Ltd. called 109.22 acre tract, crossing said Centerpoint Road, and continuing on for a total distance of **82.22 feet** to a wire fence in the northeast line of said roadway, for the north corner of the herein described tract of land, same being in the southwest line of that certain called 63.133 acre tract of land conveyed as "Tract 1" in a deed to San Marcos Land Associates recorded in Volume 1060, Page 848 of the Deed Records of Hays County, Texas, and from which a steel corner fence post at the west corner of said San Marcos Land Associates called 63.133 acre tract bears, North 45°52'41" West, a distance of 0.43 feet;

**THENCE South 45°52'41" East** (S 44°21'26" E Record), with the northeast line of said Centerpoint Road and the common southwest line of said San Marcos Land Associates called 63.133 acre tract, along the meanders of a wire fence, a distance of **615.92 feet** to the intersection of said common line with the projection of the southeast line of the aforementioned Transportation Way, dedicated 76 foot public right-of-way, for the east corner of the herein described tract of land;

**THENCE South 43°34'33" West**, along the projection of the of the northwest line of said Transportation Way, crossing said Centerpoint Road, at a distance of 53.16 feet passing the record northeast line of aforesaid Outlet West Investors, Ltd. called 109.22 acre tract, and continuing on for a total distance of **79.86 feet** to the **POINT OF BEGINNING** and **CONTAINING 9.610 ACRES OF LAND.**

BEARING BASIS HEREIN DERIVED BY GPS MEASUREMENTS ADJUSTED BY HARN (HIGH ACCURACY REFERENCE NETWORK) & PROJECTED TO TEXAS STATE PLANE COORDINATES (TEXAS SOUTH CENTRAL ZONE) & NAD83.

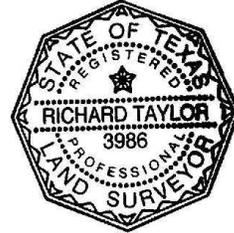
I, Richard H. Taylor, do certify that this description and associated exhibit were prepared this date from a boundary survey performed under my direction during December 2019, and is true and correct to the best of my knowledge and belief.

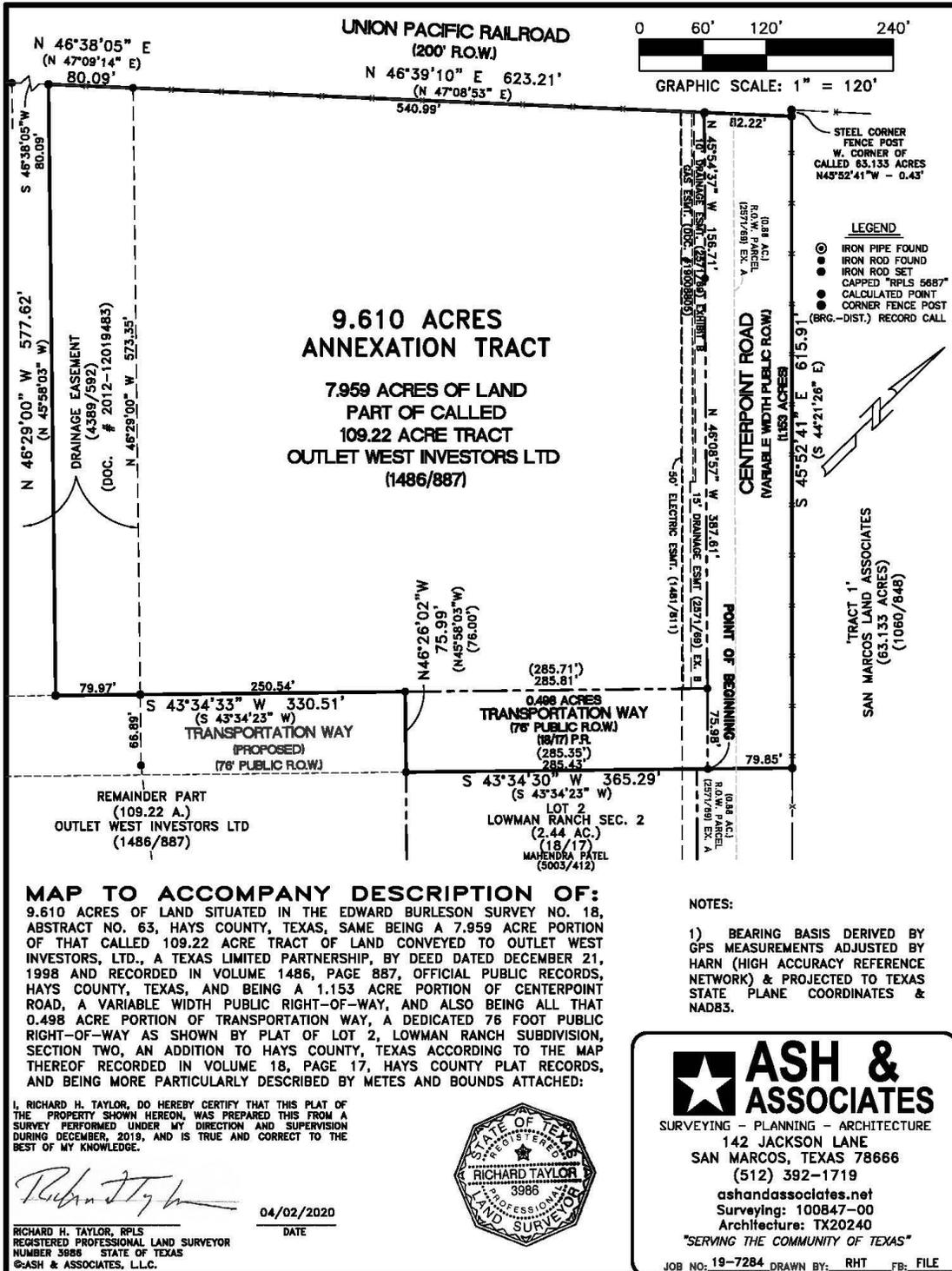


Richard H. Taylor  
Registered Professional Land Surveyor  
No. 3986 State of Texas  
Attachment: Drawing of 9.610 Acre Annexation Tract  
Job: 19-7284

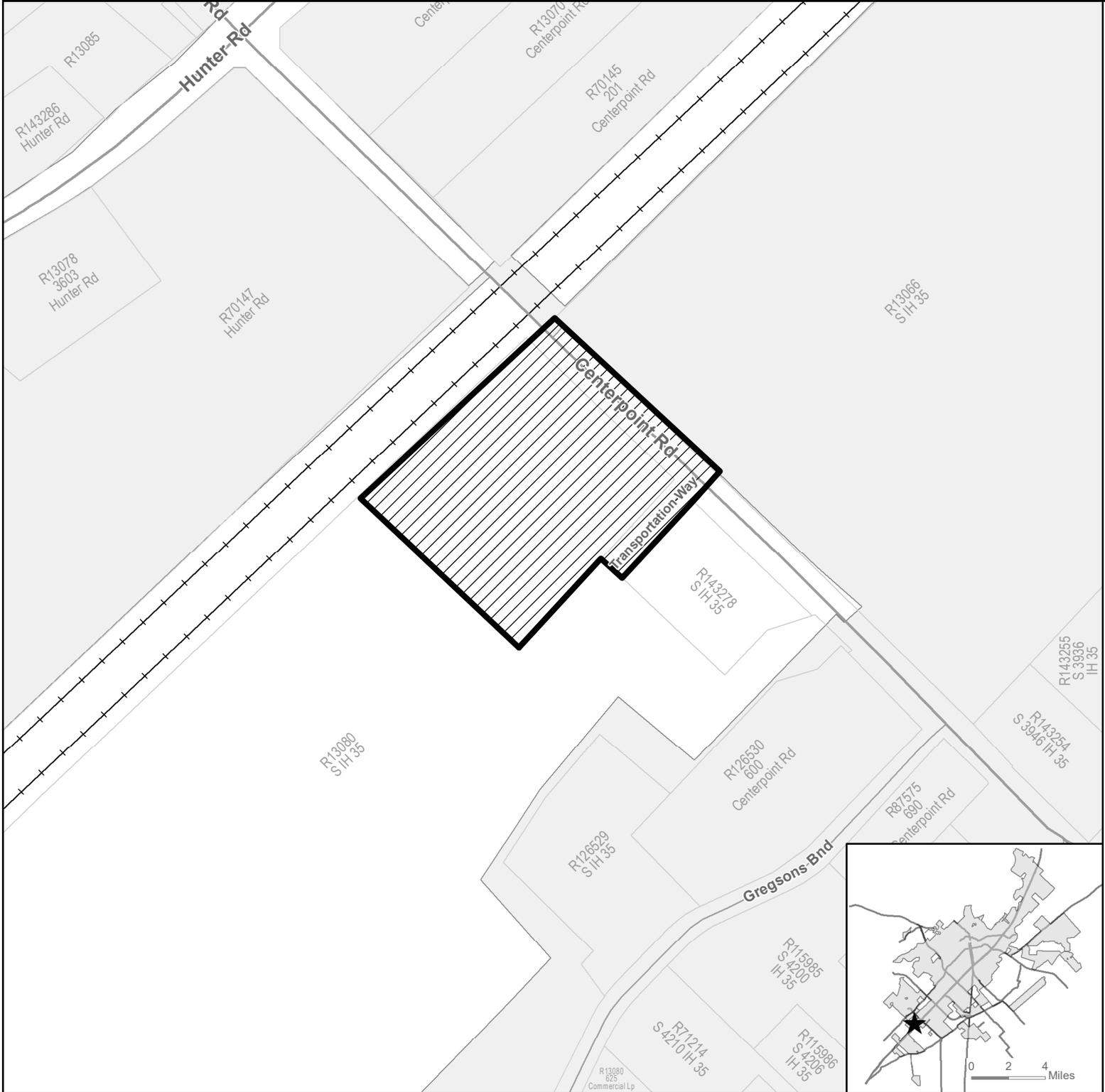
04/02/2020

Date

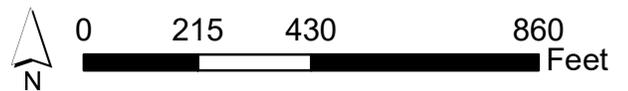




# AN-20-04 Location Map Annexation — 400 Block of Centerpoint Road



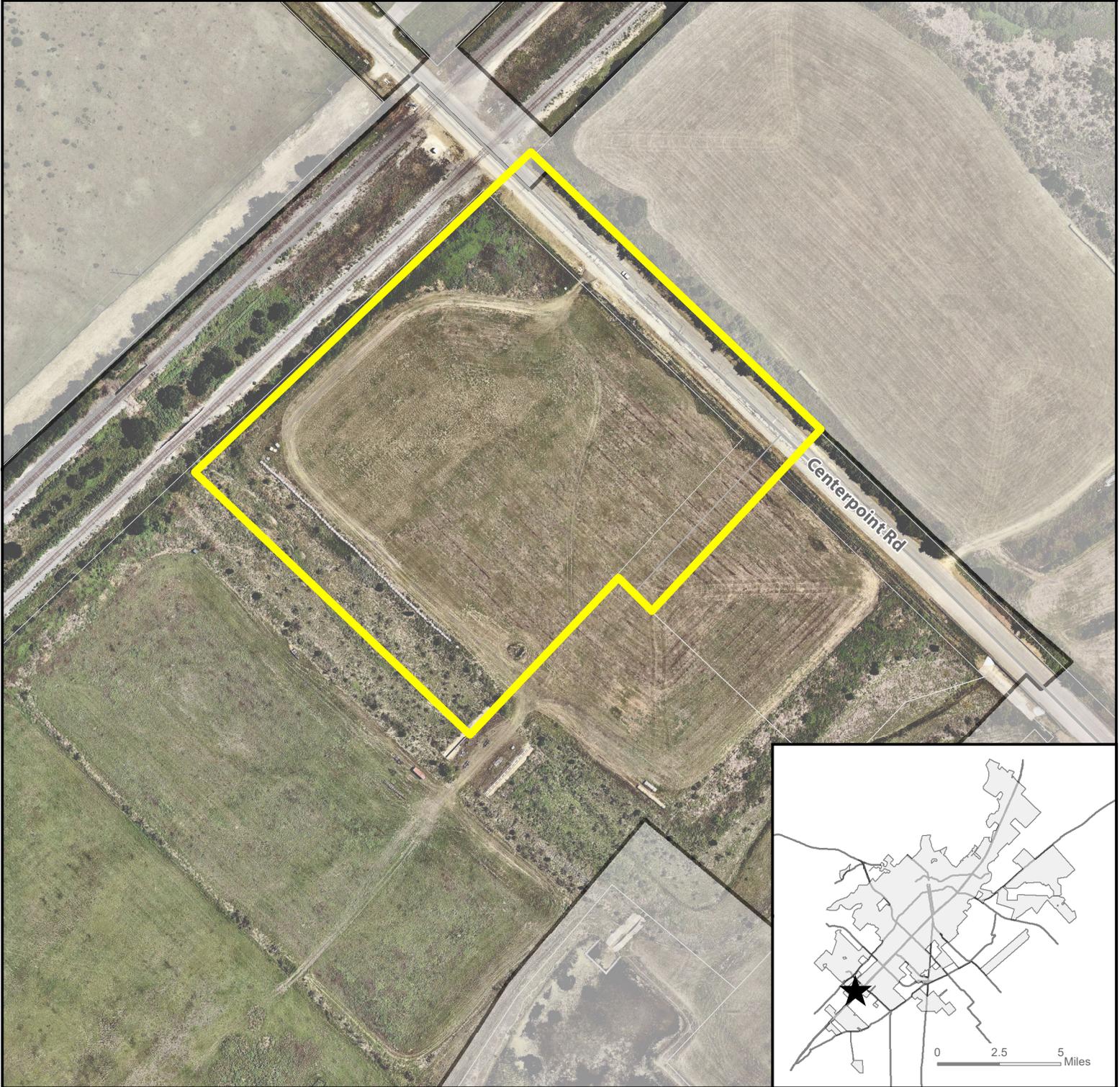
- ★ Site Location
-  Subject Property
-  Parcel
-  City Limit



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/25/2020

# AN-20-04 Aerial View Annexation — 400 Block of Centerpoint Road



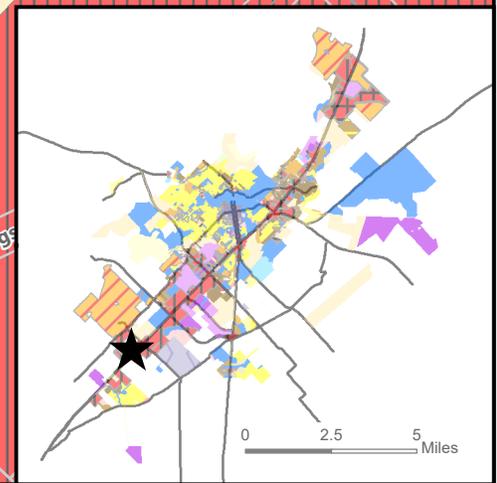
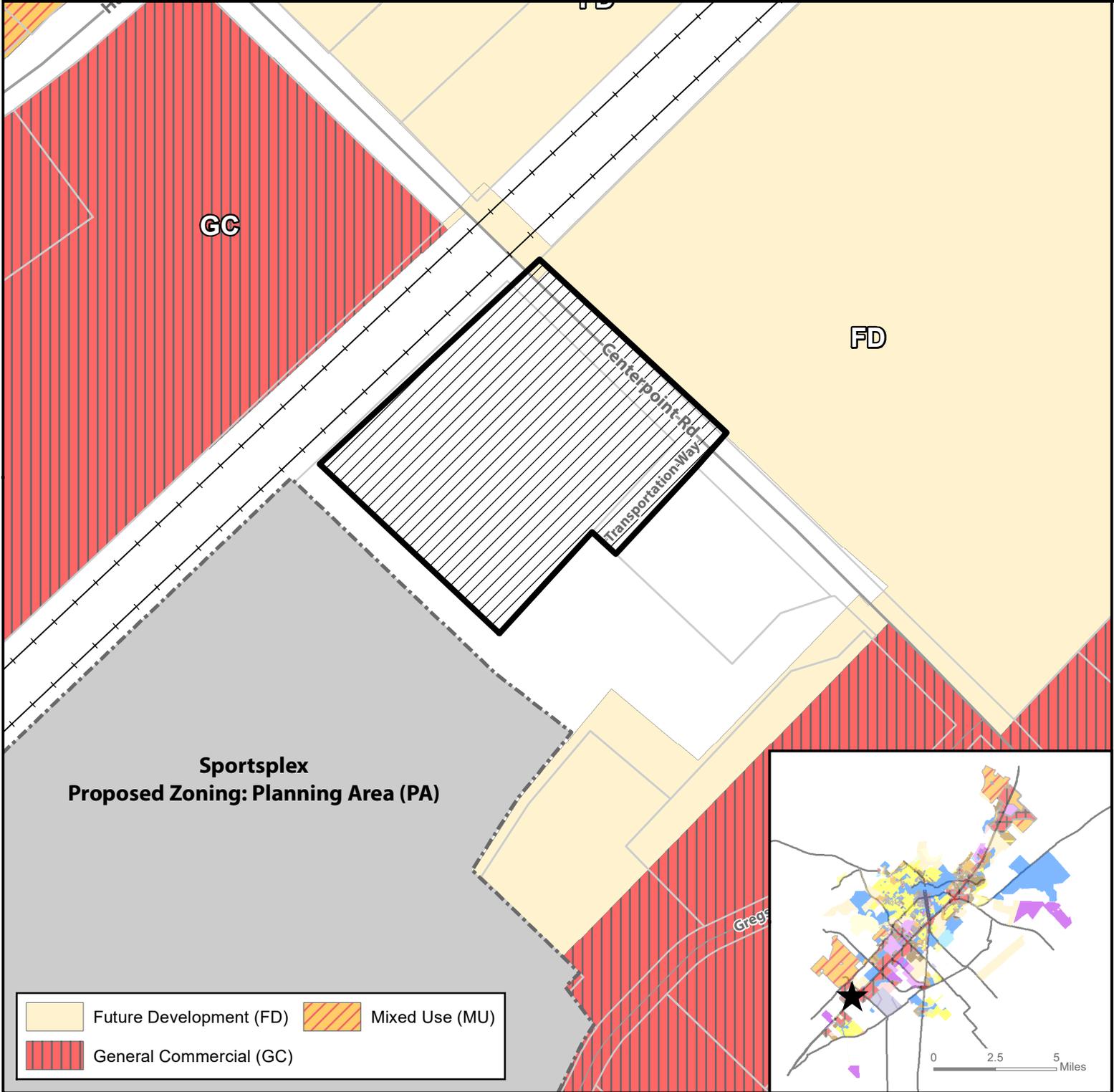
- ★ Site Location
- ▭ Subject Property
- ▭ Parcel
- ▭ City Limit



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 3/25/2020

# AN-20-04 Existing Zoning Map Annexation — 400 Block of Centerpoint Road

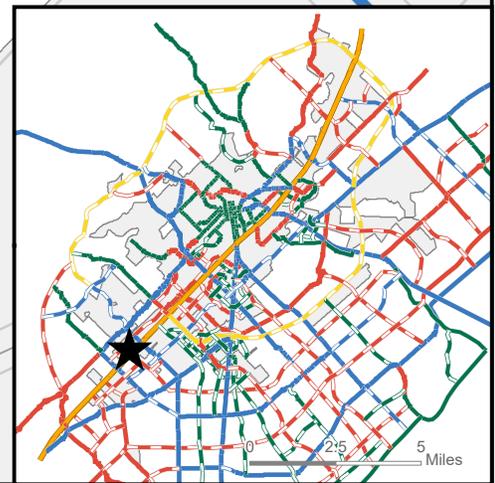
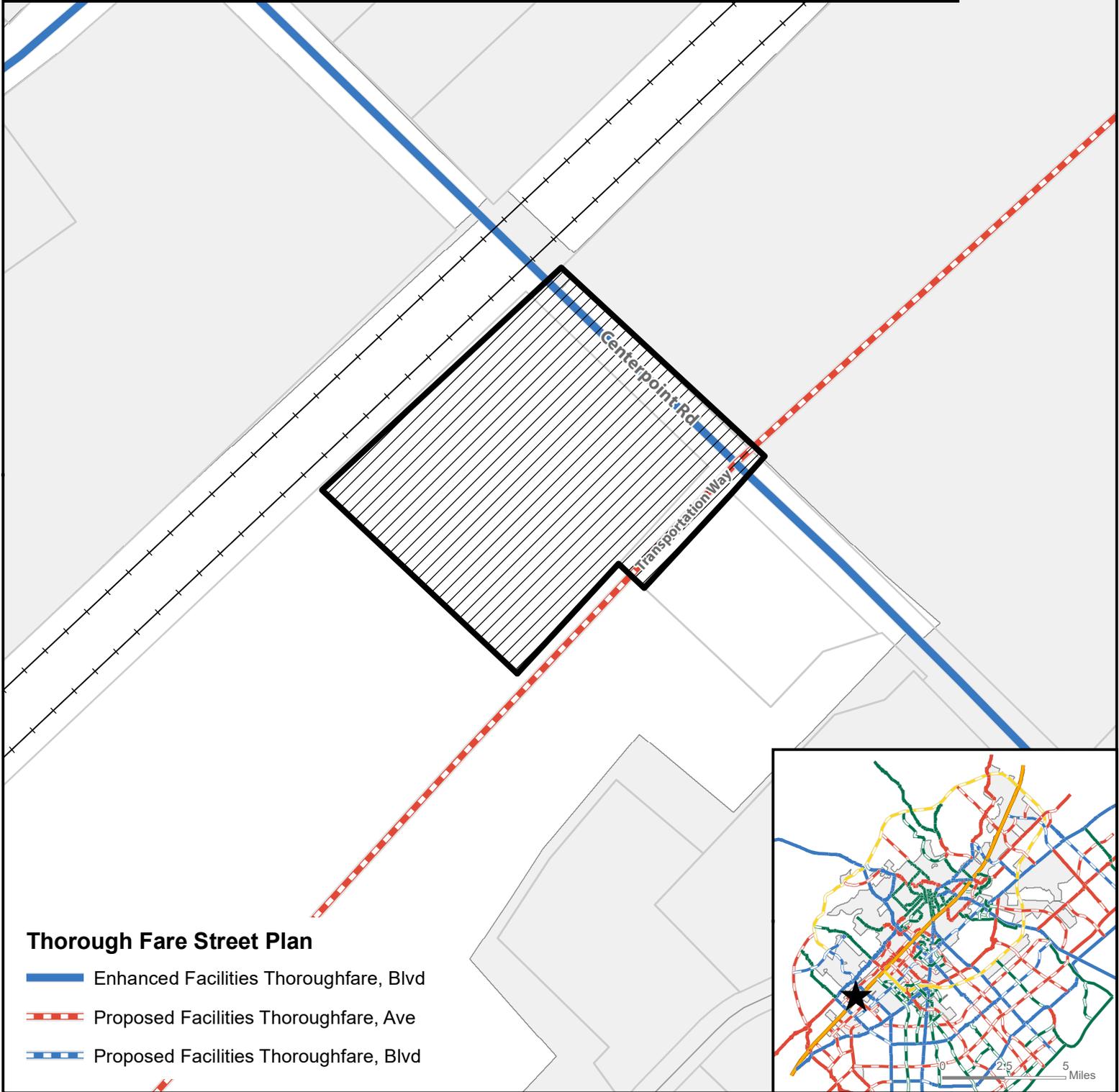


	<b>Site Location</b>		0	190	380	760	Feet
	<b>Subject Property</b>						
	<b>Parcels</b>						
	<b>City Limit</b>						

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Map Date: 3/25/2020

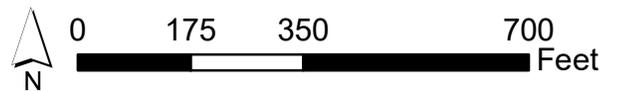
# AN-20-04 Transportation Master Plan Annexation - 400 Block of Centerpoint Road



 **Subject Property**

 **Parcels**

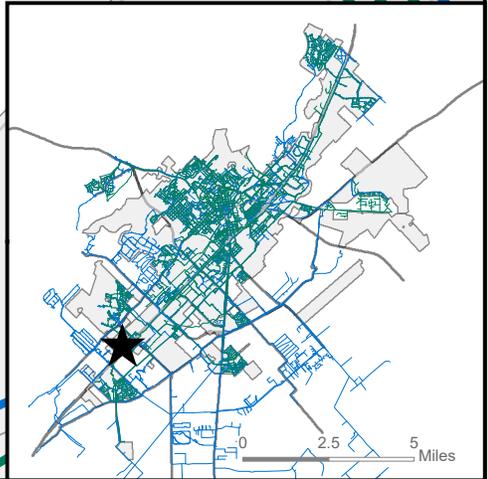
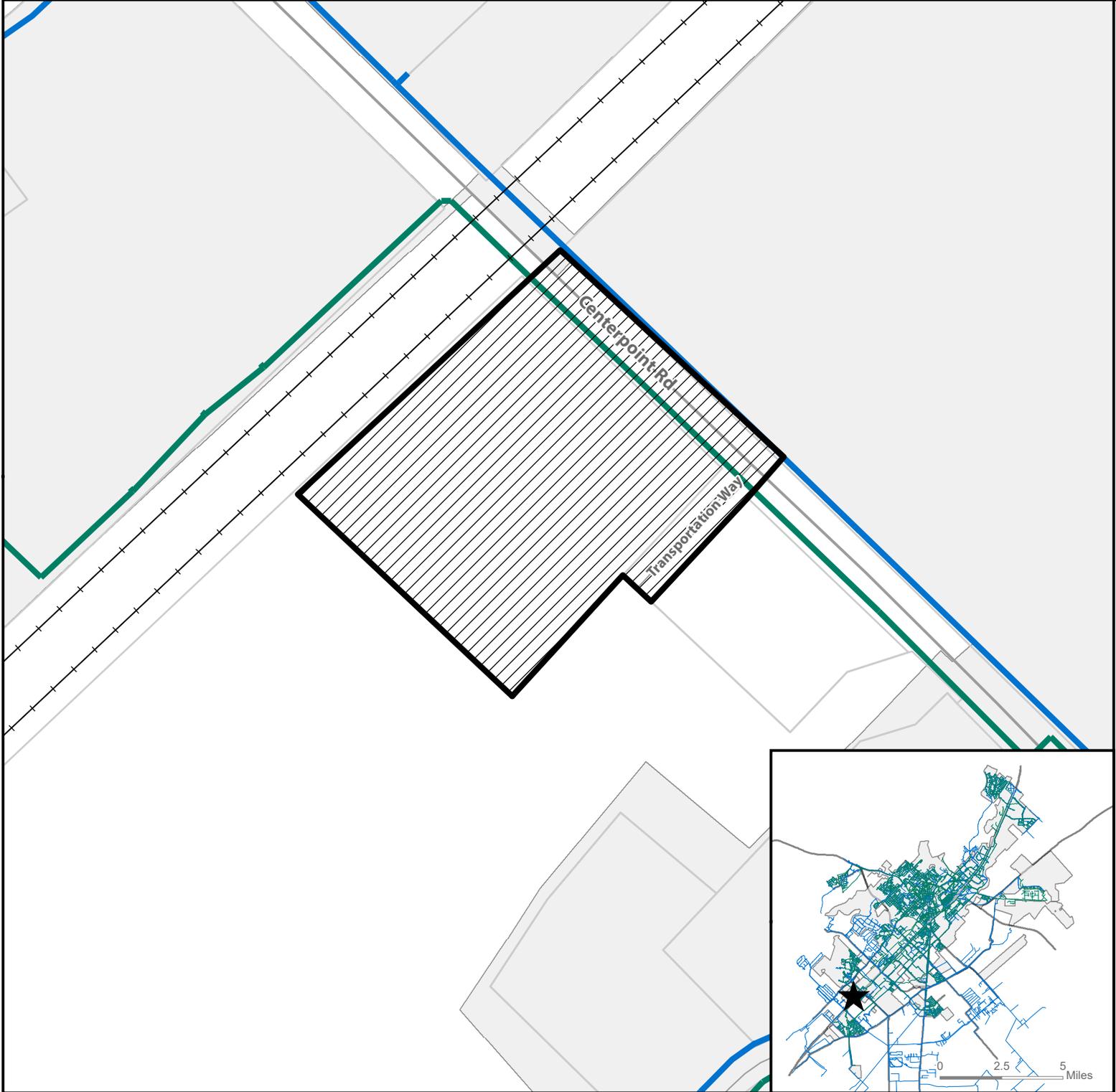
 **City Limit**



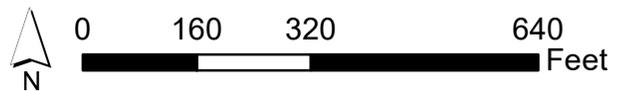
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/25/2020

# AN-20-04 Water/Wastewater Lines Annexation — 400 Block of Centerpoint Road



-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**
-  **Sanitary Main**
-  **Water Main**



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Map Date: 3/25/2020

## Comparison Table – City Limits vs. Outside City Limits

Development Standard	City Limits	Outside City Limits
<b>Allowable Uses</b>	Uses are regulated based on the zoning of the property. (ex: an industrial use would not be allowed in a residential zoned property)	Uses cannot be regulated
<b>Transportation Master Plan Roadways</b>	Required	Required
<b>Internal Streets</b>	Based on block perimeter requirements. (5,000' block perimeter max for properties zoned HC)	Based on block perimeter requirements. (3,000' block perimeter max for properties in ETJ)
<b>Zoning Development Standards</b>	Required, including: <ul style="list-style-type: none"> <li>• Property setbacks</li> <li>• Unit maximums</li> <li>• Landscaping</li> <li>• Screening</li> <li>• Tree mitigation</li> <li>• Parking</li> <li>• Lighting</li> <li>• Trash/recycling</li> <li>• Building height / articulation</li> </ul>	Not required
<b>Environmental</b>	Required per Chapter 5 of the Development Code, including: <ul style="list-style-type: none"> <li>• Stormwater / Detention</li> <li>• Water Quality</li> <li>• Floodplain</li> </ul>	Required per Chapter 5 of the Development Code, including: <ul style="list-style-type: none"> <li>• Stormwater / Detention</li> <li>• Water Quality</li> <li>• Floodplain</li> </ul>

Application	City Limits	Outside City Limits
<b>Subdivision Plat</b> – formally divides and provides the layout of the property.	Required	Required
<b>Public Improvement Construction Plan</b> – the construction documents submitted to the city for public infrastructure including utilities and streets.	Required	Required
<b>Watershed Protection Plan</b> – the environmental reports and proposal for environmental engineering on the property.	Required	Required
<b>Building Permit</b> – the construction documents for the structures proposed on the property.	Required	Not required
<b>Site Development Permit</b> – construction of site related items	Required	Required

# ANNEXATION APPLICATION

Updated: October, 2019



## CONTACT INFORMATION

Applicant's Name	Benjamin Green	Property Owner	Outlet West Investors Limited
Company	Kimley-Horn	Company	
Applicant's Mailing Address	2600 Via Fortuna Suite 300	Owner's Mailing Address	1300 Post Oak Blvd, Suite 1650, Houston, TX 77056
Applicant's Phone #	512-646-2243	Owner's Phone #	713-552-1110
Applicant's Email	ben.green@kimley-horn.com	Owner's Email	bstrong@beemanstrong.com

## PROPERTY INFORMATION

Is the property adjacent to city limits  YES  NO

Is the property less than ½ mile in width  YES  NO

Are there less than 3 qualified voters living on the property  YES  NO

Proposed Use: Self-Storage Proposed Zoning: Heavy Commercial

Reason for Annexation / Other Considerations: \_\_\_\_\_

This development will request utility extensions which must be accompanied by a request for annexation.

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee \$1,181      Technology Fee \$13      TOTAL COST \$1,194

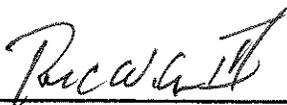
Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

**APPLY ONLINE – [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

**PROPERTY OWNER AUTHORIZATION**

Robert C. Wilson, III, President of JOQ GP, LLC  
I, its General Partner (owner name) on behalf of  
Outlet West Investors Limited (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
0 Centerpoint Road, San Marcos, TX 78666 (address).

I hereby authorize Benjamin Green (agent name) on behalf of  
Kimley-Horn (agent company) to file this application for  
Annexation (application type), and, if necessary, to work with  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner:    
 Date: 20 Feb 20

Printed Name, Title: Robert C. Wilson, III, President of JOQ, LLC  
General Partner of Outlet West Investors Limited

Signature of Agent: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: Benjamin Green PE, Project Manager

Form Updated October, 2019

**AGREEMENT FOR THE PROVISION OF SERVICES**  
(Pursuant to Tex. Local Gov't Code §43.0672)

**Date:** April 28, 2020

**Owner:** OUTLET WEST INVESTORS LTD., 1300 Post Oak Blvd, Suite 1650, Houston, Texas 77056

**City:** City of San Marcos, Texas, a home rule municipal corporation, 630, East Hopkins Street, San Marcos, Texas 78666

**Property:** As described in Exhibit A.

1. The Owner has petitioned the City and the City has elected to annex the Property into the corporate limits of the City. Pursuant to Tex. Local Gov't Code §43.0672, the Owner and the City enter this agreement (the "Agreement") for the provision of services to the Property when annexed.

2. By this Agreement, the Owner affirms effective as of the Effective Date (as defined below), its consent to such annexation of the Property by the City and that Owner does not wish to enter into and has declined the offer from the City of a development agreement under Sections 43.016 and 212.172 of the Texas Local Government Code

3. In consideration of the mutual benefits to the Owner and the City arising from the annexation of the Property, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Owner and the City enter into this Agreement and agree that services to the Property will be provided as described in Exhibit B.

4. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in state courts located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

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

6. Effective as of the Effective Date (as defined herein), this Agreement shall be binding upon Owner, and Owner's heirs, successors and assigns, and all future owners of all or any portion of the Property.

7. This Agreement will become effective only from and after the date (the "Effective Date") that all of the following conditions (the "Conditions") have been satisfied: (i) an ordinance annexing the Property is finally passed, approved and adopted by the City's city council, and (ii) Owner has conveyed fee title to the Property to CBTX Capital, LLC, or its permitted assigns, pursuant to that certain Commercial Contract – Unimproved Property between Owner and CBTX

Capital, LLC, with an effective date of November 22, 2019, as such contract may be amended. In the event that all the Conditions have not been fully satisfied by April 2, 2021, then this instrument shall be null and void and of no further force or effect.

[SIGNATURES ON NEXT PAGE]

**CITY:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS           §

                                  §  
COUNTY OF HAYS       §

          This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of the City of San Marcos, in such capacity, on  
behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas



## EXHIBIT B

When the Property is annexed, services will be provided to the Property as follows:

### **1. Police Protection**

Police services, including patrolling, response to calls and other routine services, will begin on the Effective Date of the annexation using existing personnel and equipment.

### **2. Fire Protection**

Fire protection services, including emergency response calls, will begin on the Effective Date of the annexation using existing personnel and equipment and within the limitations of the available water supply.

### **3. Emergency Medical Services**

Emergency medical services, including emergency response calls, will continue at the same level of service after the annexation. The City of San Marcos contracts for emergency medical services through the San Marcos – Hays County EMS, which already provides service to the area being annexed.

### **4. Solid Waste Collection**

Solid waste collection services, provided under contract with a private company, will be made available to all properties on the Effective Date of the annexation. Residents of the Property may elect to continue using the services of a private solid waste hauler for a period of two years after the Effective Date of the annexation. Businesses and institutions must make arrangements with private solid waste haulers.

### **5. Operation and Maintenance of Water and Wastewater Facilities**

**a. Water.** The Property is located within an area over which the City of San Marcos holds a Certificate of Convenience and Necessity (CCN) for water service. The City will make water service available to the Property on the Effective Date of the annexation on the same basis as available to other owners of property in the City, i.e., the Owner is responsible for the cost to construct and extend all infrastructure, facilities, and lines necessary to serve the Property.

**b. Wastewater.** The Property is not covered by a CCN for wastewater service, however, the City of San Marcos has wastewater lines adjacent to the Property and agrees to make wastewater service available to the Property on the Effective Date of the annexation on the same basis as available to other owners of property in the City, i.e., the Owner is responsible for the cost to construct and extend all infrastructure, facilities, and lines necessary to serve the Property. In addition, the City is in the process of adding the Property as an area covered by the City's CCN for wastewater service.

### **6. Construction, Operation and Maintenance of Roads and Streets**

As new development occurs within the Property, the Owner(s) of Property will be required to construct streets at the Owner's sole expense in accordance with applicable ordinances of the City.

### **7. Electric Service**

The Property is located in the Pedernales Electric service area. Thus, the City will not provide electric service to the Property.

**8. Operation and Maintenance of Parks, Playgrounds, and/or Swimming Pools**

No parks, playgrounds, and/or swimming pools currently exist within the Property. The same standards and policies now established and in force within the city limits will be followed in maintaining and expanding recreational facilities to serve the Property. Upon annexation, the owners and residents of property located within the Property shall be entitled to the use of all municipal parks and recreational facilities, subject to the same restrictions, fees, and availability that pertains to the use of those facilities by other citizens of the city.

**9. Operation and Maintenance of Other Public Facilities, Buildings, and Services**

No other public facilities, buildings, or services currently exist within the Property. The same standards and policies now established and in force within the city limits will be followed in maintaining and expanding other public facilities, building, and services. Upon annexation, the owners and residents of property located within the Property shall be entitled to the use of all municipal facilities, buildings, and services, subject to the same restrictions, fees, and availability that pertains to the use of those facilities and services by other citizens of the city.



## **SURVEYING - PLANNING - ARCHITECTURE**

*"Serving the Community of Texas"*

142 Jackson Lane  
San Marcos, Texas 78666  
Phone: 512-392-1719  
ashandassociates.net

**STATE OF TEXAS  
COUNTY OF HAYS**

**9.610 ACRES  
EDWARD BURLESON SURVEY  
NO. 18 - ABSTRACT # 63**

**BEING 9.610 ACRES OF LAND SITUATED IN THE EDWARD BURLESON SURVEY NO. 18, ABSTRACT NO. 63, HAYS COUNTY, TEXAS, SAME BEING A 7.959 ACRE PORTION OF THAT CALLED 109.22 ACRE TRACT OF LAND CONVEYED TO OUTLET WEST INVESTORS, LTD., A TEXAS LIMITED PARTNERSHIP, BY DEED DATED DECEMBER 21, 1998 AND RECORDED IN VOLUME 1486, PAGE 887, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, AND BEING A 1.153 ACRE PORTION OF CENTERPOINT ROAD, A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY, AND ALSO BEING ALL THAT 0.498 ACRE PORTION OF TRANSPORTATION WAY, A DEDICATED 76 FOOT PUBLIC RIGHT-OF-WAY AS SHOWN BY PLAT OF LOT 2, LOWMAN RANCH SUBDIVISION, SECTION TWO, AN ADDITION TO HAYS COUNTY, TEXAS ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 18, PAGE 17, HAYS COUNTY PLAT RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

**BEGINNING** at a 1/2" iron rod found with cap marked "BYRN" at the intersection of the southwest line of Centerpoint Road, a variable width public right-of-way, as widened and described in Exhibit 'A' in Lis Pendens Notice recorded in Volume 2571, Page 69, Official Public Records, Hays County, Texas, with the southeast line of said Transportation Way, for the east corner of the 9.611 acre herein described tract of land;

**THENCE** South 43°34'30" West (S 45°34'23" W Record), at a distance of 10.30 feet passing the north corner of said Lot 2, Lowman Ranch Section Two, and a common corner of the right-of-way of said Centerpoint Road, and continuing on for a total distance of 285.43 feet (285.35' Record) to a 1/2" iron rod found with cap marked "BYRN" at the west corner of said Lot 2 and a common south corner of said Transportation Way, for a south corner of the herein described tract of land;

**THENCE** North 46°26'02" West (N 46°25'37" W Record), a distance of 75.99 feet (76.00' Record) to a 1/2" iron rod found with cap marked "BYRN" at the west corner of said Transportation Way, for an interior corner of the herein described tract of land;

**THENCE** South 43°34'33" West (S 43°34'23" W Record), with the projection of the northwest line of said proposed Transportation Way, at a distance of 250.54 feet passing a 1/2" iron rod set with cap marked "RPLS 5687" set at the intersection of said proposed Transportation Way with the northeast line of a drainage easement described in Exhibit 'A' of the Instrument recorded in Volume 4389, Page 592 of the Hays County Real Property Records, and continuing on in all a total distance of 330.51 feet to the approximate centerline of said drainage easement, for the south corner of the herein described tract of land;

**THENCE North 46°29'00" West (N 45°58'03" W Record), with the approximate centerline of said drainage easement, a distance of 577.62 feet to the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, for the west corner of the herein described tract of land, and from which a 1/2" iron rod found with cap marked "BYRN" at a west corner of said drainage easement bears South 46°38'05" West (S 47°09'14" W Record), a distance of 80.09 feet (80.12' Record);**

**THENCE with the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, the following courses and distances numbered (1) and (2):**

**1) North 46°38'05" East (N 47°09'14" E Record), a distance of 80.09 feet (80.12' Record) to a 1/2" iron rod found with cap marked "BYRN" at a north corner of said drainage easement;**

**2) North 46°39'10" East (N 47°08'53" E Record), a distance of 540.99 feet to a 1/2" iron rod set with cap marked "RPLS 5687" set at the intersection of the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract with the southwest line of aforesaid Centerpoint Road, as widened, and from which the north corner of said Outlet West Investors, Ltd. called 109.22 acre tract bears North 46°39'10" East (N 47°08'53" E Record), a distance of 27.30 feet;**

**THENCE North 46°39'10" East (N 47°08'53" E Record), with the projection of the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, at a distance of 27.30 feet passing the record north corner of said Outlet West Investors, Ltd. called 109.22 acre tract, crossing said Centerpoint Road, and continuing on for a total distance of 82.22 feet to a wire fence in the northeast line of said roadway, for the north corner of the herein described tract of land, same being in the southwest line of that certain called 63.133 acre tract of land conveyed as "Tract 1" in a deed to San Marcos Land Associates recorded in Volume 1060, Page 848 of the Deed Records of Hays County, Texas, and from which a steel corner fence post at the west corner of said San Marcos Land Associates called 63.133 acre tract bears, North 45°52'41" West, a distance of 0.43 feet;**

**THENCE South 45°52'41" East (S 44°21'26" E Record), with the northeast line of said Centerpoint Road and the common southwest line of said San Marcos Land Associates called 63.133 acre tract, along the meanders of a wire fence, a distance of 615.92 feet to the intersection of said common line with the projection of the southeast line of the aforementioned Transportation Way, dedicated 76 foot public right-of-way, for the east corner of the herein described tract of land;**

**THENCE South 43°34'33" West, along the projection of the of the northwest line of said Transportation Way, crossing said Centerpoint Road, at a distance of 53.16 feet passing the record northeast line of aforesaid Outlet West Investors, Ltd. called 109.22 acre tract, and continuing on for a total distance of 79.86 feet to the POINT OF BEGINNING and CONTAINING 9.610 ACRES OF LAND.**

**BEARING BASIS HEREIN DERIVED BY GPS MEASUREMENTS ADJUSTED BY HARN (HIGH ACCURACY REFERENCE NETWORK) & PROJECTED TO TEXAS STATE PLANE COORDINATES (TEXAS SOUTH CENTRAL ZONE) & NAD83.**

I, Richard H. Taylor, do certify that this description and associated exhibit were prepared this date from a boundary survey performed under my direction during December 2019, and is true and correct to the best of my knowledge and belief.

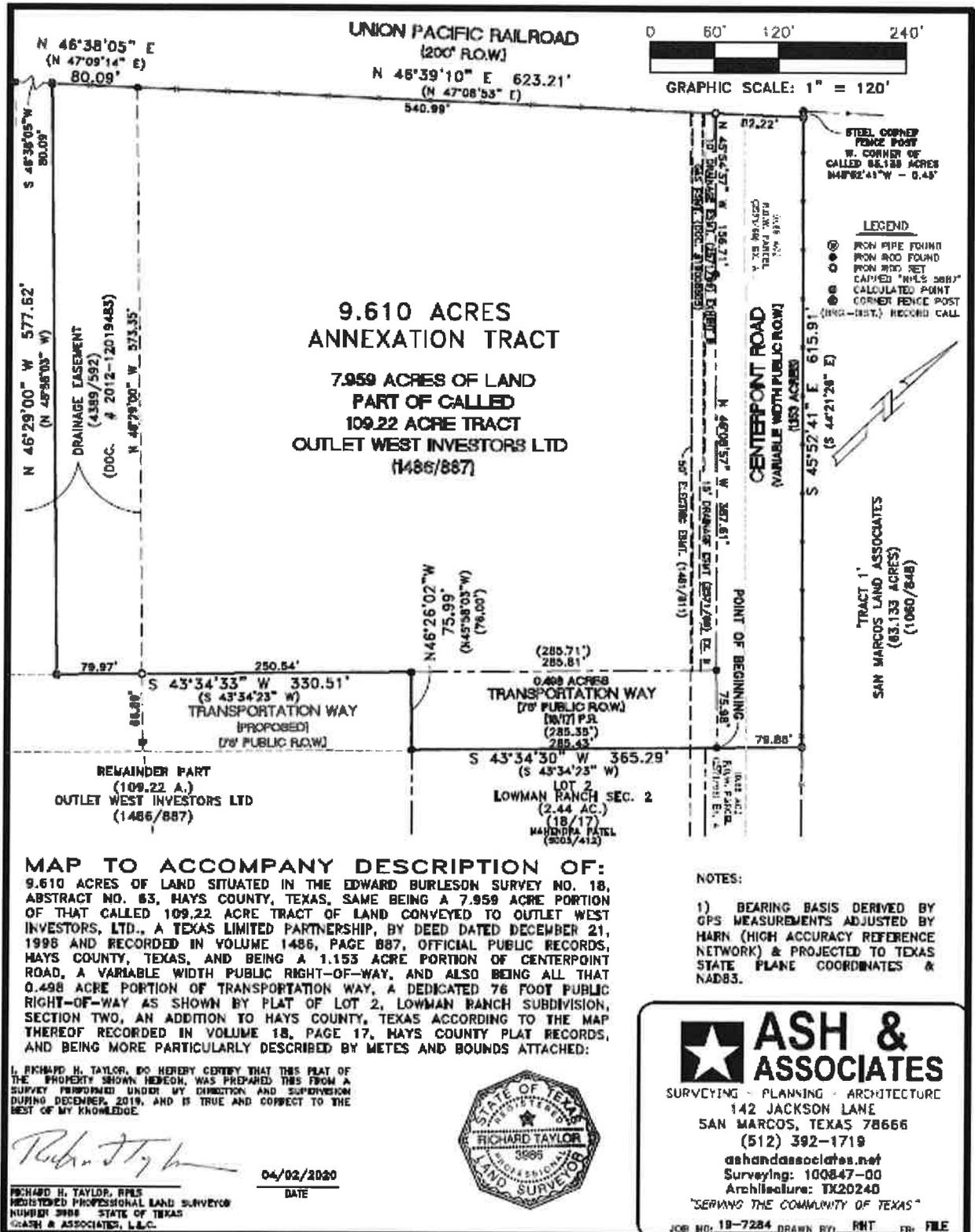


Richard H. Taylor  
Registered Professional Land Surveyor  
No. 3986 State of Texas  
Attachment: Drawing of 9.610 Acre Annexation Tract  
Job: 19-7284

04/02/2020

Date





**MAP TO ACCOMPANY DESCRIPTION OF:**  
 9.610 ACRES OF LAND SITUATED IN THE EDWARD BURLESON SURVEY NO. 18, ABSTRACT NO. 83, HAYS COUNTY, TEXAS, SAME BEING A 7.959 ACRE PORTION OF THAT CALLED 109.22 ACRE TRACT OF LAND CONVEYED TO OUTLET WEST INVESTORS, LTD., A TEXAS LIMITED PARTNERSHIP, BY DEED DATED DECEMBER 21, 1998 AND RECORDED IN VOLUME 1486, PAGE 887, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, AND BEING A 1.153 ACRE PORTION OF CENTERPOINT ROAD, A VARIABLE WIDTH PUBLIC RIGHT-OF-WAY, AND ALSO BEING ALL THAT 0.498 ACRE PORTION OF TRANSPORTATION WAY, A DEDICATED 76 FOOT PUBLIC RIGHT-OF-WAY AS SHOWN BY PLAT OF LOT 2, LOWMAN RANCH SUBDIVISION, SECTION TWO, AN ADDITION TO HAYS COUNTY, TEXAS ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 18, PAGE 17, HAYS COUNTY PLAT RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS ATTACHED:

**NOTES:**

- 1) BEARING BASIS DERIVED BY GPS MEASUREMENTS ADJUSTED BY HARN (HIGH ACCURACY REFERENCE NETWORK) & PROJECTED TO TEXAS STATE PLANE COORDINATES & NAD83.

I, RICHARD H. TAYLOR, DO HEREBY CERTIFY THAT THIS PLAT OF THE PROPERTY SHOWN HEREON, WAS PREPARED TRUE FROM A SURVEY PERFORMED UNDER MY DIRECTION AND SUPERVISION DURING DECEMBER, 2019, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

*Richard H. Taylor*

04/02/2020  
DATE

RICHARD H. TAYLOR, RPES  
 REGISTERED PROFESSIONAL LAND SURVEYOR  
 NUMBER 3988 STATE OF TEXAS  
 ASH & ASSOCIATES, L.L.C.



**ASH & ASSOCIATES**

SURVEYING - PLANNING - ARCHITECTURE  
 142 JACKSON LANE  
 SAN MARCOS, TEXAS 78866  
 (512) 392-1719  
 ashandassociates.net  
 Surveying: 100847-00  
 Architecture: TX20240  
 "SERVING THE COMMUNITY OF TEXAS"

JOB NO. 19-7284 DRAWN BY: RHT TB: FILE

H'g5rfNOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

### OWNER'S CONSENT TO ANNEXATION OF LAND

**Date:** April 28, 2020  
**City:** City of San Marcos, Texas, a home rule municipal corporation  
**Owner:** OUTLET WEST INVESTORS, LTD., 1300 Post Oak Blvd, Suite 1650, Houston, Texas 77056  
**Property:** 9.61 +/- acres out of the Edward Burleson Survey No. 18, Abstract No. 63, Hays County

Owner petitioned the City to initiate proceedings to annex the Property. Owner acknowledges and agrees that, in connection with annexation of the Property:

1. Owner does not wish to enter into a development agreement with the City under Section 212.172 and has declined the offer by the City of such a development agreement.

2. Unless specifically authorized by a written agreement with Owner approved by the City Council under applicable ordinances, the City has no obligation to extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property at the City's expense, and the City has made no offers, representations or promises that the City will, at the City's expense, extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property. Such extensions to the Property shall be made available in the same manner and on the same basis as available to other areas of the City, whereby it shall be Owner's sole obligation, and at Owner's sole expense, to construct and install all infrastructure necessary to extend such services to the Property under applicable ordinances.

3. From and after the Effective Date (as defined below), Owner waives any and all rights of Owner to assert any claim or demand, or to file suit against, and covenants not to sue, the City on the basis that the annexation of the Property by the City is invalid, void or voidable, in whole or in part.

4. This instrument is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings concerning this instrument shall lie in State courts having jurisdiction located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

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

6. After the Effective Date (as defined below), this instrument may be recorded in the Official Public Records of the County or Counties in which the Property is located and is binding on Owner's successors, heirs and assigns, and any future owners of the Property.

7. This instrument shall not be effective unless and until the date (the "Effective Date") that all of the following conditions (the "Conditions") have been satisfied: (i) an ordinance annexing the Property is finally passed, approved and adopted by the City's city council, and (ii) Owner has conveyed fee title to the Property to CBTX Capital, LLC, or its permitted assigns, pursuant to that certain Commercial Contract – Unimproved Property between Owner and CBTX Capital, LLC with an effective date of November 22, 2019, as such contract may be amended. In the event that all the Conditions have not been fully satisfied by April 2, 2021, then this instrument shall be null and void and of no further force or effect.

[SIGNATURE(S) ON NEXT PAGE]



**DECLINATION OF OFFER OF DEVELOPMENT AGREEMENT**

The attached Development Agreement was offered by the City of San Marcos to the owner of the property subject to the following application/petition (check one):

Out of City Utility Connection of Extension Application

Petition for Annexation (without OCU Request)

By signing below, the owner of the subject property declines the offer to enter into such Development Agreement.

**OWNER (Entity):**

**Outlet West Investors, Ltd.**

**By: JOQ GP, LLC, its general partner**

By: *Robert C Wilson, III*

**Name: Robert C Wilson, III**  
**Title: President**

**Date: 7 May 2020**

Approved  
Jm  
5/4/20

Case No. AN-20-04 (Centerpoint Road)



Legislation Text

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**File #:** Ord. 2020-33(b), **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-33, on the second of two readings, amending the Official Zoning Map of the City by rezoning approximately 7.959 acres of land, generally located in the 400 Block of Centerpoint Road, from "FD" Future Development District to "HC" Heavy Commercial District; and including procedural provisions.

**Meeting date:** June 2, 2020

**Department:** Planning and Development Services

**Amount & Source of Funding**

**Funds Required:** n/a

**Account Number:** n/a

**Funds Available:** n/a

**Account Name:** n/a

**Fiscal Note:**

**Prior Council Action:** n/a

**City Council Strategic Initiative:**

N/A

**Comprehensive Plan Element (s):**

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Direct Growth, Compatible with Surrounding Uses
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Safe, Well coordinated transportation system implemented in an environmentally sensitive manner
- Core Services
- Not Applicable

**Master Plan:**

Vision San Marcos - A River Runs Through Us

**Background Information:**

The subject property is currently located outside the City Limits in the Extraterritorial Jurisdiction (ETJ). The property is currently vacant and is adjacent to rural/agricultural property as well as the Union Pacific Railroad. In addition, the City recently approved annexation and zoning to the south of the subject property for a sportsplex facility.

The purpose of this zoning change to "Heavy Commercial" zoning is to allow the development of a self-storage facility.

The City of San Marcos will provide water and wastewater services at the site. The developer will be responsible for extending water and wastewater facilities through the site. Pedernales Electric Service will provide electric service.

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

**Planning and Zoning Commission Meeting: April 28, 2020**

**Speakers in favor or opposed:**

1. 0 (in favor)
2. 0 (in opposition)

**Recommendation:** A motion was made by Commissioner Dillon, seconded by Commissioner Haverland, to approve ZC-20-06. The motion carried 8-0.

- **For:** (8) Chairperson Gleason, Commissioner Rand, Commissioner McCarty, Commissioner Haverland, Commissioner Dillon, Commissioner Moore, Commissioner Agnew, Commissioner Spell.
- **Against:** 0
- **Absent:** (1) Vice Chairperson Kelsey

**Alternatives:**

n/a

**Recommendation:**

Staff provides this request to the Council for your consideration and recommends **approval** of the request for a zoning change from "FD" Future Development to "HC" Heavy Commercial.

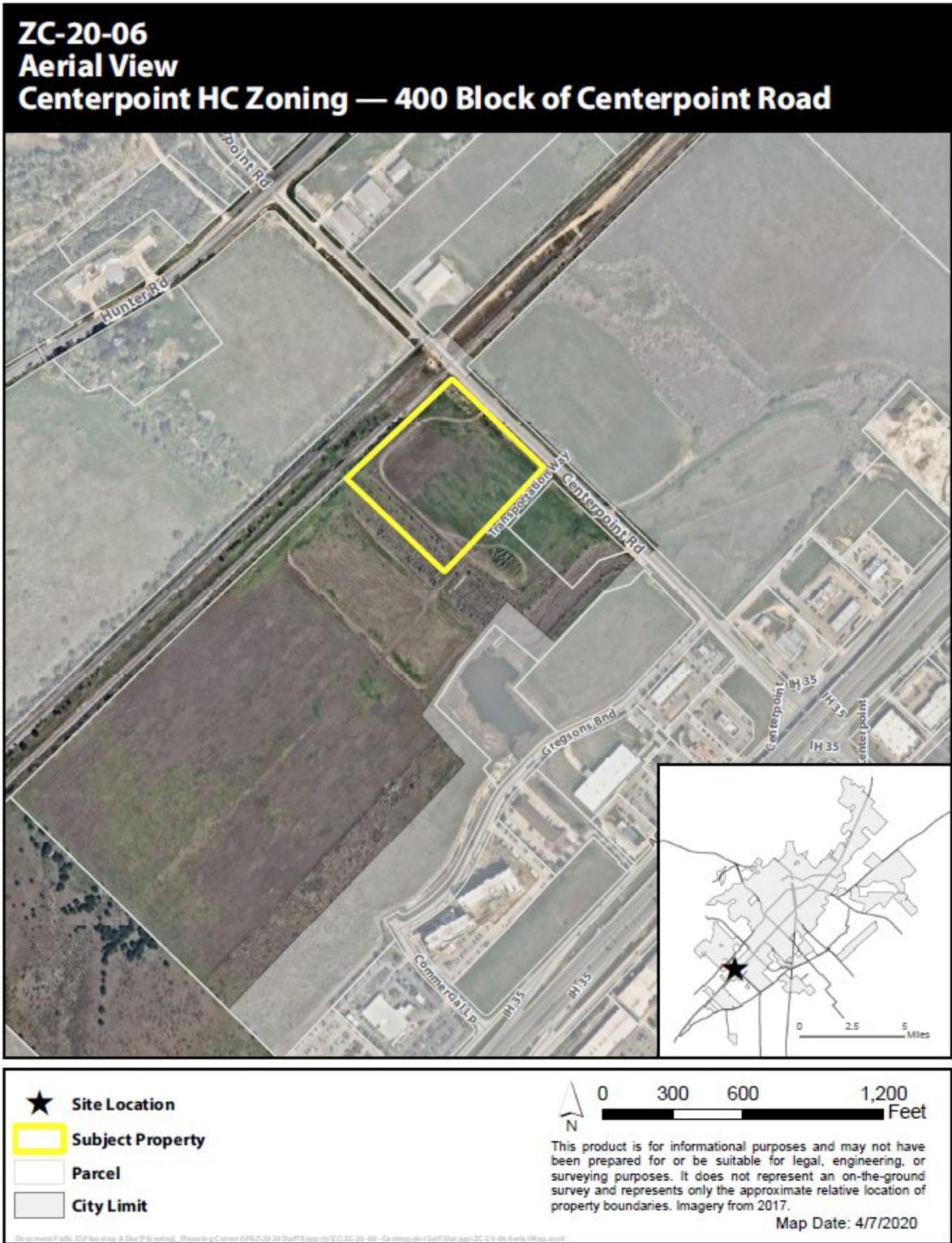
## ZC-20-06 (Centerpoint HC)

Receive a Staff Presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-XX, amending the Official Zoning Map of the City by rezoning approximately 7.959 acres, more or less, out of the Edward Burleson Survey, No. 18, Abstract No. 63, Hays County, generally located in the 400 Block of Centerpoint Road, from “FD” Future Development District to “HC” Heavy Commercial District; and including procedural provisions; and consider approval of Ordinance 2020-XX on the first of two readings.

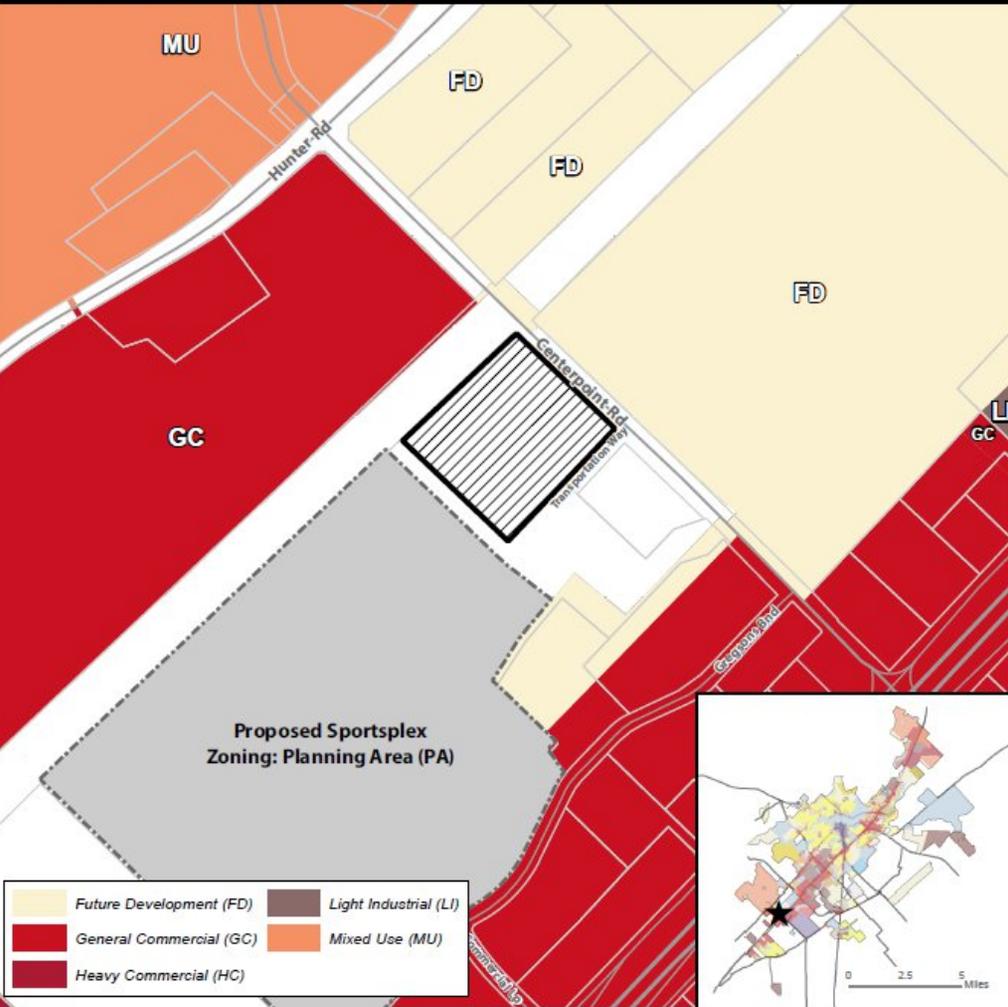


# Context & History

- **Existing Zoning:** Outside City Limits (ETJ)
- **Proposed Zoning:** Heavy Commercial (HC)
- Proposed HC zoning allows for primarily commercial and industrial uses with some agricultural and public/institutional uses
- Applicant is currently proposing a self-storage project / commercial uses
- Annexation request is being processed concurrently for property located outside City Limits

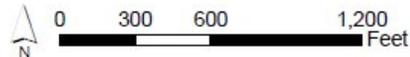


**ZC-20-06**  
**Existing Zoning**  
**Centerpoint HC Zoning – 400 Block of Centerpoint Road**



- Future Development (FD)
- General Commercial (GC)
- Heavy Commercial (HC)
- Mixed Use (MU)
- Light Industrial (LI)

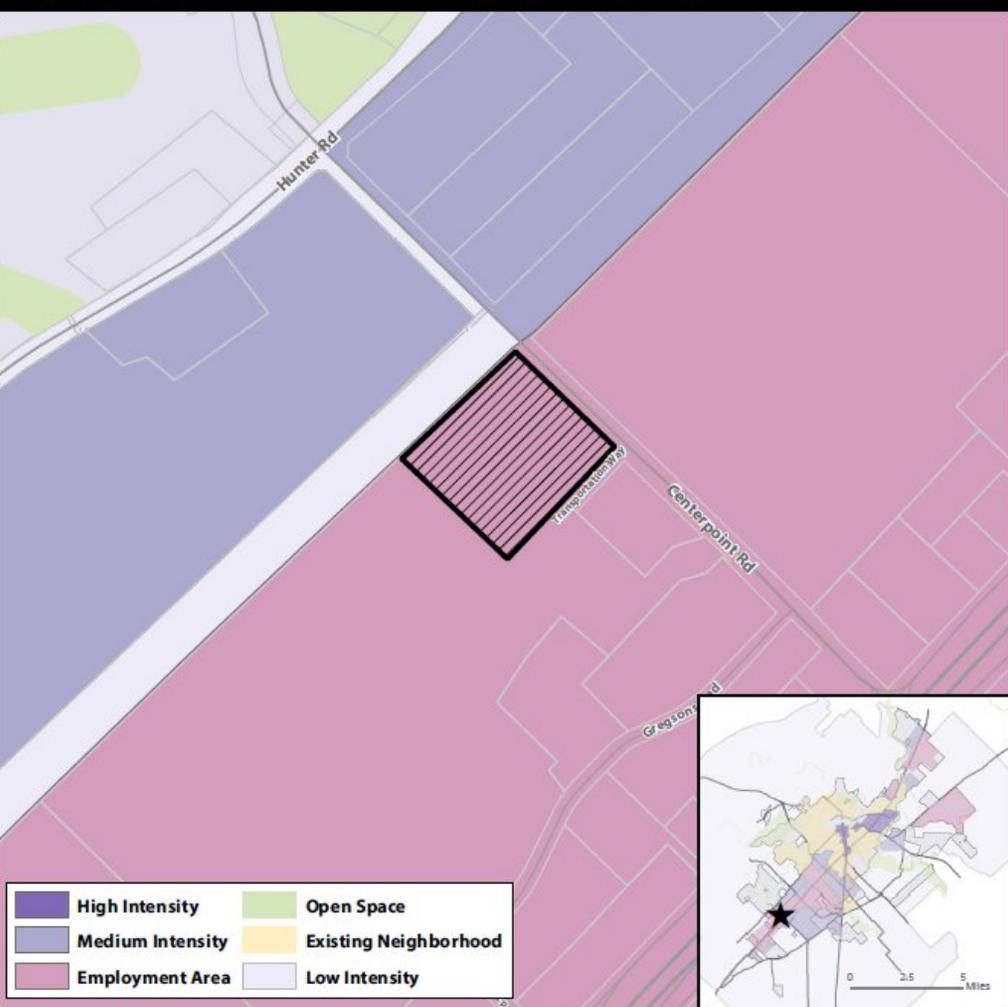
- Site Location
- Subject Property
- Parcels
- City Limit



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Map Date: 4/13/2020

**ZC-20-06**  
**Preferred Scenario**  
**Centerpoint HC Zoning – 400 Block of Centerpoint Road**



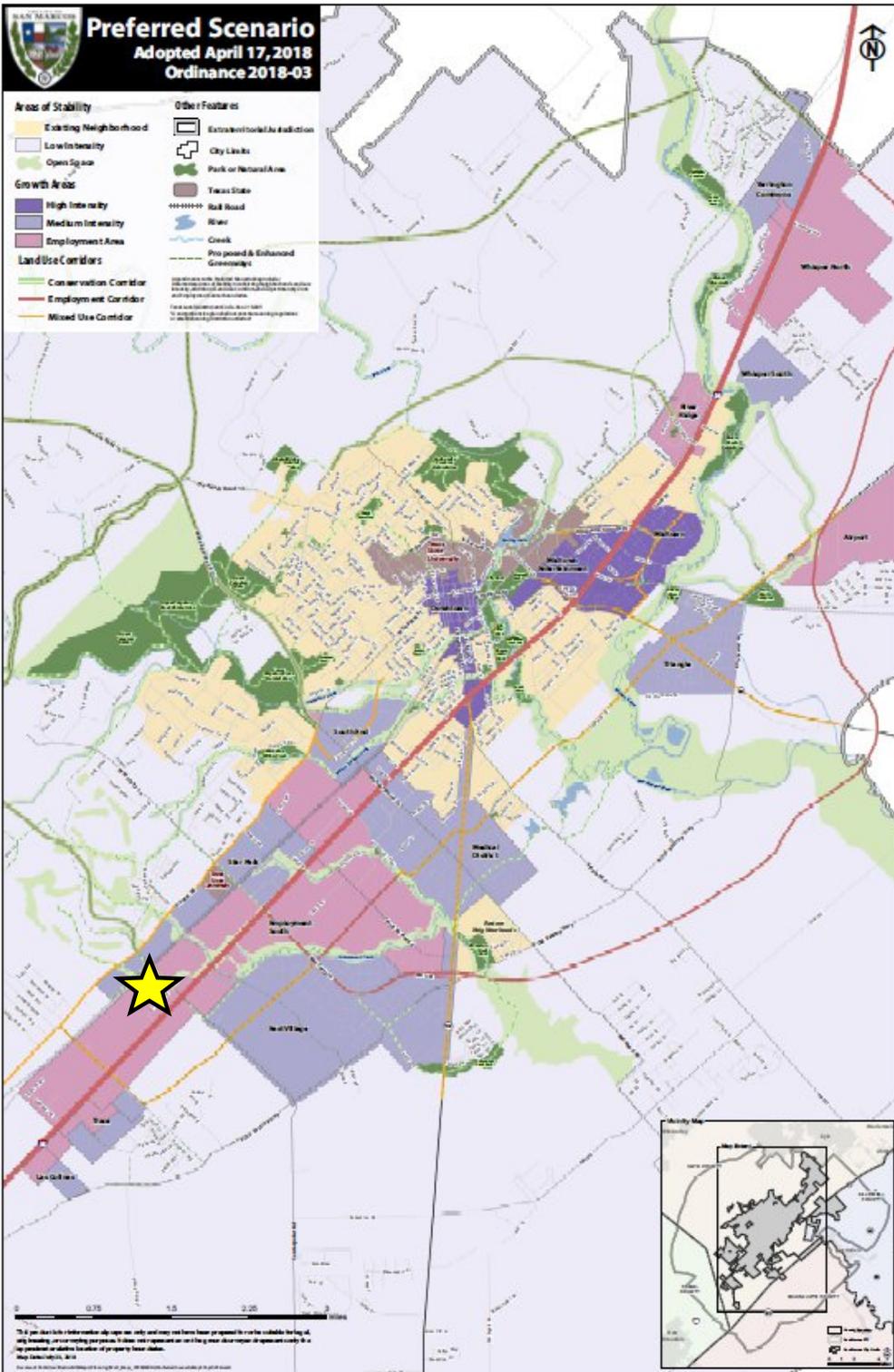
- High Intensity
- Medium Intensity
- Employment Area
- Open Space
- Existing Neighborhood
- Low Intensity

- Site Location
- Subject Property
- Parcels
- City Limit



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Map Date: 4/7/2020



# Comprehensive Plan Analysis

**Step 1:** Where is the property located on the Comprehensive Plan?

**Located in an Employment Area**

“the preferred scenario shows the locations of potential employment areas which are appropriate for industrial, large office park and intensive commercial uses. Typically, these uses are located on large sites with excellent road and rail access and access to water and sewer infrastructure.”

(Comprehensive Plan, pg. 69)

# Comprehensive Plan Analysis

**Step 2:** Is the request consistent with the Comprehensive Plan / District Translation Table?

Applicant is requesting a “Special District” (Heavy Commercial zoning) within an Employment Area

**TABLE 4.1 COMPREHENSIVE PLAN / DISTRICT TRANSLATION**

DISTRICT CLASSIFICATION	COMPREHENSIVE PLAN DESIGNATIONS					
	OPEN SPACE/ AGRICULTURAL	LOW INTENSITY	EXISTING NEIGHBORHOOD	MEDIUM OR HIGH INTENSITY ZONE	EMPLOYMENT CENTER	CORRIDOR
Conventional Residential	NP	NP	C	--	--	--
Neighborhood Density Districts	NP	NP	See Section 4.1.2.4 - 4.1.2.5	NP	NP	C
Character Districts	NP	C	--	C	NP	C
<b>Special Districts</b>	--	NP	NP	NP	<b>C</b>	C
Legend	-- = Not Allowed (PSA Required)		NP=Not Preferred		C = Consider	

# HC Zoning Analysis:

- HC zoning is intended to “accommodate auto-oriented and other heavy commercial uses. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.”
- **Allowable Building Types:** *General Commercial, Civic Building*
- Surrounding area is located in an Employment Area and surrounding zoning is primarily General Commercial, has a placeholder zoning designation of Future Development, or is located outside the city limits
- Adjacent to the recently approved sportsplex facility, zoned Planning Area

4

CHAPTER

SECTION 4.4.5.2 HEAVY COMMERCIAL

HC

A

**KEY**

- Property Line (ROW)
- Setbacks
- Building Footprint

DISTRICT INTENT STATEMENTS

HC is intended to accommodate auto oriented and other heavy commercial uses. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.

BUILDING TYPES ALLOWED

General Commercial	Section 4.4.6.13
Civic Building	Section 4.4.6.15

BUILDING STANDARDS

Principle Building Height	4 stories max.	62 ft. max.
Accessory Structure Height	N/A	24 ft. max.

DENSITY

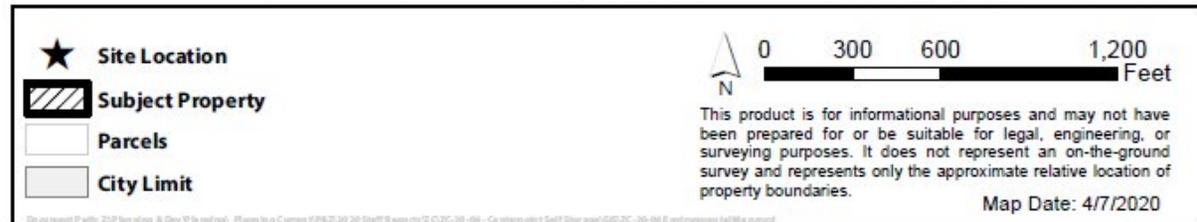
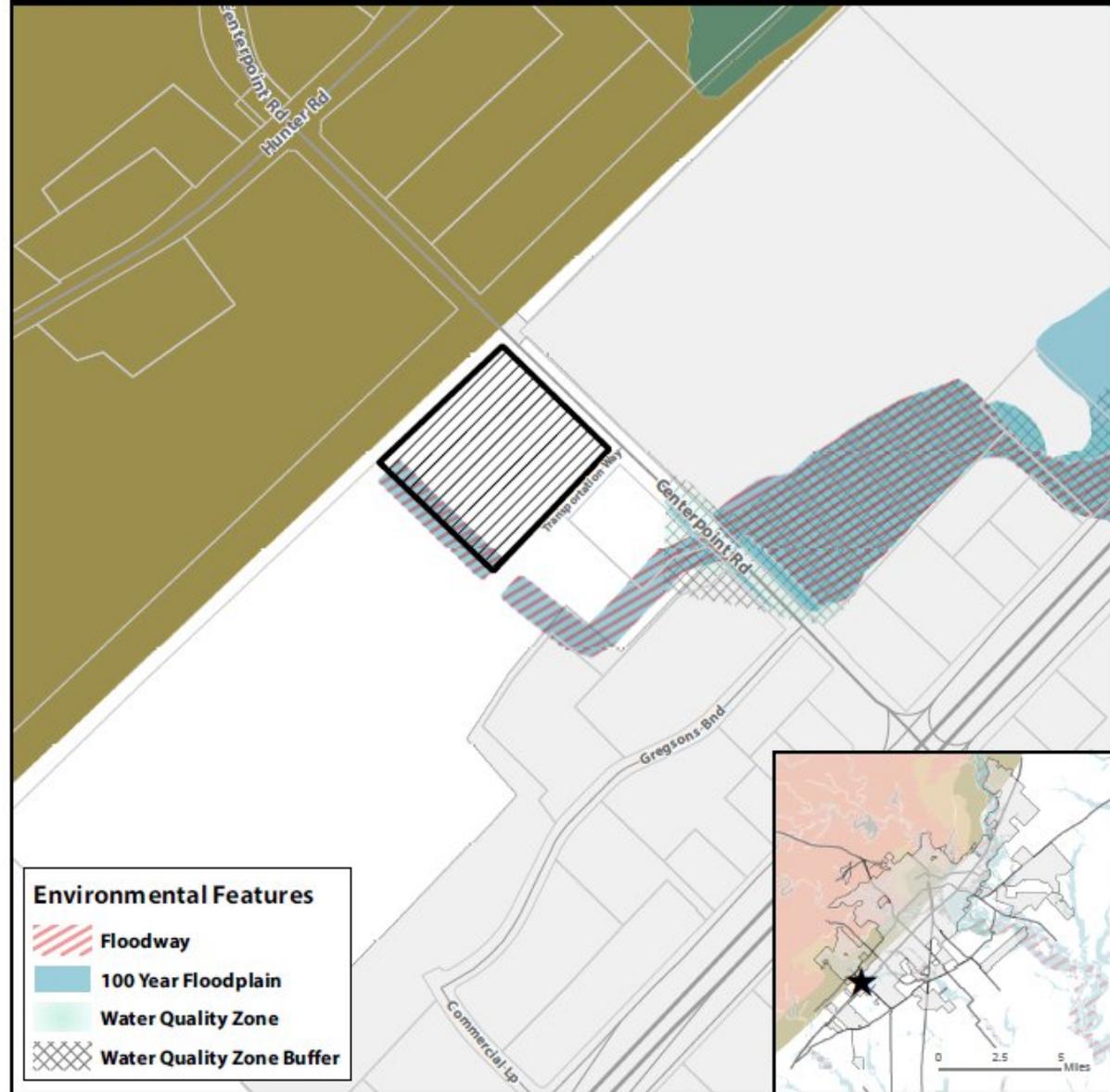
Impervious Cover	80% max.
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TRANSPORTATION

Block Perimeter	5,000 ft. max	Section 3.6.2.1
Streetscape Type	Conventional	Section 3.8.1.7

## Environmental Analysis

- Located in a moderately constrained area on the Land Use Suitability map
- Portion of floodplain at the rear of the property
- Watershed Protection Plan Phase 2
  - Detention
  - Drainage
  - Environmental Reports



## Additional Requirements

### • Street Requirements

- Transportation Master Plan
- Block perimeter requirements (5,000 feet)
- Bike facility requirements (all streets)
- Greenway requirement (Centerpoint)
- Sidewalk connections (all streets)
- Traffic Impact Analysis (TIA)

### • Subdivision Requirements

- Subdivision plat in accordance with lot and block standards

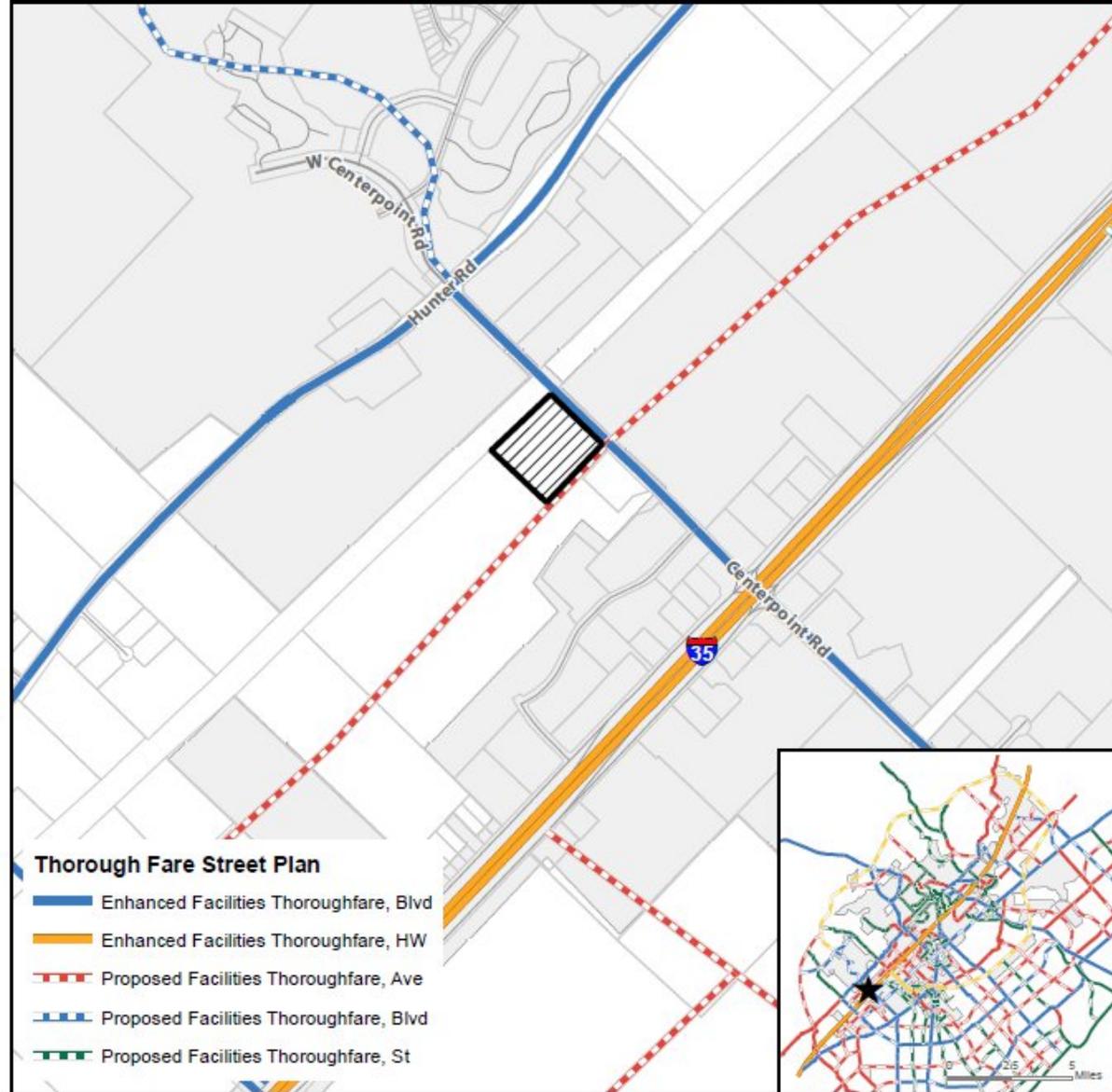
### • Utility Requirements

- Connection to water and wastewater facilities in accordance with City standards

ZC-20-06

Transportation Master Plan

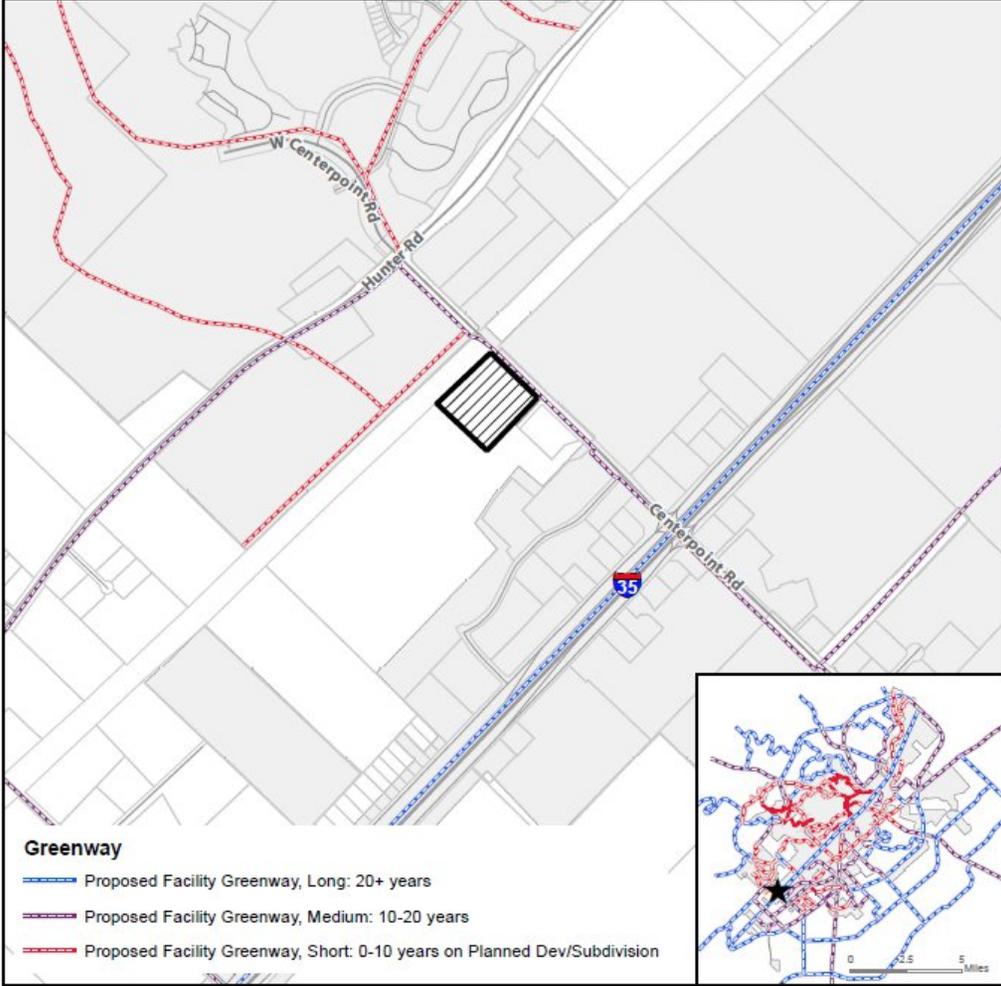
Centerpoint HC Zoning – 400 Block of Centerpoint Road



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Map Date: 4/7/2020

**ZC-20-06**  
**Transportation Master Plan Greenways**  
**Centerpoint HC Zoning – 400 Block of Centerpoint Road**



- Greenway**
- Proposed Facility Greenway, Long: 20+ years
  - Proposed Facility Greenway, Medium: 10-20 years
  - Proposed Facility Greenway, Short: 0-10 years on Planned Dev/Subdivision

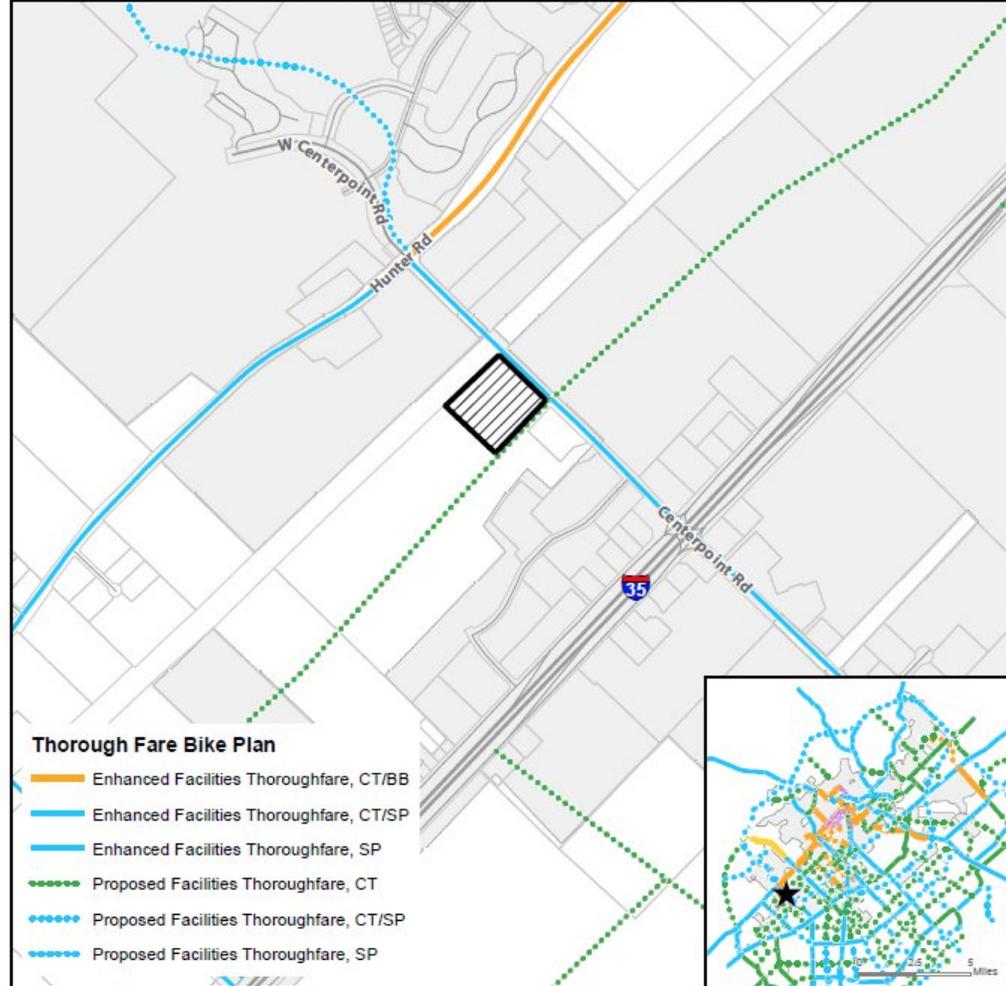
- ★ Site Location
- Subject Property
- Parcels
- City Limit



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Map Date: 4/7/2020

**ZC-20-06**  
**Transportation Master Plan Bicycle Infrastructure**  
**Centerpoint HC Zoning – 400 Block of Centerpoint Road**



- Thorough Fare Bike Plan**
- Enhanced Facilities Thoroughfare, CT/BB
  - Enhanced Facilities Thoroughfare, CT/SP
  - Enhanced Facilities Thoroughfare, SP
  - ⋯ Proposed Facilities Thoroughfare, CT
  - ⋯ Proposed Facilities Thoroughfare, CT/SP
  - ⋯ Proposed Facilities Thoroughfare, SP

- ★ Site Location
- Subject Property
- Parcels
- City Limit



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Map Date: 4/7/2020





## San Marcos Planning and Zoning Meeting



Developers recently opened a similar facility in Dripping Springs, TX, following local design aesthetics and building materials

# DRAFT SITE CONCEPT PLAN



Phase 1:  
Class-A Self Storage

Phase 2:  
Commercial



Developer's Current Projects Under Construction  
New Braunfels, Round Rock and College Station



## Staff Recommendation:

At their April 28, 2020 Meeting, the Planning and Zoning Commission recommended approval of the zoning change with a 8-0 vote.

Staff provides this request to the Council for your consideration and recommends **approval** of the request for a zoning change from “FD” Future Development to “HC” Heavy Commercial.

# Zoning District Comparison Chart

Topic	Existing Zoning: Future Development (FD)	Proposed Zoning: Heavy Commercial (HC)
Zoning Description	The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.	Heavy Commercial (HC) is intended to accommodate auto-oriented and other heavy commercial uses. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.
Uses	Primarily agricultural, residential, and public/institutional (See Land Use Matrix)	Primarily commercial and industrial uses with some allowances for and public/institutional and agricultural uses (See Land Use Matrix)
Parking Location	No location standards	No location standards
Parking Standards	Depends on use	Depends on use. For example, warehouse and distribution uses require 1 space for each 2,000 square feet of gross floor area excluding office space, which shall be calculated separately depending on office use.
Max Residential Units per acre	0.4 units per acre (max)	Residential uses are not allowed
Occupancy Restrictions	N/A	N/A
Landscaping	Tree and shrub requirements	Tree and shrub requirements
Building Height (max)	2 stories (40 feet)	4 stories (62 feet)
Setbacks	50' minimum front; 20' min side; minimum rear setback is 20% of total lot depth	20' minimum front, 5' minimum side, 20' minimum rear
Impervious Cover (max)	30%	80%
Lot Sizes	Allows a variety of lot sizes depending on Building Type.	Allows a variety of lot sizes depending on Building Type.
Streetscapes	Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area between sidewalk and street required.	Conventional Street: 6' sidewalk, street trees every 40' on center average, 7' planting area between sidewalk and street required.
Blocks	No Block Perimeter Required	5,000 ft. Block Perimeter max

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY REZONING APPROXIMATELY 7.959 ACRES OF LAND, GENERALLY LOCATED IN THE 400 BLOCK OF CENTERPOINT ROAD, FROM “FD” FUTURE DEVELOPMENT DISTRICT TO “HC” HEAVY COMMERCIAL DISTRICT; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

1. On April 28, 2020, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “FD” Future Development District to “HC” Heavy Commercial District for approximately 7.959 acres of land, generally located in the 400 Block of Centerpoint Road.
2. The Planning and Zoning Commission voted to recommend that the request be approved by the City Council.
3. The City Council held a public hearing on May 19, 2020 regarding the request.
4. All requirements pertaining to Zoning Map amendments have been met.
5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

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

**SECTION 1.** The Official Zoning Map of the City is amended to rezone the tract of land described in Exhibit A, attached hereto and made a part hereof, from “FD” Future Development District to “HC” Heavy Commercial District.

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

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

**SECTION 4.** This ordinance shall not be effective unless and until the date (the “Effective Date”) that all of the following conditions (the “Conditions”) have been satisfied: (i) this ordinance is finally passed, approved and adopted on second reading; (ii) an ordinance annexing the Property into the corporate limits of the City has been finally passed, approved and adopted; and (iii) Outlet West Investors, Ltd. has conveyed fee title to the Property to CBTX Capital, LLC, or its permitted

assigns, pursuant to that certain Commercial Contract – Unimproved Property between Outlet West Investors, Ltd. and CBTX Capital, LLC with an effective date of November 22, 2019, as such contract may be amended. In the event that all the Conditions have not been fully satisfied by April 2, 2021, then this ordinance shall be null and void and of no further force or effect.

**PASSED AND APPROVED** on first reading on May 19, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney



May 29, 2020

RE: Ordinance 2020-33

Dear Miss Villalobos:

At the April 28, 2020 meeting of the San Marcos Planning and Zoning Commission (the "Commission"), unanimously approved the zoning request ZC-20-06 of approximately 7.959 acres, more or less, out of the Edward Burleson Survey, No. 18, Abstract No. 63, Hays County, generally located in the 400 Block of Centerpoint Road (the "Property"), from Future Development to Heavy Commercial ("HC") with a 8-0 vote.

On May 19, 2020, City Staff noted in their presentation to San Marcos City Council (the "Council") that the zoning request is consistent with the Comprehensive Plan and the Council voted 4-3 approving the rezoning on First Reading. In the discussion leading up to the vote, Council discussed other potential uses that could apply to any site zoned HC. While a multitude of uses are listed as approved in HC zoning, only a handful actually apply to the Property and zoning case in question as further discussed herein.

Outlet West Investors, Ltd. (the "Seller"), contractually enacted restrictive covenants<sup>1</sup> on the Property which run with the land for thirty (30) years, regardless of whether the land remains in the extra territorial jurisdiction or is annexed and zoned by the City of San Marcos. Per the sales contract, the conveyance of the Property to CB Capital, LLC (the "Buyer") shall be subject to these provisions and included in the deed at closing which **prevent the following uses** on the Property by Buyer, as well as any subsequent owner of the Property:

1. Adult or sexually oriented businesses;
2. Live music venue;
3. Bail bond services;
4. Campground or mobile homes;
5. Commercial blood plasma center;
6. Funeral Service and/or cemeteries;
7. Kennels or other uses involving breeding or keeping of animals;
8. Pawn shop;
9. Scrap and/or salvage yard;
10. Heavy equipment sales;
11. Outside storage, with the exception of outside storage for automobiles to the extent the primary business being conducted is the sale and service of automobiles, and;
12. Long-term parking of automobiles, trucks, campers, boats, trailers, or motor homes, except that such long term parking shall be permitted only within the approved structures subject to conditions.

1. Declaration of Restrictive Covenants filed with the Hays County Clerk's Office December 21, 2007, 800001970PR, Vol. 3310, Pg. 669



If the Property is annexed and Heavy Commercial zoning is approved as requested by Buyer, then the restrictive covenants in place, along with a process of elimination analysis of the Land Use Matrix in Section 5.1 of the San Marcos Development Code, adopted April 17, 2018, limits uses on the Property to the following:

- Commercial Uses
  - Professional Office
  - Medical
    - Urgent care
    - Nursing/Retirement Home
  - Personal Services EXCLUDING animal care and funeral homes
  - Retail Sales EXCLUDING building/material sales and Pawnshops
  - Restaurants
  - Outdoor recreation EXCLUDING RV short terms stays
  - Indoor Recreation
- Public & Institutional Uses
- Industrial Uses EXCLUDING waste-related services
- Agricultural Uses
- Accessory Uses

Buyer respectfully requests that Council approve on Second Reading the Heavy Commercial zoning request at the Council hearing on June 2, 2020 (Ordinance 2020-33), as it is the lowest intensity zoning category that allows the use of self-storage under the current code.

Best Regards,

: 

Christian Alvarado  
Co-Founder  
CB Capital, LLC

# EXHIBIT A



STATE OF TEXAS  
COUNTY OF HAYS

7.959 ACRES  
EDWARD BURLESON SURVEY  
NO. 18 - ABSTRACT # 63

BEING 7.959 ACRES OF LAND SITUATED IN THE EDWARD BURLESON SURVEY NO. 18, ABSTRACT NO. 63, HAYS COUNTY, TEXAS, SAME BEING A PORTION OF THAT CALLED 109.22 ACRE TRACT OF LAND CONVEYED TO OUTLET WEST INVESTORS, LTD., A TEXAS LIMITED PARTNERSHIP, BY DEED DATED DECEMBER 21, 1998 AND RECORDED IN VOLUME 1486, PAGE 887, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found with cap marked "BYRN" at the intersection of the southwest line of Centerpoint Road, a variable width public right-of-way, as widened and described in Exhibit 'A' in Lis Pendens Notice recorded in Volume 2571, Page 69, Official Public Records, Hays County, Texas, with the northwest line of Transportation Way, a proposed 76 foot public right-of-way as shown by Plat of Lot 2, Lowman Ranch Subdivision, Section Two, an addition to Hays County, Texas according to the Map thereof recorded in Volume 18, Page 17, Hays County Plat Records, for the east corner of the herein described tract of land;

THENCE South 43°34'33" West (S 43°34'23" W Record), with the northwest right-of-way line and projection of said proposed Transportation Way, at a distance of 285.81 feet (285.71' Record) passing a 1/2" iron rod found with cap marked "BYRN" at a west corner of said Transportation Way, as shown by plat, at a distance of 536.35 feet passing a 1/2" iron rod set with cap marked "RPLS 5687" set at the intersection of said proposed Transportation Way with the northeast line of a drainage easement described in Exhibit 'A' of the Instrument recorded in Volume 4389, Page 592 of the Hays County Real Property Records, and continuing on in all a total distance of 616.32 feet to the approximate centerline of said drainage easement, for the south corner of the herein described tract of land;

THENCE North 46°29'00" West (N 45°58'03" W Record), with the approximate centerline of said drainage easement, a distance of 577.62 feet to the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, for the west corner of the herein described tract of land, and from which a 1/2" iron rod found with cap marked "BYRN" at a west corner of said drainage easement bears South 46°38'05" West (S 47°09'14" W Record), a distance of 80.09 feet (80.12' Record);

THENCE with the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, the following courses and distances numbered (1) and (2):

- 1) North 46°38'05" East (N 47°09'14" E Record), a distance of 80.09 feet (80.12' Record) to a 1/2" iron rod found with cap marked "BYRN" at a north corner of said drainage easement;
- 2) North 46°39'10" East (N 47°08'53" E Record), a distance of 540.99 feet to a 1/2" iron rod set with cap marked "RPLS 5687" set at the intersection of the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract with the southwest line of aforesaid Centerpoint Road, as widened, same being at the beginning of the arc of a curve;

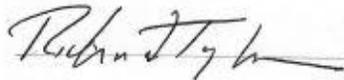
THENCE with the southwest line of aforesaid Centerpoint Road, as widened, the following courses and distances numbered (1) and (2):

1) Southeasterly, 156.71 feet (Record) along the arc of said curve, to the left, having a radius of 18800.00 feet (Record), a delta angle of  $00^{\circ}28'39''$  (Record), and a chord which bears South  $45^{\circ}54'37''$  East (S  $45^{\circ}54'29''$  E Record), a distance of 156.71 feet (Record) to a 1/2" iron rod found with cap marked "PB&J" at the end of said curve;

2) South  $46^{\circ}08'57''$  East (S  $46^{\circ}08'49''$  E Record), a distance of 387.61 feet to the POINT OF BEGINNING and CONTAINING 7.959 ACRES OF LAND.

BEARING BASIS HEREIN DERIVED BY GPS MEASUREMENTS ADJUSTED BY HARN (HIGH ACCURACY REFERENCE NETWORK) & PROJECTED TO TEXAS STATE PLANE COORDINATES (TEXAS SOUTH CENTRAL ZONE) & NAD83.

I, Richard H. Taylor, do certify that this description and associated exhibit were prepared this date from a boundary survey performed under my direction during December 2019, and is true and correct to the best of my knowledge and belief.

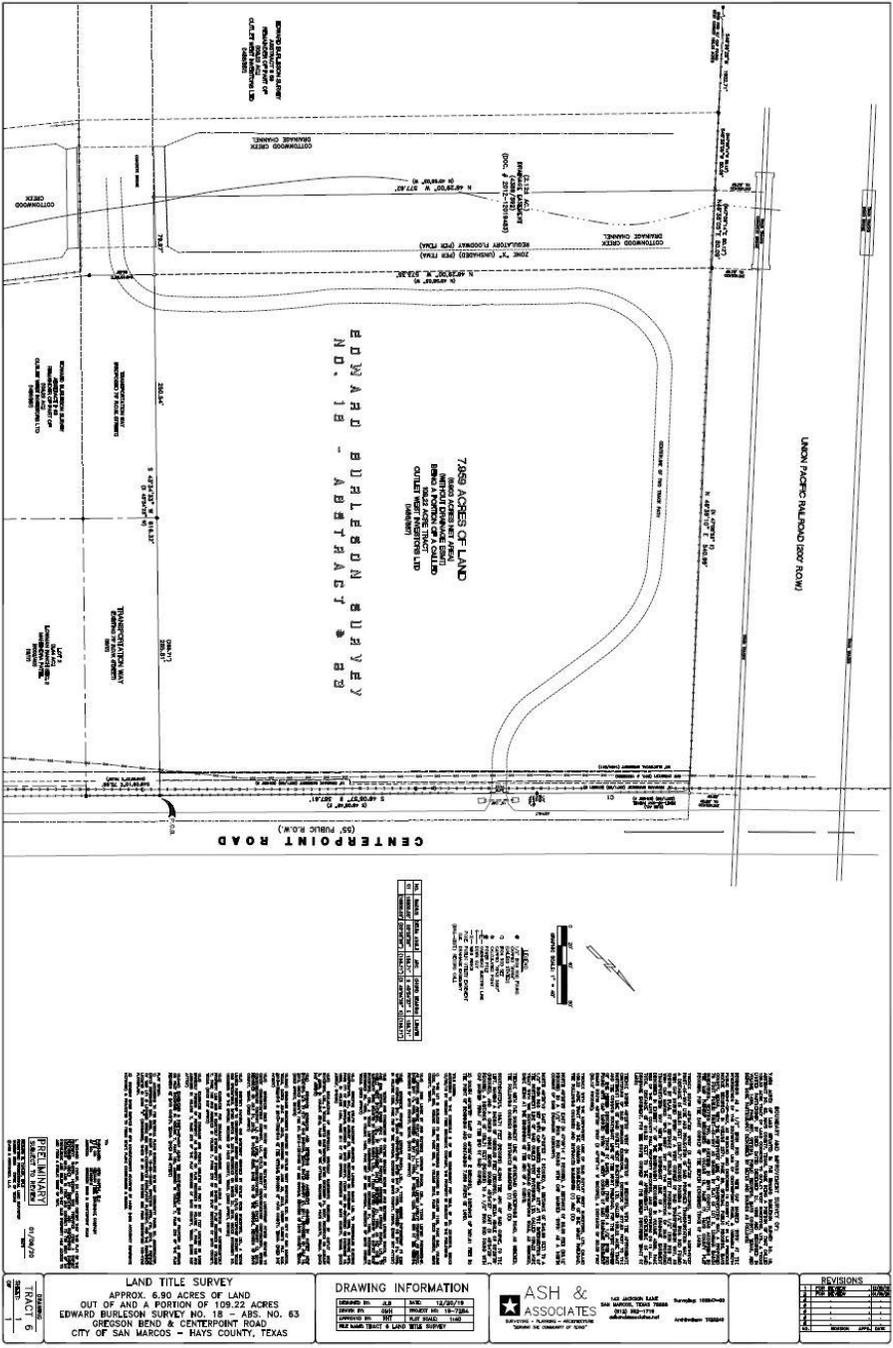


Richard H. Taylor  
Registered Professional Land Surveyor  
No. 3986 State of Texas  
Attachment: Drawing of 7.959 acres  
Job: 19-7284

12/30/19

Date





**LAND TITLE SURVEY**  
 APPROX. 6.80 ACRES OF LAND  
 OUT OF AND A PORTION OF 109.22 ACRES  
 EDWARD BULPSON SURVEY NO. 18 - ABS. NO. 63  
 GREGSON BEND & CENTERPOINT ROAD  
 CITY OF SAN MARCOS - HAYS COUNTY, TEXAS

**DRAWING INFORMATION**

DATE	BY	CHKD	DATE
12/28/18	ASH	ASH	12/28/18
12/28/18	ASH	ASH	12/28/18
12/28/18	ASH	ASH	12/28/18

**ASH & ASSOCIATES**  
 SURVEYORS - A LIMITED LIABILITY COMPANY  
 1000 GLENVIEW DRIVE  
 SAN MARCOS, TEXAS 78682  
 512.393.1111  
 www.ashsurveyors.com

**REVISIONS**

NO.	DATE	DESCRIPTION
1	12/28/18	ISSUED FOR RECORD

**PRELIMINARY**  
 THIS SURVEY IS PRELIMINARY AND IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS MADE. IT IS NOT TO BE CONSIDERED AS A FINAL SURVEY. THE SURVEYOR'S OFFICE IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS SURVEY. THE SURVEYOR'S OFFICE IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS SURVEY. THE SURVEYOR'S OFFICE IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS SURVEY.

<b>Zoning Request</b>	<b>400 Block of Centerpoint Road</b>
<b>ZC-20-06</b>	



**Summary**

<b>Request:</b>	Zoning change from “FD” Future Development to “HC” Heavy Commercial		
<b>Applicant:</b>	Benjamin Green Kimley-Horn 2600 Via Fortuna Ste 300 Austin, TX 78746	<b>Property Owner:</b>	Outlet West Investors Limited 1300 Post Oak Blvd, Ste 1650, Houston, TX 77056

**Notification**

<b>Application:</b>	March 24, 2020	<b>Neighborhood Meeting:</b>	N/A
<b>Published:</b>	April 12, 2020	<b># of Participants</b>	N/A
<b>Posted:</b>	April 10, 2020	<b>Personal:</b>	April 10, 2020
<b>Response:</b>	None as of Staff Report date		

**Property Description**

<b>Legal Description:</b>	+/- 7.959 acre tract out of the Edward Burleson Survey No. 18, Abstract No. 63, Hays County		
<b>Location:</b>	400 Block of Centerpoint Road		
<b>Acreage:</b>	7.959	<b>PDD/DA/Other:</b>	Pending Annexation
<b>Existing Zoning:</b>	“FD” Future Development	<b>Proposed Zoning:</b>	“HC” Heavy Commercial
<b>Existing Use:</b>	Vacant / Rural	<b>Proposed Use:</b>	Self-Storage
<b>Preferred Scenario:</b>	Employment Area	<b>Proposed Designation:</b>	Employment Area
<b>CONA Neighborhood:</b>	N/A	<b>Sector:</b>	N/A
<b>Utility Capacity:</b>	Developer is responsible for extending utilities.	<b>Floodplain:</b>	Yes – at rear of property
<b>Historic District</b>	N/A		

**Surrounding Area**

	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Preferred Scenario</b>
<b>North of Property:</b>	ETJ and General Commercial “GC”	Union Pacific Railroad and Rural / Vacant	Medium Intensity
<b>South of Property:</b>	ETJ	Rural / Vacant	Employment Area
<b>East of Property:</b>	Future Development “FD”	Rural / Vacant	Employment Area
<b>West of Property:</b>	ETJ / Planning Area “PA” (Sportsplex)	Rural / Vacant	Employment Area

<b>Zoning Request</b>	<b>400 Block of Centerpoint Road</b>
<b>ZC-20-06</b>	



**Staff Recommendation**

<b>X</b>	Approval as Submitted	Approval with Conditions / Alternate	Denial
<b>Staff:</b> Andrea Villalobos, AICP, CNU-A <b>Title:</b> Senior Planner <b>Date:</b> April 24, 2020			

**Commission Recommendation**

<b>X</b>	Approval as Submitted	Approval with Conditions / Alternate	Denial
<p><b><u>Planning and Zoning Commission Meeting: April 28, 2020</u></b></p> <p><b>Speakers in favor or opposed:</b></p> <ol style="list-style-type: none"> <li>1. 0 (in favor)</li> <li>2. 0 (in opposition)</li> </ol> <p><b>Recommendation from the Planning and Zoning Commission meeting held April 28, 2020:</b></p> <p>A motion was made by Commissioner Dillon, seconded by Commissioner Haverland, to approve ZC-20-06. The motion carried 8-0.</p> <ul style="list-style-type: none"> <li>• <b>For:</b> (8) Chairperson Gleason, Commissioner Rand, Commissioner McCarty, Commissioner Haverland, Commissioner Dillon, Commissioner Moore, Commissioner Agnew, Commissioner Spell.</li> <li>• <b>Against:</b> 0</li> <li>• <b>Absent:</b> (1) Vice-Chairperson Kelsey</li> </ul>			

<b>Zoning Request</b>	<b>400 Block of Centerpoint Road</b>
<b>ZC-20-06</b>	



**History**

The subject property is currently located outside the City Limits in the Extraterritorial Jurisdiction (ETJ). The property is currently vacant and is adjacent to rural/agricultural property as well as the Union Pacific Railroad. In addition, the City recently approved annexation and zoning to the south of the subject property for a sportsplex facility.

The purpose of this zoning change to “Heavy Commercial” zoning is to allow the development of a self-storage facility.

The City of San Marcos will provide water and wastewater services at the site. The developer will be responsible for extending water and wastewater facilities through the site. Pedernales Electric Service will provide electric service.

**Additional Analysis**

Upon annexation, the property will be zoned “FD”, the default classification for newly annexed land. The annexation request will be considered prior to the zoning change by City Council.

Additional details regarding this analysis is outlined in the staff report and the Comprehensive Plan Analysis checklist.

**Comments from Other Departments**

<b>Police</b>	No issues with the proposed development.
<b>Fire</b>	No issues with the proposed development.
<b>Public Services</b>	No Comment
<b>Engineering</b>	No Comment

Zoning Request	<b>400 Block of Centerpoint Road</b>
ZC-20-06	



Evaluation			Compatibility of Uses & Density Criteria (Sec.4.1.2.5)
Consistent	Inconsistent	Neutral	
<u>X</u>			<p><b>Helps prevent the impacts of high density uses on low density areas</b>  <i>The subject property is located within an "Employment Area" designation on the Preferred Scenario Map as part of the Comprehensive Plan (see Preferred Scenario Map). "Special Districts", which include the Heavy Commercial zoning district, are "C" Considered within this designation on the Preferred Scenario Map. Much of the immediately surrounding property is also located within an Employment Area.</i></p>
		<u>N/A</u>	<p><b>Limits changes in neighborhood density categories unless directed by a small area plan or neighborhood character study</b>  <i>Studies were not complete at the time of the request.</i></p>
	<u>X</u>		<p><b>Encourages more opportunities for home ownership</b>  <i>The proposed Heavy Commercial zoning district would not allow for residential uses.</i></p>
	<u>X</u>		<p><b>Ensures a diversity of housing to serve citizens with varying needs and interests</b>  <i>The proposed Heavy Commercial zoning district would not allow for residential uses.</i></p>

Evaluation			Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	Neutral	
<u>X</u>			<p><b>Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan and preferred scenario map</b>  <i>Vision San Marcos Comprehensive Plan states that "the preferred scenario shows the locations of potential employment areas which are appropriate for industrial, large office park and intensive commercial uses. Typically, these uses are located on large sites with excellent road and rail access and access to water and sewer infrastructure." The Comprehensive Plan states that "Special Districts", such as Heavy Commercial zoning are designated as "C" Considered on the Comprehensive Plan / District Translation Table within an "Employment Area" designation. The proposed zoning map amendment aligns with the description of an Employment Area.</i></p>

Zoning Request	<b>400 Block of Centerpoint Road</b>
ZC-20-06	



Evaluation		Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	
		<p><b>Whether the proposed zoning map amendment is consistent with any adopted small area plan or neighborhood character study for the area</b>  <i>Studies were not complete at time of request.</i></p>
		<p><b>Whether the proposed zoning map amendment is consistent with any applicable development agreement in effect</b>  <i>A development agreement is not required because the property is requesting annexation into the city limits.</i></p>
<u>X</u>		<p><b>Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses shall be appropriate in the immediate area of the land to be reclassified</b>  <i>Heavy Commercial zoning primarily allows for primarily commercial and industrial uses with some allowances for agricultural and public/institutional uses (see attached land use matrix comparison table). Heavy Commercial zoning is intended to “accommodate auto-oriented and other heavy commercial uses. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.” The immediately surrounding area is located in an Employment Area and surrounding zoning is primarily General Commercial or has a placeholder zoning designation of Future Development. In addition, the property to the south recently received approval by City Council for Planning Area zoning to allow a proposed sportsplex facility.</i></p>
<u>X</u>		<p><b>Whether the proposed zoning will reinforce the existing or planned character of the area</b>  <i>Approval of this zoning change would allow the property to develop in a manner that is “C” Considered according to the District Translation Table which states that “Special Districts”, such as the Heavy Commercial zoning district, is Considered within an “Employment Area” designation on the Preferred Scenario Map.</i></p>
<u>X</u>		<p><b>Whether the site is appropriate for the development allowed in the proposed district</b>  <i>The property is vacant and shown to be in a moderately constrained area on the Land Use Suitability Map. The site is located adjacent to City Limits with adequate existing services. The property will have access to Centerpoint Road and Transportation Way.</i></p>

Zoning Request	<b>400 Block of Centerpoint Road</b>
ZC-20-06	

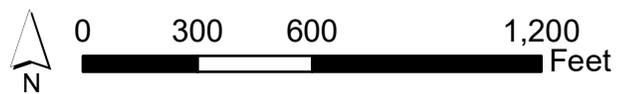


		Evaluation	<b>Criteria for Approval (Sec.2.5.1.4)</b>
Consistent	Inconsistent	Neutral	
		<u>N/A</u>	<p><b>Whether there are substantial reasons why the property cannot be used according to the existing zoning</b>  <i>The property is currently not zoned as it is located outside City Limits.</i></p>
<u>X</u>			<p><b>Whether there is a need for the proposed use at the proposed location</b>  <i>The proposed rezoning would allow primarily commercial and industrial uses. The subject property's location in an Employment Area and along a major transportation roadway would allow for such uses to be developed in accordance with city standards.</i></p>
<u>X</u>			<p><b>Whether the City and other service providers will be able to provide sufficient public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, public safety, and emergency services, while maintaining sufficient levels of service to existing development</b>  <i>The site is located adjacent to City Limits with access to existing utilities and Centerpoint Road and Transportation Way.</i></p>
<u>X</u>			<p><b>Whether the proposed rezoning will have a significant adverse impact on property in the vicinity of the subject property</b>  <i>The immediately surrounding area is located in an Employment Area and surrounding zoning is primarily General Commercial, Planning Area for the proposed sportsplex, or has a placeholder zoning designation of Future Development. The proposed development is consistent with existing or proposed surrounding uses.</i></p>
		<u>N/A</u>	<p><b>For requests to a Neighborhood Density District, whether the proposed amendment complies with the compatibility of uses and density in Section 4.1.2.5</b>  <i>This request is not for a Neighborhood Density District.</i></p>
<u>X</u>			<p><b>The impact the proposed amendment has with regard to the natural environment, including the quality and quantity of water and other natural resources, flooding, and wildlife management</b>  <i>The property is located within a moderately constrained area according to the Land Use Suitability Map. The property does have a small portion of floodplain at the rear of the property which will be evaluated during the Watershed Protection Plan process as well as adjoining plat, site, and building permit applications.</i></p>
<u>X</u>			<p><b>Any other factors which shall substantially affect the public health, safety, morals, or general welfare</b>  <i>None noted.</i></p>

# ZC-20-06 Aerial View Centerpoint HC Zoning — 400 Block of Centerpoint Road



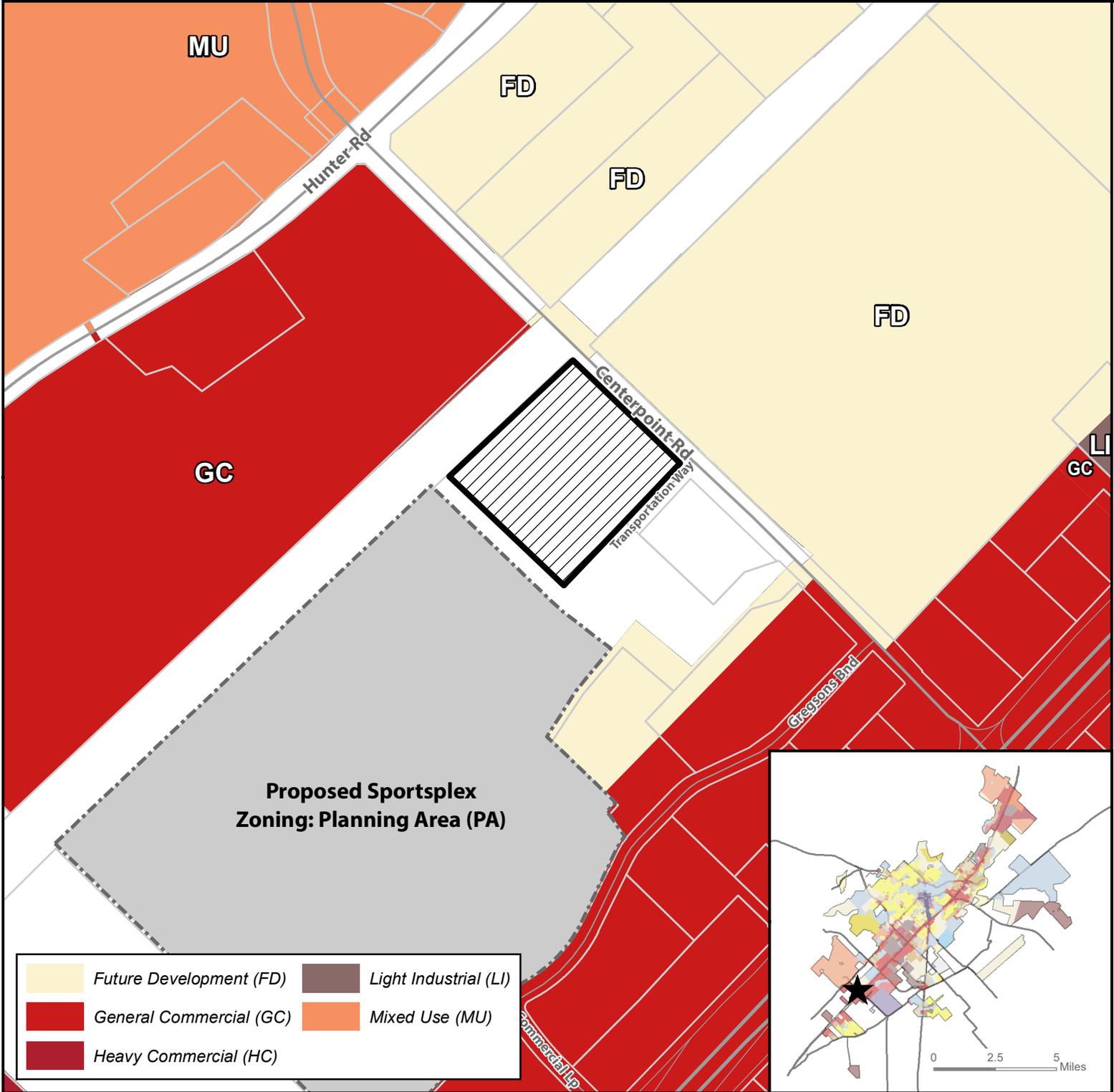
-  **Site Location**
-  **Subject Property**
-  **Parcel**
-  **City Limit**



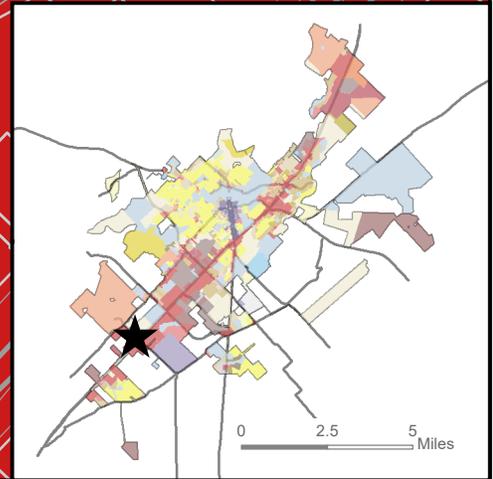
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 4/7/2020

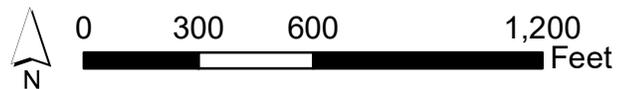
# ZC-20-06 Existing Zoning Centerpoint HC Zoning – 400 Block of Centerpoint Road



	Future Development (FD)		Light Industrial (LI)
	General Commercial (GC)		Mixed Use (MU)
	Heavy Commercial (HC)		



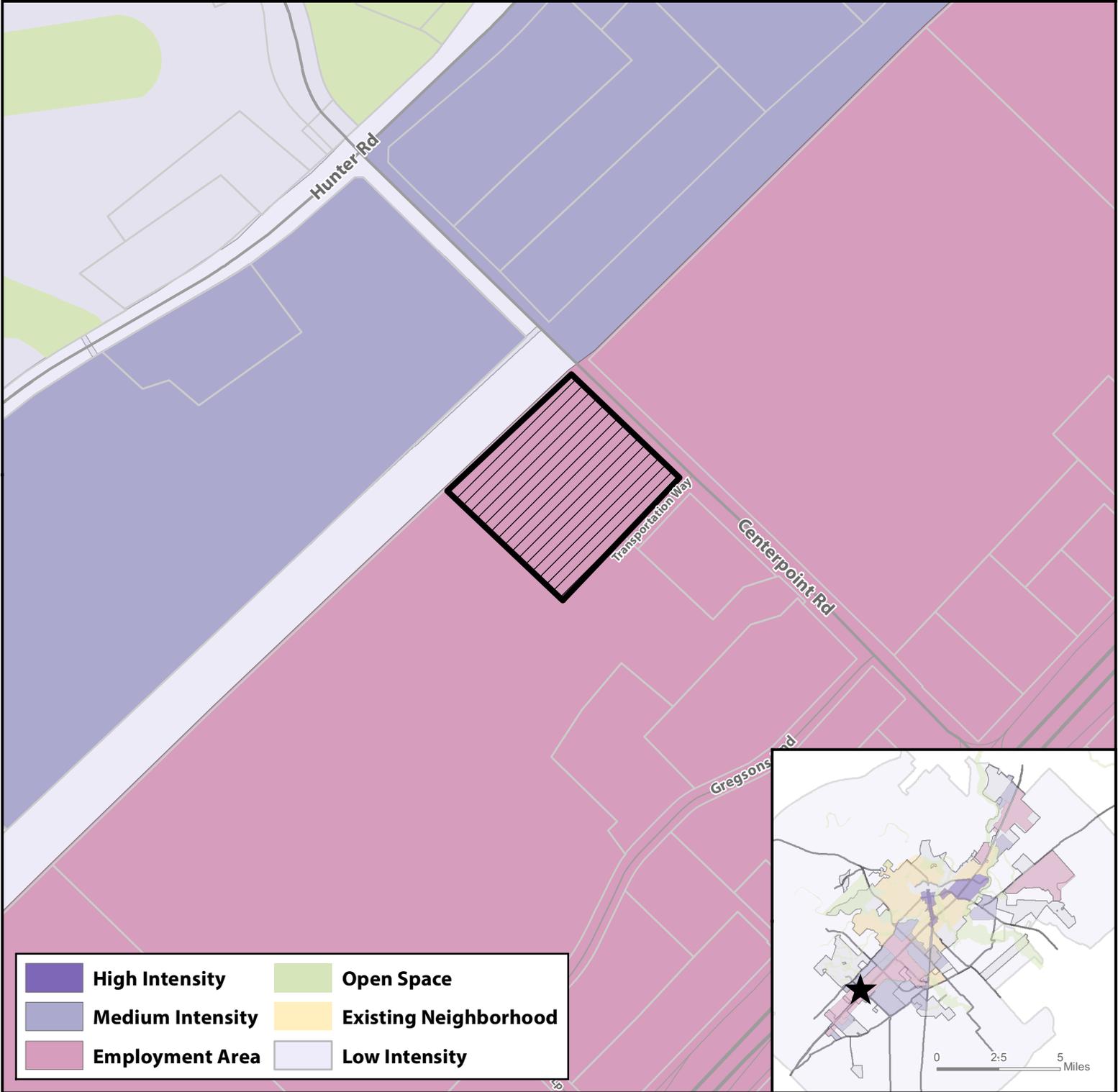
- Site Location**
- Subject Property**
- Parcels**
- City Limit**



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Map Date: 4/13/2020

# ZC-20-06 Preferred Scenario Centerpoint HC Zoning – 400 Block of Centerpoint Road



	<b>High Intensity</b>		<b>Open Space</b>
	<b>Medium Intensity</b>		<b>Existing Neighborhood</b>
	<b>Employment Area</b>		<b>Low Intensity</b>



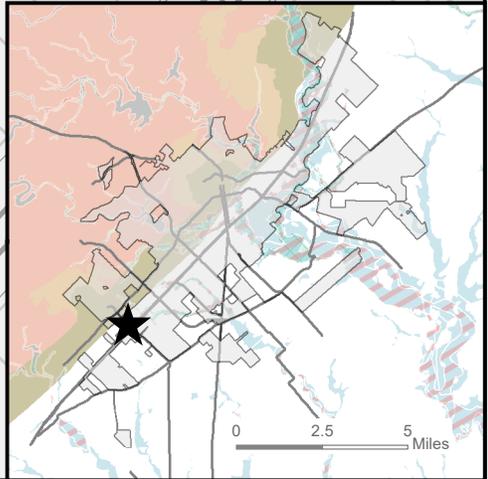
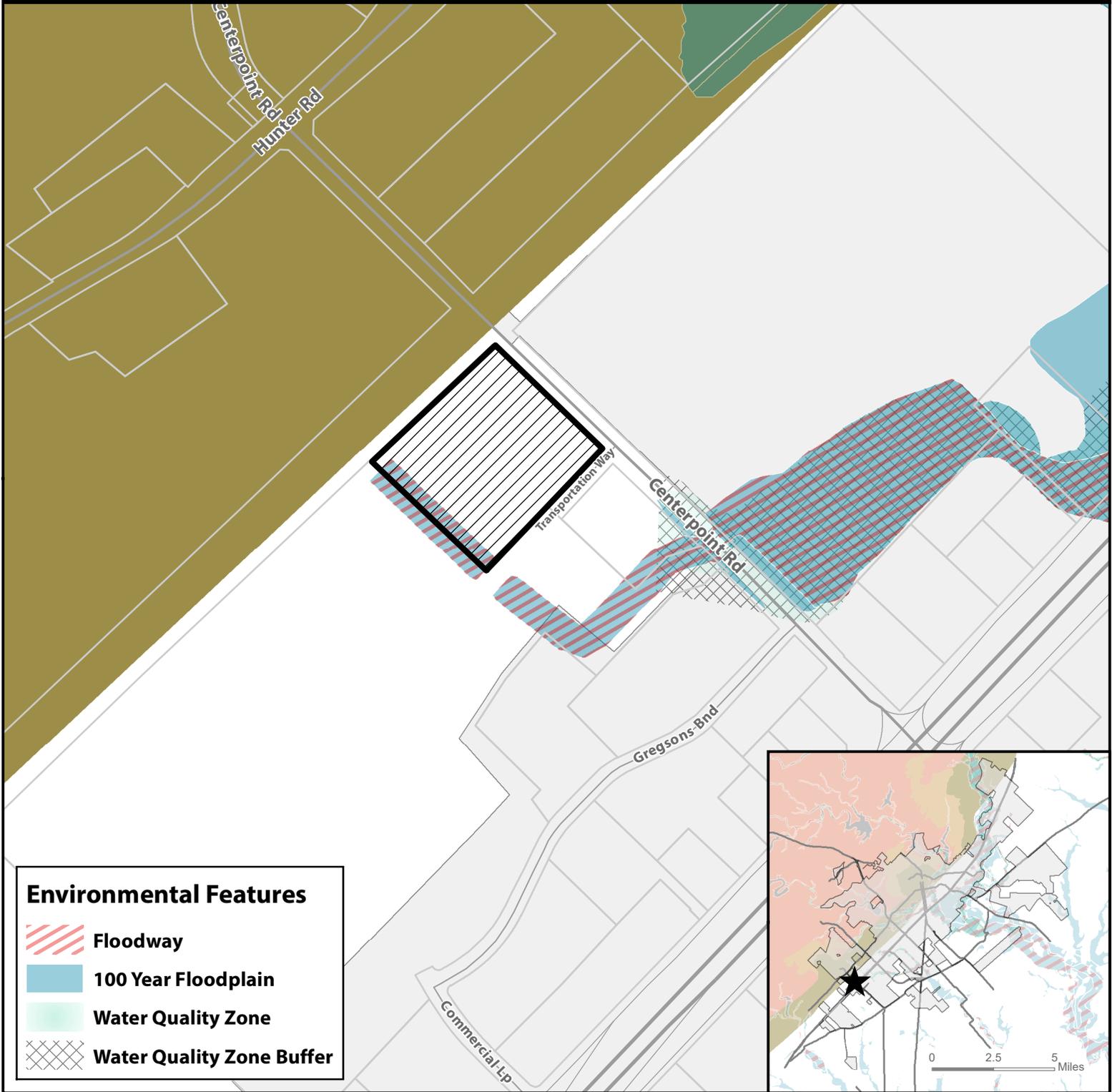
-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**



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Map Date: 4/7/2020

# ZC-20-06 Environmental Features Centerpoint HC Zoning – 400 Block of Centerpoint Road



**Environmental Features**

-  Floodway
-  100 Year Floodplain
-  Water Quality Zone
-  Water Quality Zone Buffer

-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**

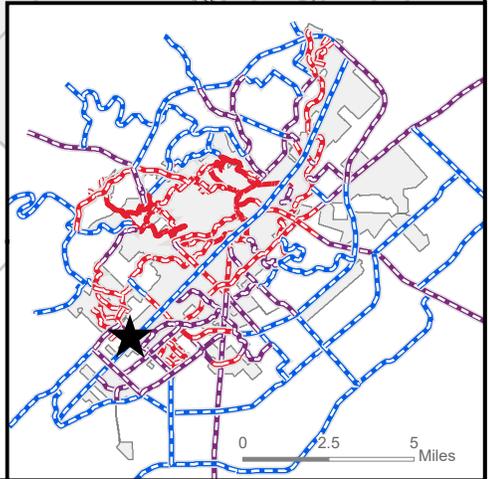
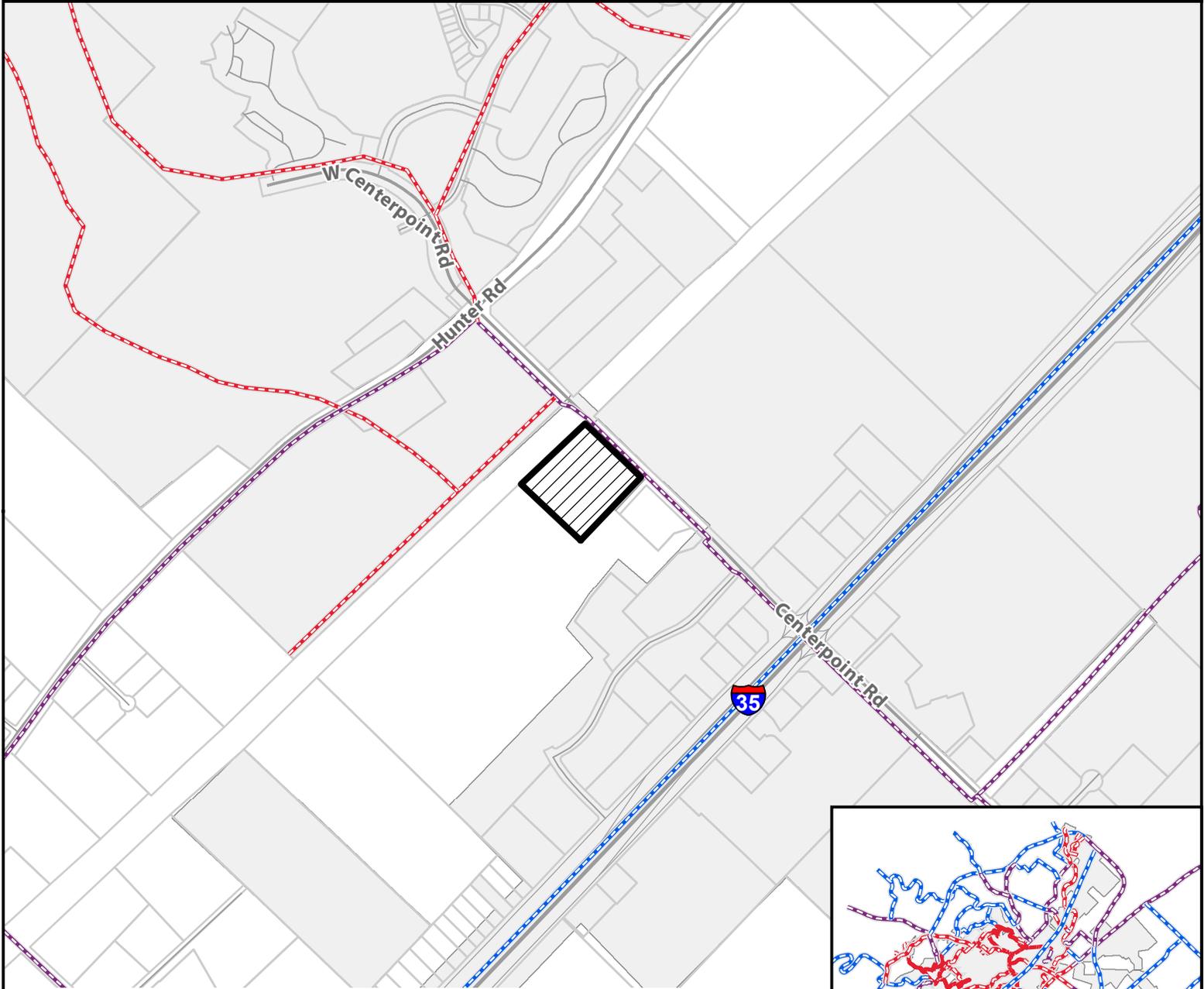


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Map Date: 4/7/2020

# ZC-20-06

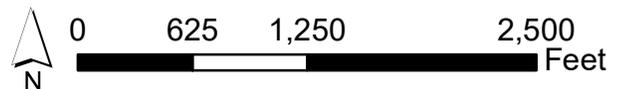
## Transportation Master Plan Greenways Centerpoint HC Zoning – 400 Block of Centerpoint Road



### Greenway

-  Proposed Facility Greenway, Long: 20+ years
-  Proposed Facility Greenway, Medium: 10-20 years
-  Proposed Facility Greenway, Short: 0-10 years on Planned Dev/Subdivision

-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**



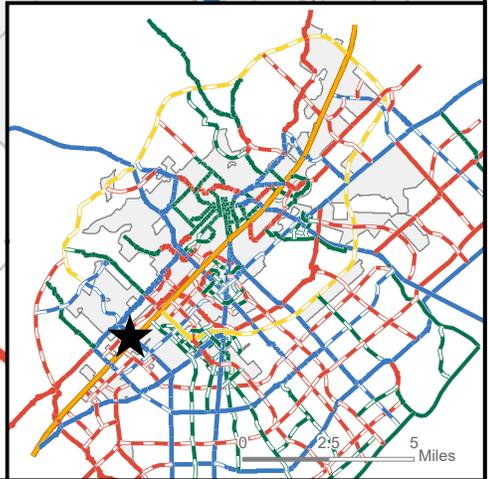
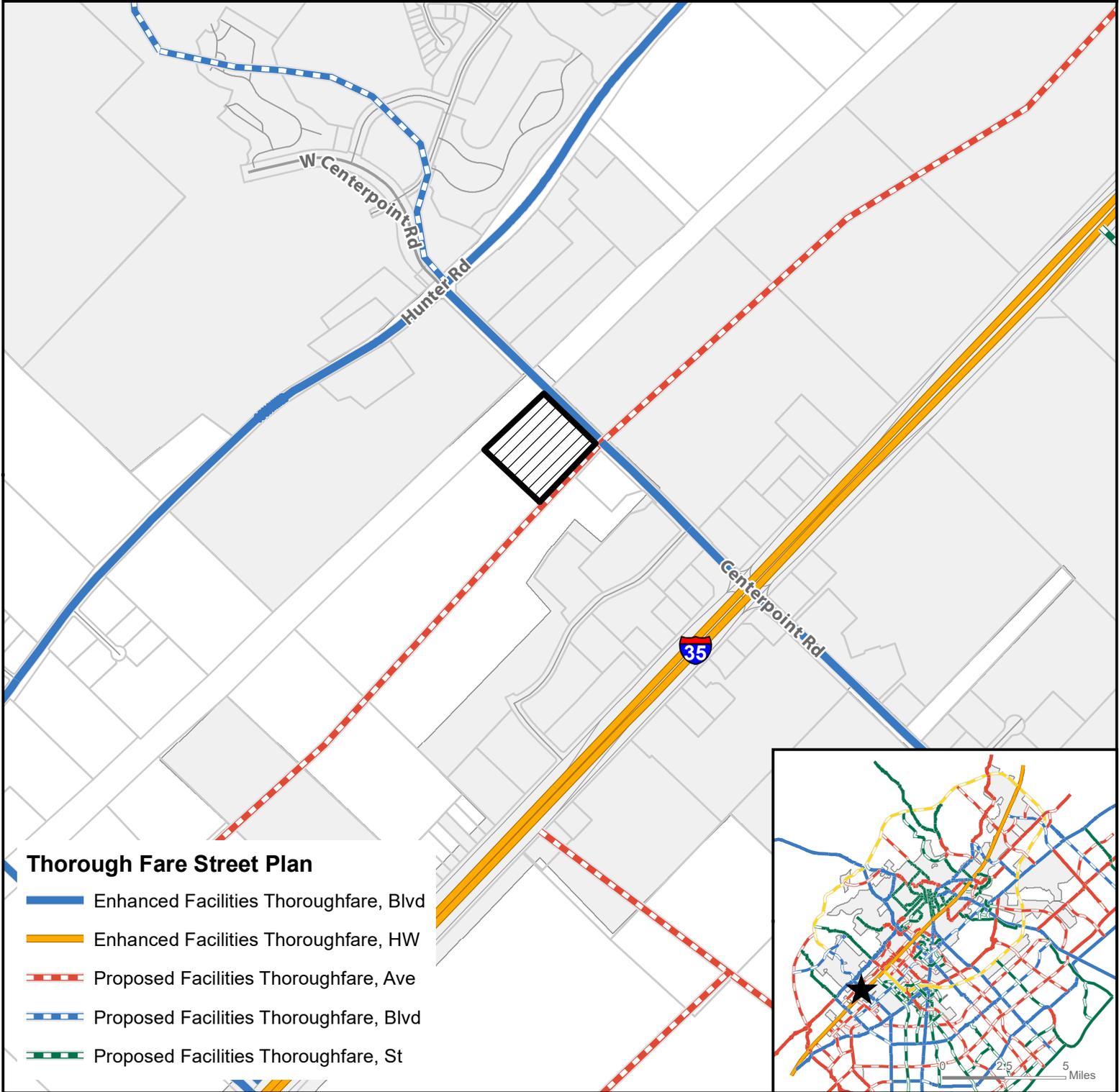
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Map Date: 4/7/2020

# ZC-20-06

## Transportation Master Plan

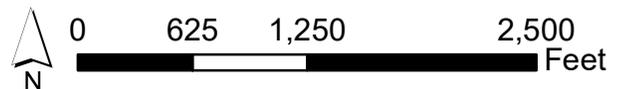
### Centerpoint HC Zoning – 400 Block of Centerpoint Road



#### Thoroughfare Street Plan

- Enhanced Facilities Thoroughfare, Blvd
- Enhanced Facilities Thoroughfare, HW
- Proposed Facilities Thoroughfare, Ave
- Proposed Facilities Thoroughfare, Blvd
- Proposed Facilities Thoroughfare, St

- ★ Site Location
- ▨ Subject Property
- Parcels
- City Limit

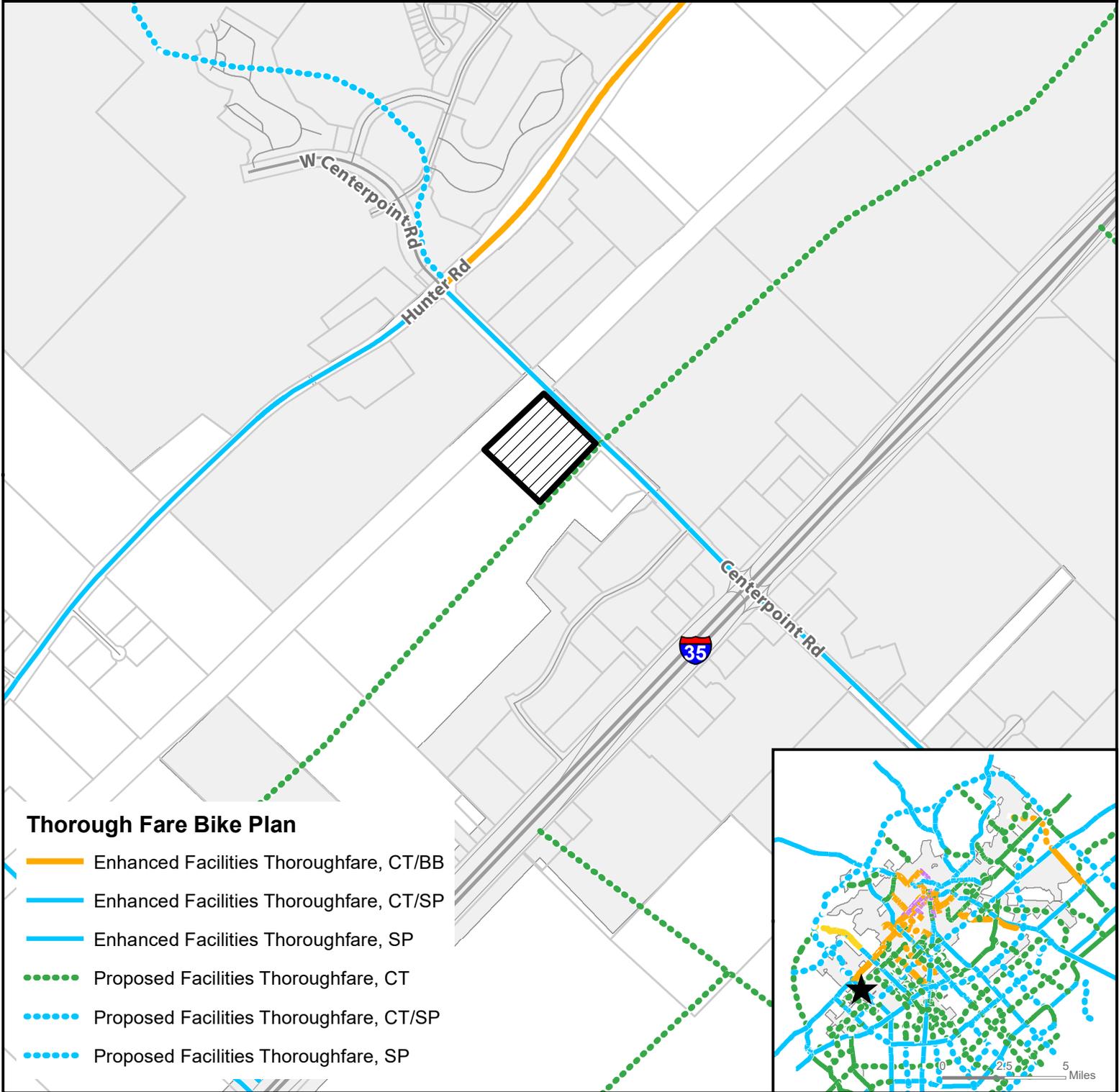


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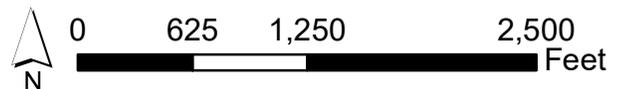
Map Date: 4/7/2020

# ZC-20-06

## Transportation Master Plan Bicycle Infrastructure Centerpoint HC Zoning – 400 Block of Centerpoint Road



- ★ Site Location
- ▨ Subject Property
- Parcels
- City Limit



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Map Date: 4/7/2020



## Notification List (ZC-20-06)

Property ID	Site Address	Site Street Name	Owner Name	Owner Address	Owner Address 2	Owner City	Owner State	Owner Zip
13080		IH 35 @ W CENTERPOINT	OUTLET WEST INVESTORS LTD	Attn: MR. BEEMAN STRONG	1300 POST OAK BLVD	HOUSTON	TX	77056-3162
13066	3939	IH 35	SAC N PAC	1910 CENTER POINT RD		SAN MARCOS	TX	78666-9443
126529			OUTLET WEST INVESTORS LTD	Attn: MR. BEEMAN STRONG	1300 POST OAK BLVD	HOUSTON	TX	77056-3162
88793	201	CENTERPOINT	BASLER PLASTICS LLC	12570 STATE ROUTE 143		HIGHLAND	IL	62249-1074
70145	201	CENTERPOINT	BASLER PLASTICS LLC	12570 STATE ROUTE 143		HIGHLAND	IL	62249-1074
143278		CENTERPOINT	PATEL MAHENDRA	PO BOX 1528		BUDA	TX	78610
70147		HUNTER	CARMA PASO ROBLES LLC	11501 ALTERRA PKWY	STE 100	AUSTIN	TX	78758-3201
			Joe Cantu	725 Willow Ridge Dr		SAN MARCOS	TX	78666
			Johnny Garcia	420 MCGEHEE ST		SAN MARCOS	TX	78666

Section 5.1.1.2 Land Use Matrix **Future Development (FD)** VS. **Heavy Commercial (HC)**

**TABLE 5.1 LAND USE MATRIX**

TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS					DEFINITION USE STANDARDS
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH	EC	
<b>AGRICULTURAL USES</b>																				
Barns or agricultural buildings	P	L	--	--	--	--	--	--	P	P	L	--	--	--	P	--	--	--	--	Section 5.1.2.1
Stables	P	L	--	--	--	--	--	--	--	P	L	--	--	--	P	--	--	--	--	Section 5.1.2.2
Community Garden	P	P	L	L	L	L	L	--	P	P	L	L	L	L	P	P	P	P	P	Section 5.1.2.3
Urban Farm	P	C	C	C	C	L	L	C	P	P	L	L	C	C	P	P	--	P	C	Section 5.1.2.4
Plant Nursery	L	--	--	--	--	--	--	P	--	L	--	--	P	P	P	P	P	--	P	Section 5.1.2.5
<b>ACCESSORY USES AND STRUCTURES</b>																				
Accessory Building/Structure	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.3.1
Accessory Dwelling Unit	L	L	L	L	L	L	P	P	--	P	L	P	P	P	--	--	--	--	--	Section 5.1.3.1
Accessory Use, except as listed below:	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.3.2
Outdoor Storage	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	L	P	--	L	Section 5.1.3.2
Outdoor Display	--	--	--	--	--	--	--	L	--	--	--	--	L	L	P	--	--	--	L	Section 5.1.3.2
Food Truck	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.3.1
Drive-thru or Drive-in	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.3.2
Home Occupation	L	L	L	L	L	L	L	--	--	L	L	L	--	--	--	--	--	--	--	Section 5.1.3.4
Family Home Care	P	P	P	P	P	P	P	--	--	P	P	P	--	--	--	--	--	--	--	Section 5.1.3.5
Short Term Rental	L	L	L	L	L	L	L	P	--	L	L	P	P	P	--	--	--	L	P	Section 5.1.3.6
<b>RESIDENTIAL USES</b>																				
Single Family Detached	P	L	L	L	L	L	L	--	--	P	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Cottage Court	--	--	--	--	--	L	L	--	--	--	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Two Family	--	--	--	--	--	L	L	--	--	--	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Single Family Attached	--	--	--	--	L	L	L	L	--	--	P	P	P	P	--	--	--	--	--	Section 5.1.4.1
Small Multi-Family (up to 9 units)	--	--	--	--	--	L	L	L	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Courtyard Housing (up to 24 units)	--	--	--	--	--	--	L	L	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Multi-family (10 or more units)	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Purpose Built Student Housing	--	--	--	--	--	--	--	--	--	--	--	--	C	C	--	--	--	--	--	Section 5.1.4.1
Manufactured Home	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	Section 5.1.4.1
Mobile Home Community	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	Section 5.1.4.1

TABLE 5.1 LAND USE MATRIX

TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS				DEFINITION USE STANDARDS	
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH		EC
Community Home	L	L	L	L	L	L	P	P	--	P	P	P	P	P	--	--	--	L	--	Section 5.1.4.12
Fraternity or Sorority Building	--	--	--	--	--	--	C	C	--	--	--	C	P	P	--	--	--	--	--	Section 5.1.4.12
<b>COMMERCIAL USES</b>																				
Professional Office	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	P	--	--	P	Section 5.1.5.1
Medical, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.2
Urgent care, emergency clinic, or hospital	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	--	--	P	Section 5.1.5.2
Nursing/ retirement home	--	--	--	--	--	--	P	P	--	--	--	P	P	P	P	--	--	--	P	Section 5.1.5.2
Personal Services, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.3
Animal care (indoor)	C	--	--	--	--	--	--	P	--	--	--	--	P	P	P	--	--	--	P	Section 5.1.5.3
Animal care (outdoor)	C	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	C	Section 5.1.5.3
Funeral Home	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.3
Adult Oriented Businesses	See Section 18, Article 6 of the City Code																			
All Retail Sales, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.4
Gasoline Sales	--	--	--	--	--	--	--	L	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.4
Truck stop	--	--	--	--	--	--	--	--	--	--	--	--	--	--	L	--	--	--	L	Section 5.1.5.4
Tattoo, body piercing	--	--	--	--	--	--	C	C	--	--	--	C	P	P	P	--	--	--	P	Section 5.1.5.4
Building material sales	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	P	P	--	P	Section 5.1.5.4
Vehicle Sales/ Rental	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.4
Pawnshop	--	--	--	--	--	--	--	C	--	--	--	C	P	P	P	--	--	--	P	Section 5.1.5.4
Restaurant/ Bar, as listed below:																				
Eating Establishment	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.5
Bar	--	--	--	--	--	--	--	C	--	--	--	--	C	C	C	--	--	--	C	Section 5.1.5.5
Mobile Food Court	--	--	--	--	--	--	--	C	--	--	--	--	P	P	--	--	--	--	--	Section 5.1.5.5
Sale of Alcohol for on premise consumption	--	--	--	--	--	--	C	C	--	--	--	C	C	C	C	--	--	--	C	Section 5.1.5.5
Overnight Lodging, as listed below:																				
Bed and Breakfast (up to 8 rooms)	L	C	C	C	C	L	L	P	--	P	C	P	P	P	--	--	--	--	P	Section 5.1.5.6
Boutique Hotel (9 - 30 rooms)	--	--	--	--	--	--	C	P	--	--	--	P	P	P	--	--	--	--	P	Section 5.1.5.6

TABLE 5.1 LAND USE MATRIX

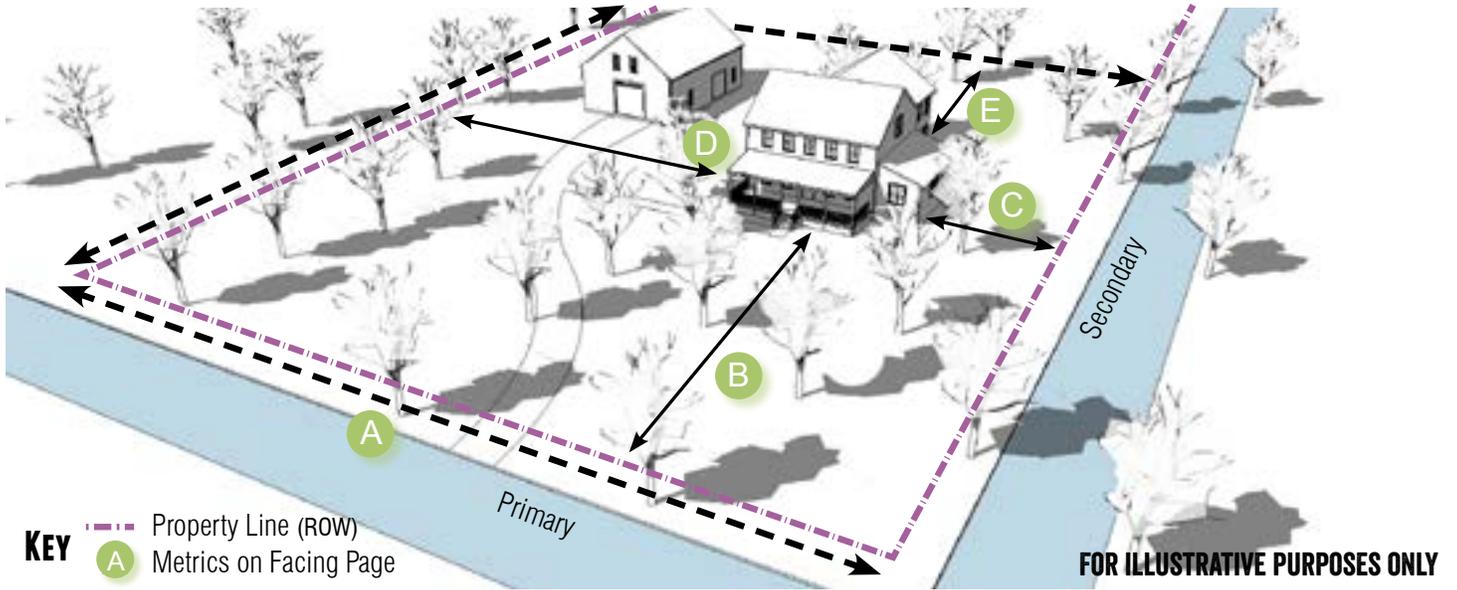
TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS				DEFINITION USE STANDARDS	
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH		EC
Hotel/ Motel (more than 30 rooms)	--	--	--	--	--	--	--	P	--	--	--	--	P	P	--	--	--	--	P	Section 5.1.5.6
Outdoor Recreation, except as listed below:	--	--	--	--	--	--	--	C	--	--	--	--	P	C	P	--	--	--	P	Section 5.1.5.7
Golf Course	C	C	C	C	C	C	C	C	C	C	C	C	C	C	--	--	--	C	C	Section 5.1.5.7
Traveler Trailers/ RVs Short Term stays	P	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	P	--	Section 5.1.5.7
Shooting Range	C	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	C	Section 5.1.5.7
Indoor Recreation, except as listed below:	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.5.8
Gym/ Health club	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	P	P	--	P	Section 5.1.5.8
Smoking Lounge	--	--	--	--	--	--	--	C	--	--	--	--	P	C	--	--	--	--	P	Section 5.1.5.8
Charitable Gaming Facility	--	--	--	--	--	--	--	--	--	--	--	--	C	--	C	--	--	--	C	Section 5.1.5.8
<b>PUBLIC &amp; INSTITUTIONAL</b>																				
Civic, except as listed below:	P	L	L	L	L	L	P	P	L	L	L	P	P	P	P	P	P	P	P	Section 5.1.6.1
Day Care Center	C	--	--	--	C	C	L	P	--	C	C	L	P	P	P	--	--	--	P	Section 5.1.6.1
Parks, Open Space, and Greenways	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.6.2
Minor Utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.6.3
Major Utilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	--	--	Section 5.1.6.3
Antenna	See Section 5.1.6.3D																			
<b>INDUSTRIAL</b>																				
Light Industrial	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	P	P	--	C	Section 5.1.7.1
Light Manufacturing	--	--	--	--	--	--	--	C	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.7.2
Vehicle Service, as listed below:																				Section 5.1.7.3
Car Wash	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	C	Section 5.1.7.3
Vehicle repair (minor)	--	--	--	--	--	--	--	C	--	--	--	--	P	P	P	P	P	--	C	Section 5.1.7.3
Vehicle repair (major)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	--	C	Section 5.1.7.3
Warehouse & Distribution	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	P	P	--	P	Section 5.1.7.4
Waste-Related service	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	P	P	--	--	Section 5.1.7.5
Wholesale trade	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	P	Section 5.1.7.6
Self Storage	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	C	Section 5.1.7.7
Research and Development	--	--	--	--	--	--	--	--	--	--	--	--	C	C	P	P	P	--	C	Section 5.1.7.8
Wrecking/Junk Yard	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	Section 5.1.7.9

# Zoning District Comparison Chart

Topic	<i>Existing Zoning:</i> Future Development (FD)	<i>Proposed Zoning:</i> Heavy Commercial (HC)
<b>Zoning Description</b>	The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.	Heavy Commercial (HC) is intended to accommodate auto-oriented and other heavy commercial uses. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.
<b>Uses</b>	Primarily agricultural, residential, and public/institutional (See Land Use Matrix)	Primarily commercial and industrial uses with some allowances for and public/institutional and agricultural uses (See Land Use Matrix)
<b>Parking Location</b>	No location standards	No location standards
<b>Parking Standards</b>	Depends on use	Depends on use. For example, warehouse and distribution uses require 1 space for each 2,000 square feet of gross floor area excluding office space, which shall be calculated separately depending on office use.
<b>Max Residential Units per acre</b>	0.4 units per acre (max)	Residential uses are not allowed
<b>Occupancy Restrictions</b>	N/A	N/A
<b>Landscaping</b>	Tree and shrub requirements	Tree and shrub requirements
<b>Building Height (max)</b>	2 stories (40 feet)	4 stories (62 feet)
<b>Setbacks</b>	50' minimum front; 20' min side; minimum rear setback is 20% of total lot depth	20' minimum front, 5' minimum side, 20' minimum rear
<b>Impervious Cover (max)</b>	30%	80%
<b>Lot Sizes</b>	Allows a variety of lot sizes depending on Building Type.	Allows a variety of lot sizes depending on Building Type.
<b>Streetscapes</b>	Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area between sidewalk and street required.	Conventional Street: 6' sidewalk, street trees every 40' on center average, 7' planting area between sidewalk and street required.
<b>Blocks</b>	No Block Perimeter Required	5,000 ft. Block Perimeter max

FD

SECTION 4.4.1.1 FUTURE DEVELOPMENT DISTRICT



**GENERAL DESCRIPTION**

The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.

**DENSITY**

Units Per Gross Acre	.4 max.
Impervious Cover	30% max.

**TRANSPORTATION**

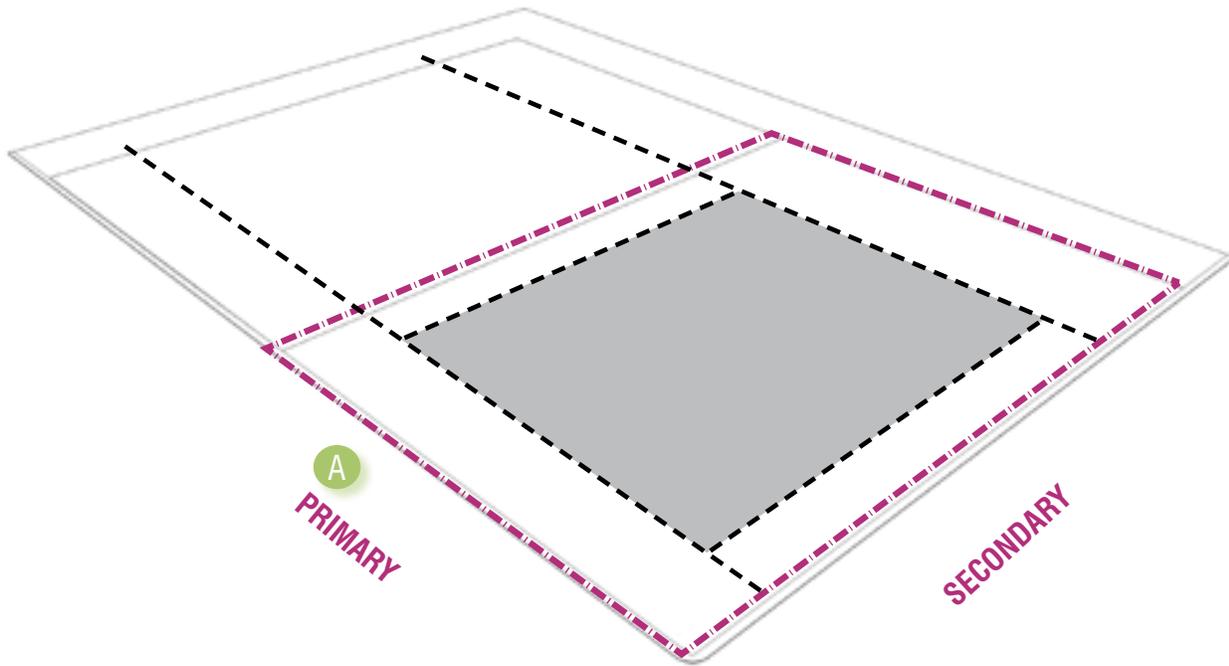
Streetscape Type	Residential	Section 3.8.1.10
Sidewalks are not required for lots greater than 1 acre		

**BUILDING TYPES ALLOWED**

Accessory Dwelling	Section 4.4.6.1
House	Section 4.4.6.2
Civic	Section 4.4.6.15

## HC

### SECTION 4.4.5.2 HEAVY COMMERCIAL



**KEY**

- - - Property Line (ROW)
- A Metrics on This and Facing Page
- Setbacks
- Building Footprint

#### DISTRICT INTENT STATEMENTS

HC is intended to accommodate auto oriented and other heavy commercial uses. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.

#### DENSITY

Impervious Cover                      80% max.

#### TRANSPORTATION

Block Perimeter	5,000 ft. max	Section 3.6.2.1
Streetscape Type	Conventional	Section 3.8.1.7

#### BUILDING TYPES ALLOWED

General Commercial	Section 4.4.6.13
Civic Building	Section 4.4.6.15

#### BUILDING STANDARDS

Principle Building Height	4 stories max.	62 ft. max.
Accessory Structure Height	N/A	24 ft. max.

**ZC-20-06 (Centerpoint HC) Zoning Change Review (By Comp Plan Element)**

**LAND USE – Preferred Scenario Map / Land Use Intensity Matrix**

	YES	NO (map amendment required)
Does the request meet the intent of the Preferred Scenario Map and the Land Use Intensity Matrix?	<b>X – It is designated as “Considered” on the Preferred Scenario Map</b>	

**ECONOMIC DEVELOPMENT – Furthering the goal of the Core 4 through the three strategies**

STRATEGY	SUMMARY	Supports	Contradicts	Neutral
Preparing the 21 <sup>st</sup> Century Workforce	Provides / Encourages educational opportunities			<b>X</b>
Competitive Infrastructure & Entrepreneurial Regulation	Provides / Encourages land, utilities and infrastructure for business	<b>The Developer will extend utilities through this site</b>		
The Community of Choice	Provides / Encourages safe & stable neighborhoods, quality schools, fair wage jobs, community amenities, distinctive identity			<b>X</b>

**ENVIRONMENT & RESOURCE PROTECTION – Land Use Suitability & Development Constraints**

	1 (least)	2	3 (moderate)	4	5 (most)
Level of Overall Constraint	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	
Constraint by Class					
Cultural	<b>X</b>			<b>X</b>	
Edwards Aquifer	<b>X</b>				
Endangered Species	<b>X</b>				
Floodplains	<b>X</b>	<b>X</b>		<b>X</b>	
Geological	<b>X</b>				
Slope	<b>X</b>				
Soils	<b>X</b>	<b>X</b>			
Vegetation	<b>X</b>		<b>X</b>		
Watersheds	<b>X</b>				
Water Quality Zone	<b>X</b>	<b>X</b>		<b>X</b>	

**ENVIRONMENT & RESOURCE PROTECTION – Water Quality Model Results**

Located in Subwatershed:	<b>Cottonwood Creek Watershed</b>				
	0-25%	25-50%	50-75%	75-100%	100%+
Modeled Impervious Cover Increase Anticipated for watershed					<b>X</b>
Notes: <b>This watershed currently has very little impervious cover compared to its size. Cottonwood Creek is not a tributary to the San Marcos River, with larger more concentrated growth, best management</b>					

practices such as retention ponds and biofiltration gardens can be incorporated into the site planning process.

**NEIGHBORHOODS** – Where is the property located

CONA Neighborhood(s):	N/A – Outside City Limits
Neighborhood Commission Area(s):	9
Neighborhood Character Study Area(s):	N/A

**PARKS, PUBLIC SPACES AND FACILITIES** –Availability of parks and infrastructure

		YES	NO
Will Parks and / or Open Space be Provided? <b>Parkland dedication is not required for commercial uses, however, the project will be required to install sidewalk and streetscape infrastructure along proposed roadways.</b>			X
Will Trails and / or Green Space Connections be Provided? <b>The Transportation Master Plan requires a greenway along Centerpoint Road</b>		X	
<b>Maintenance / Repair Density</b>	Low (maintenance)		High (maintenance)
Wastewater Infrastructure	X		
Water Infrastructure	X		
<b>Public Facility Availability</b>		YES	NO
Parks / Open Space within ¼ mile (walking distance)?			X
Wastewater service available? <b>Wastewater lines will be required throughout the development to service the property.</b>		X	
Water service available? <b>Water lines will be also required throughout the development to service the property.</b>		X	

**TRANSPORTATION** – Level of Service (LOS), Access to sidewalks, bicycle lanes and public transportation

		A	B	C	D	E	F
Existing Daily LOS	<b>Centerpoint Road</b>	X					
Existing Peak LOS	<b>Centerpoint Road</b>	X					
Preferred Scenario Daily LOS	<b>Centerpoint Road</b>						X
Preferred Scenario Peak LOS	<b>Centerpoint Road</b>						X
		N/A	Good	Fair	Poor		
Sidewalk Availability (Required to build.)		X					
<b>Sidewalks will be required to be constructed at the time of development.</b>							
		YES			NO		
Adjacent to existing bicycle lane?					X		
Adjacent to existing public transportation route?					X		



**PLANNING AND DEVELOPMENT SERVICES**

**4/10/2020**

**ZC-20-06**

**CORRECTED IN RED**  
**Notice of Public Hearing**  
**Zoning Change Request**  
**“FD” Future Development to “HC” Heavy**  
**Commercial 400 Block of Centerpoint Road**

*Hold a public hearing and consider a request by Benjamin Green, on behalf of Outlet West Investors Limited, for a zoning change from “FD” Future Development to “HC” **Heavy Commercial**, or such other less intense zoning district classification as the City Council may approve, for approximately **7.959** acres, more or less, out of the Edward Bureson Survey No. 18, Abstract No. 63, Hays County, generally located in the 400 Block of Centerpoint Road.*

The San Marcos Planning and Zoning Commission will consider the above request at an upcoming public hearing and will either approve or deny the request. This recommendation will be forwarded to the San Marcos City Council. Before making a decision, the Commission and Council will hold public hearings to obtain citizen comments. Because you are listed as the owner of property located within 400 feet of the subject property, we would like to notify you of the following public hearings and seek your opinion of the request:

- A public hearing will be conducted by the Planning and Zoning Commission via virtual meeting on **Tuesday, April 28, 2020** at **6:00 p.m.** You may join and participate in the public hearing using the following link: <http://sanmarcostx.gov/541/PZ-Video-Archives>
- A public hearing will be held at the City Council Meeting on **Tuesday, May 19, 2020** at **6:00 p.m.** in the Council Chambers in City Hall, 630 East Hopkins. If current orders related to COVID-19 are extended, virtual meeting information will be provided at the following website: <https://sanmarcostx.gov/421/City-Council-Videos-Archives>

All interested citizens are invited to attend and participate in the public hearing. If you cannot participate in the virtual public hearing of the Planning and Zoning Commission or the City Council meeting, but wish to comment, you may write to the below address. Your written comments will be given to the Planning & Zoning Commission and City Council if they are received before 5 PM on the day of the meeting.

Development Services-Planning  
630 East Hopkins  
San Marcos, TX 78666  
[planninginfo@sanmarcostx.gov](mailto:planninginfo@sanmarcostx.gov)

For more information regarding this request, contact the case manager, **Andrea Villalobos**, at **512.805.2623**. When calling, please refer to case number **ZC-20-06**.

As of the date of this notice, there are no other means of participating in the public hearing. However, please check for updates on the City’s website at: [www.sanmarcostx.gov](http://www.sanmarcostx.gov) to see if other means of participating in the public hearing become available.

*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 512-393-8074 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov)*

PLANNING AND DEVELOPMENT SERVICES

Enclosure: Map (See Reverse)

**CITY HALL • 630 EAST HOPKINS • SAN MARCOS, TEXAS 78666 • 512.393.8230 • FACSIMILE 855.759.2843**  
**SANMARCOSTX.GOV**



# ZONING CHANGE, OVERLAY OR ESTABLISHMENT OF A HISTORIC DISTRICT/LANDMARK APPLICATION



Updated: October, 2019

## CONTACT INFORMATION

Applicant's Name	Benjamin Green	Property Owner	Outlet West Investors Limited
Company	Kimley-Horn	Company	
Applicant's Mailing Address	2600 Via Fortuna Suite 300; Austin, TX 78746	Owner's Mailing Address	1300 Post Oak Blvd, Suite 1650, Houston, TX 77056
Applicant's Phone #	512-646-2243	Owner's Phone #	713-552-1110
Applicant's Email	ben.green@kimley-horn.com	Owner's Email	bstrong@beemanstrong.com

## PROPERTY INFORMATION

Subject Property Address(es): 7.959 acres of land in the Edward Burleson Survey NO. 18, Abstract NO. 63, Hays County, Texas

Legal Description: Lot N/A Block N/A Subdivision N/A

Total Acreage: 7.959 Tax ID #: R

Preferred Scenario Designation: Heavy Commercial (HC) Existing Zoning: N/A (ETJ)

Existing Land Use(s): Undeveloped

## DESCRIPTION OF REQUEST

Proposed Zoning District(s): Heavy Commercial (HC)

Proposed Land Uses / Reason for Change: This site is in the City's ETJ and is being annexed into the City's Full Purpose jurisdiction and will require establishing zoning of HC for our use.

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee\* \$1,057 plus \$100 per acre Technology Fee \$13 MAXIMUM COST \$3,013  
 \*Existing Neighborhood Regulating Plan Included

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

**APPLY ONLINE – [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

**AGREEMENT TO THE PLACEMENT OF NOTIFICATION SIGNS  
AND ACKNOWLEDGEMENT OF NOTIFICATION REQUIREMENTS**

The City of San Marcos Development Code requires public notification in the form of notification signs on the subject property, published notice, and / or personal notice based on the type of application presented to the Planning Commission and / or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. ***It shall be the responsibility of the applicant to periodically check sign locations to verify that the signs remain in place had have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.***
- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be \$91 plus a \$13 technology fee.***
- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be \$91 plus a \$13 technology fee.***

*I have read the above statements and agree to the required public notification, as required, based on the attached application. The City's Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.*

Signature: \_\_\_\_\_ 

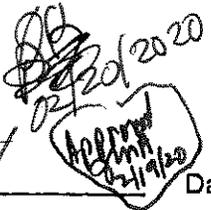
Date: 2/28/2020

Print Name: Benjamin Green

**PROPERTY OWNER AUTHORIZATION**

Robert C. Wilson, III, President of JOQ GP, LLC  
I, its General Partner (owner name) on behalf of  
Outlet West Investors Limited (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
0 Centerpoint Road, San Marcos, TX 78666 (address).

I hereby authorize Benjamin Green (agent name) on behalf of  
Kimley-Horn (agent company) to file this application for  
Annexation (application type), and, if necessary, to work with  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner:   Date: 20 Feb 20

Printed Name, Title: Robert C. Wilson, III, President of JOQ, LLC  
General Partner of Outlet West Investors Limited

Signature of Agent: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: Benjamin Green PE, Project Manager

Form Updated October, 2019

STATE OF TEXAS  
COUNTY OF HAYS

7.959 ACRES  
EDWARD BURLESON SURVEY  
NO. 18 - ABSTRACT # 63

BEING 7.959 ACRES OF LAND SITUATED IN THE EDWARD BURLESON SURVEY NO. 18, ABSTRACT NO. 63, HAYS COUNTY, TEXAS, SAME BEING A PORTION OF THAT CALLED 109.22 ACRE TRACT OF LAND CONVEYED TO OUTLET WEST INVESTORS, LTD., A TEXAS LIMITED PARTNERSHIP, BY DEED DATED DECEMBER 21, 1998 AND RECORDED IN VOLUME 1486, PAGE 887, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found with cap marked "BYRN" at the intersection of the southwest line of Centerpoint Road, a variable width public right-of-way, as widened and described in Exhibit 'A' in Lis Pendens Notice recorded in Volume 2571, Page 69, Official Public Records, Hays County, Texas, with the northwest line of Transportation Way, a proposed 76 foot public right-of-way as shown by Plat of Lot 2, Lowman Ranch Subdivision, Section Two, an addition to Hays County, Texas according to the Map thereof recorded in Volume 18, Page 17, Hays County Plat Records, for the east corner of the herein described tract of land;

THENCE South 43°34'33" West (S 43°34'23" W Record), with the northwest right-of-way line and projection of said proposed Transportation Way, at a distance of 285.81 feet (285.71' Record) passing a 1/2" iron rod found with cap marked "BYRN" at a west corner of said Transportation Way, as shown by plat, at a distance of 536.35 feet passing a 1/2" iron rod set with cap marked "RPLS 5687" set at the intersection of said proposed Transportation Way with the northeast line of a drainage easement described in Exhibit 'A' of the Instrument recorded in Volume 4389, Page 592 of the Hays County Real Property Records, and continuing on in all a total distance of 616.32 feet to the approximate centerline of said drainage easement, for the south corner of the herein described tract of land;

THENCE North 46°29'00" West (N 45°58'03" W Record), with the approximate centerline of said drainage easement, a distance of 577.62 feet to the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, for the west corner of the herein described tract of land, and from which a 1/2" iron rod found with cap marked "BYRN" at a west corner of said drainage easement bears South 46°38'05" West (S 47°09'14" W Record), a distance of 80.09 feet (80.12' Record);

THENCE with the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract and the common southeast line of the MK&T Railroad, the following courses and distances numbered (1) and (2):

1) North 46°38'05" East (N 47°09'14" E Record), a distance of 80.09 feet (80.12' Record) to a 1/2" iron rod found with cap marked "BYRN" at a north corner of said drainage easement;

2) North 46°39'10" East (N 47°08'53" E Record), a distance of 540.99 feet to a 1/2" iron rod set with cap marked "RPLS 5687" set at the intersection of the northwest line of said Outlet West Investors, Ltd. called 109.22 acre tract with the southwest line of aforesaid Centerpoint Road, as widened, same being at the beginning of the arc of a curve;

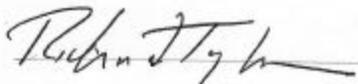
THENCE with the southwest line of aforesaid Centerpoint Road, as widened, the following courses and distances numbered (1) and (2):

1) Southeasterly, 156.71 feet (Record) along the arc of said curve, to the left, having a radius of 18800.00 feet (Record), a delta angle of  $00^{\circ}28'39''$  (Record), and a chord which bears South  $45^{\circ}54'37''$  East (S  $45^{\circ}54'29''$  E Record), a distance of 156.71 feet (Record) to a 1/2" iron rod found with cap marked "PB&J" at the end of said curve;

2) South  $46^{\circ}08'57''$  East (S  $46^{\circ}08'49''$  E Record), a distance of 387.61 feet to the POINT OF BEGINNING and CONTAINING 7.959 ACRES OF LAND.

BEARING BASIS HEREIN DERIVED BY GPS MEASUREMENTS ADJUSTED BY HARN (HIGH ACCURACY REFERENCE NETWORK) & PROJECTED TO TEXAS STATE PLANE COORDINATES (TEXAS SOUTH CENTRAL ZONE) & NAD83.

I, Richard H. Taylor, do certify that this description and associated exhibit were prepared this date from a boundary survey performed under my direction during December 2019, and is true and correct to the best of my knowledge and belief.



Richard H. Taylor  
Registered Professional Land Surveyor  
No. 3986 State of Texas  
Attachment: Drawing of 7.959 acres  
Job: 19-7284

12/30/19

Date







# San Marcos Planning and Zoning Meeting



Developers recently opened a similar facility in Dripping Springs, TX, following local design aesthetics and building materials

# DRAFT SITE CONCEPT PLAN

Phase 1:  
Class-A Self Storage

Phase 2:  
Commercial





Developer's Current Projects Under Construction  
New Braunfels, Round Rock and College Station



## Legislation Text

---

**File #:** Ord. 2020-34(b), **Version:** 1

---

**AGENDA CAPTION:**

Consider approval of Ordinance 2020-34, on the second of two readings, annexing into the City approximately 59.89 acres of land located at 4087 State Highway 21; including procedural provisions; and providing an effective date.

**Meeting date:** June 2, 2020

**Department:** Planning and Development Services

**Amount & Source of Funding**

**Funds Required:** n/a

**Account Number:** n/a

**Funds Available:** n/a

**Account Name:** n/a

**Fiscal Note:**

**Prior Council Action:** n/a

**City Council Strategic Initiative:** n/a

**Comprehensive Plan Element (s):**

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Direct Growth, Compatible with Surrounding Uses
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

**Master Plan:** n/a

Choose an item.

**Background Information:**

This is a request for a voluntary annexation submitted by Jim Glasgow on behalf of Palace Way Partners LLC for approximately 59.89 +/- acres of land out of Thomas G. McGehee Survey, Abstract No. 11, Hays County, located at 4087 Hwy 21.

Maxwell Water Supply Corporation will provide water services at the site. Wastewater service will be provided by the City of San Marcos. This site is not located in the San Marcos Wastewater CCN, however, the CCN boundary will be updated after annexation of the site. The developer will be responsible for extending water and wastewater facilities through the site. Pedernales Electric will provide electric service for this development.

The City of San Marcos will provide Police, Fire, and EMS services to the site.

Below is a proposed schedule for this annexation, which complies with the Texas Local Government Code requirements:

- **City Council Resolution (Approval of Service Agreement and set a public hearing date):** April 21, 2020 (Approved)
- **City Council Ordinance 1<sup>st</sup> Reading (Public Hearing):** May 19, 2020 (Today)
- **City Council Ordinance 2<sup>nd</sup> Reading:** June 2, 2020

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

n/a

**Alternatives:**

n/a

**Recommendation:**

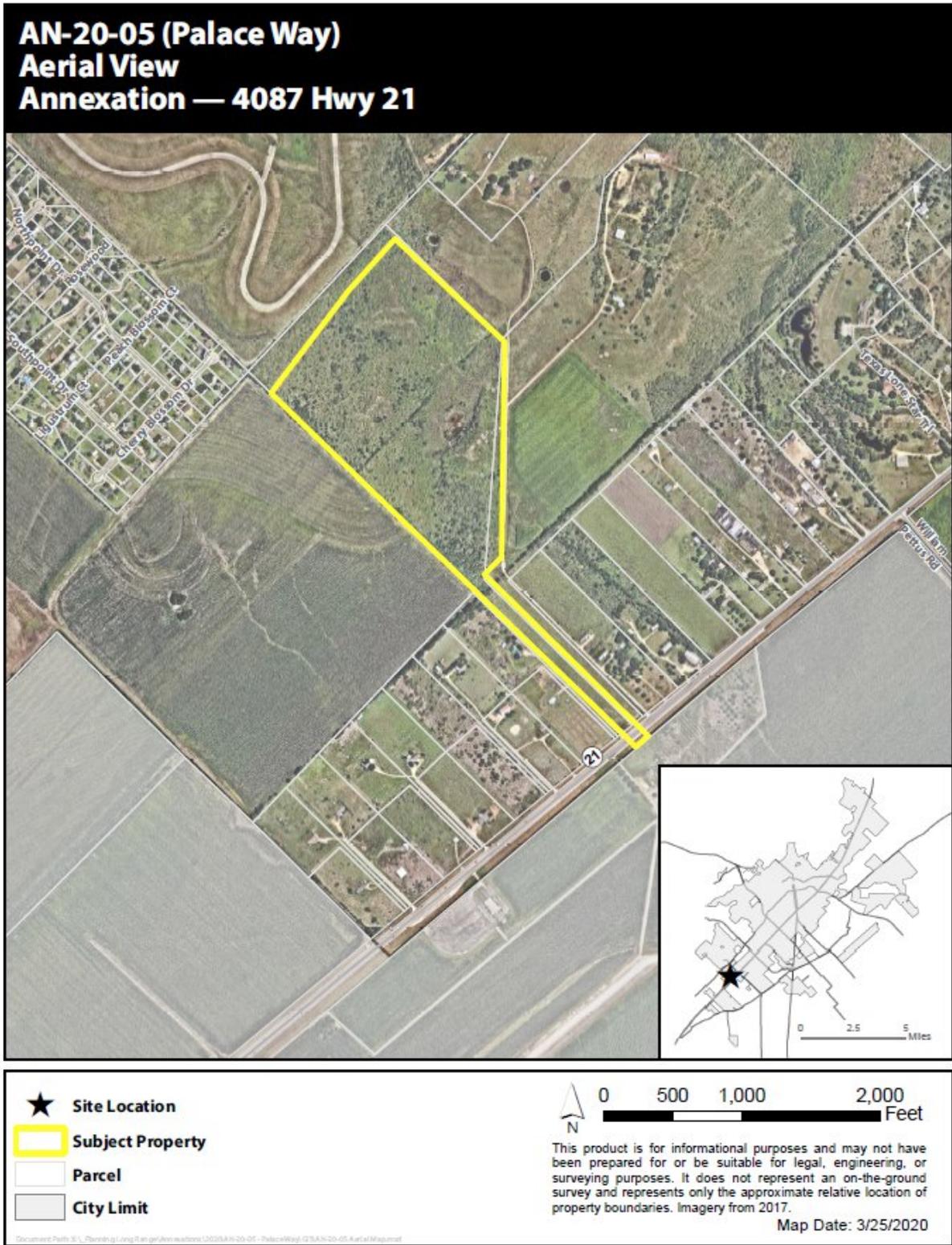
Staff recommends **approval** of the annexation request.

## AN-20-05 (Palace Way Annexation)

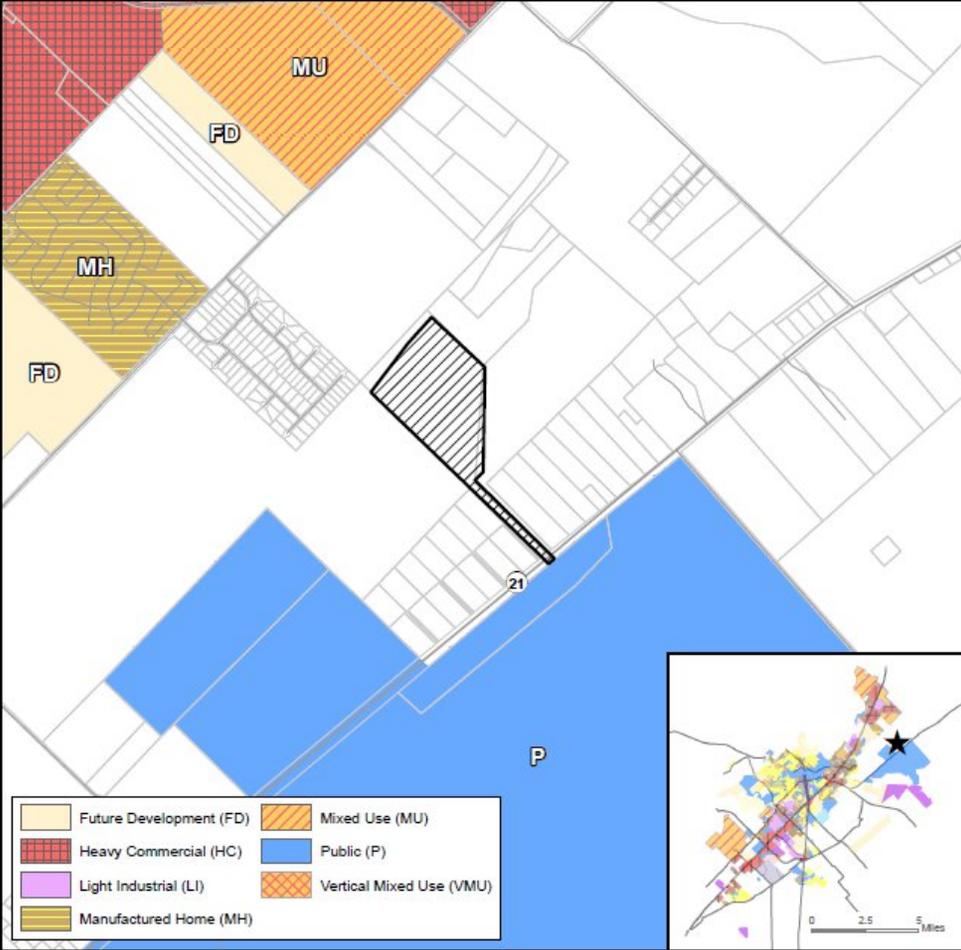
Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-XX, annexing into the City approximately 59.89 acres out of the Thomas G. McGehee Survey, Abstract No. 11, Hays County, located at 4087 State Highway 21; including procedural provisions; and providing an effective date; and consider approval of Ordinance 2020-XX on the first of two readings.

**Context:**

- 4087 Hwy 21
- 59.89 +/- acres
- Applicant proposes to develop the majority of the property as a manufactured home park and the remaining portion of the property with light industrial uses
- The applicant has request Manufactured Home (MH) and Light Industrial (LI) Zoning which is being considered concurrently with the annexation process.
- Service Plan (Attachment)



### AN-20-05 (Palace Way) Existing Zoning Map Annexation — 4087 Hwy 21



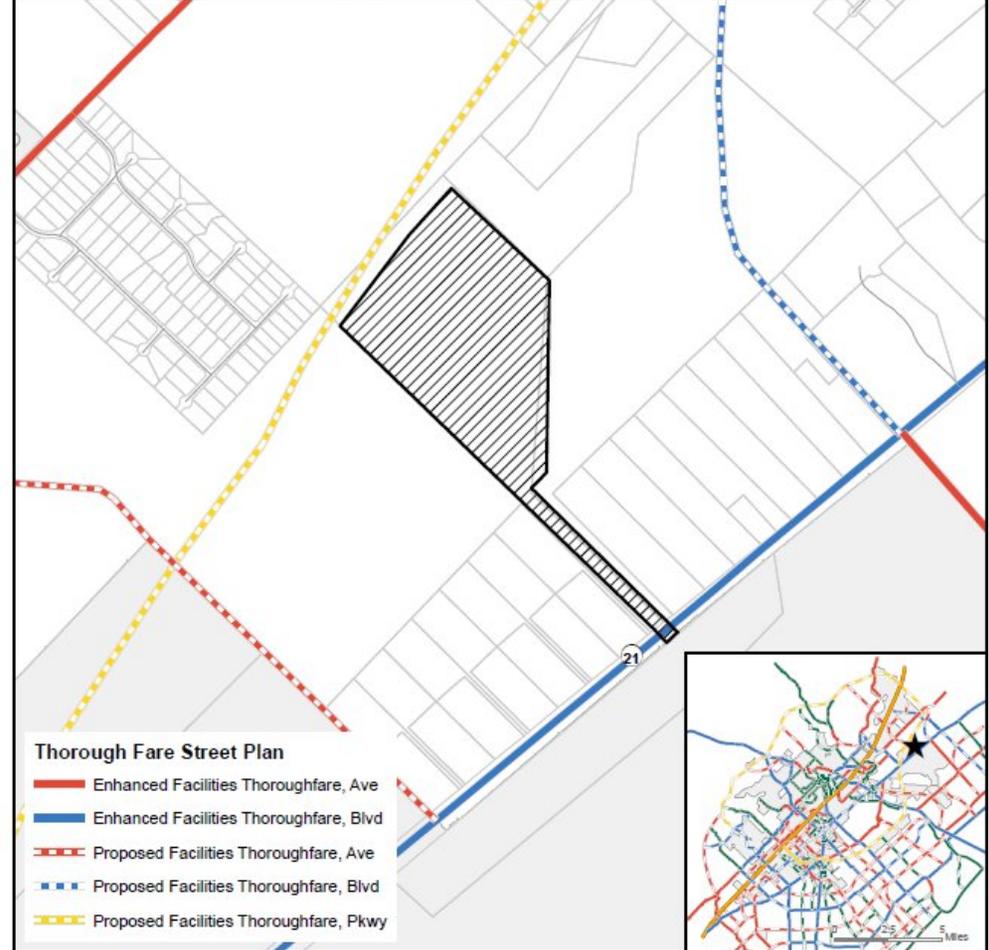
- ★ Site Location
- ▨ Subject Property
- Parcels
- City Limit



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/25/2020

### AN-20-05 (Palace Way) Transportation Master Plan Annexation - 4087 Hwy 21



- Thorough Fare Street Plan**
- Enhanced Facilities Thoroughfare, Ave
  - Enhanced Facilities Thoroughfare, Blvd
  - Proposed Facilities Thoroughfare, Ave
  - Proposed Facilities Thoroughfare, Blvd
  - Proposed Facilities Thoroughfare, Pkwy

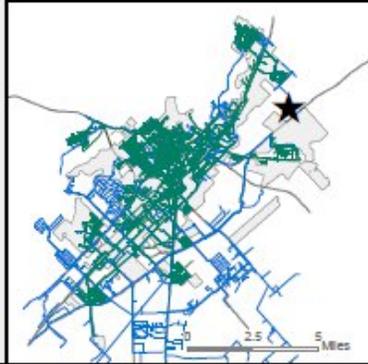
- ▨ Subject Property
- Parcels
- City Limit



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Map Date: 3/25/2020

# AN-20-05 (Palace Way) Water/Wastewater Lines Annexation — 4087 Hwy 21



Site Location	Sanitary Main	
Subject Property	Water Main	
Parcels		<p>This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.</p> <p>Map Date: 3/25/2020</p>
City Limit		



## Annexation & Zoning Schedules:

\*This schedule reflects the new annexation schedule per Texas House Bill 347

### Annexation Schedule

- **City Council Resolution (Approval of Service Agreement and set a public hearing date):** April 21, 2020 (*Approved*)
  - **City Council Ordinance 1<sup>st</sup> Reading (Public Hearing):** May 19, 2020 (Today)
  - **City Council Ordinance 2<sup>nd</sup> Reading:** June 2, 2020
- 

### Zoning Schedule

- **Planning and Zoning Commission (Public Hearing):** April 28, 2020
- **City Council Ordinance 1<sup>st</sup> Reading (Public Hearing):** May 19, 2020
- **City Council Ordinance 2<sup>nd</sup> Reading:** June 2, 2020

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS ANNEXING INTO THE CITY APPROXIMATELY 59.89 ACRES OF LAND LOCATED AT 4087 STATE HIGHWAY 21; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

1. The owner of approximately 59.89 acres of land located at 4087 State Highway 21, as further described by metes and bounds in Exhibit "A," attached hereto and incorporated herein for all purposes (the "Property"), made a request for the City to annex the Property. A location map of the Property is also shown in Exhibit "A."
2. Said owner of the Property has declined the offer of a development agreement from the City concerning the Property.
3. Said owner and the City have entered into a written agreement for the provision of services to the Property.
4. The Property is contiguous and adjacent to the current boundaries of the City.
5. The City Council held a public hearing regarding the request.
6. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

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

**SECTION 1.** The recitals of this ordinance are approved and adopted.

**SECTION 2.** The Property is annexed to and is a part of the City of San Marcos, Texas and subject to the acts, ordinances, resolutions and regulations of the City.

**SECTION 3.** Services to the Property will be provided under the terms of the written agreement for the provision of services entered into between the owner of the Property and the City as noted in Recital 3.

**SECTION 4.** The corporate limits of the City are extended to include the Property.

**SECTION 5.** The inhabitants of the Property are entitled to all the rights and privileges of other citizens of the City, and are bound by the acts, ordinances, resolutions and regulations of the City.

**SECTION 6.** If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

**SECTION 7.** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 8.** This ordinance shall be effective upon its adoption on second reading.

**PASSED AND APPROVED** on first reading on May 19, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on June 2, 2020.

Jane Hughson  
Mayor

Attest:

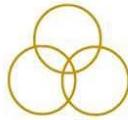
Approved:

Tammy K. Cook  
Interim City Clerk

Michael Cosentino  
City Attorney

**EXHIBIT "A"**  
Property Description

---



**TRINITY GROUP**  
*A Real Estate Development Service Company*

**Metes & Bonds description of property to be  
Annexed into The City of San Marcos**

STATE OF TEXAS - CITY OF SAN MARCOS

Palaceway Partners LLC presents a tract of land situated in the Thomas G. McGehee survey, A-11, Hays County, Texas, conveyed in volume 723 page 39, Plat record 7042-19-2-c; Hays County, TX. Same being a tract of land described to Palace Way Partners as conveyed in Instrument number 9927062, official public records, Hays County, Texas. Being more particularly described as 59.89 acres by the following metes and bounds as follows: Grid north of the Texas state plane coordinate system, NAD 83, South central zone.

Beginning at 1/2" Iron rod with plastic cap found at the southeast corner said POB-R same being southeast of Mrs. Millie Gary Et Vir to the State of Texas recorded in the public records Volume 117, Page 493. Hays County, Texas. And lying on the north Right of Way of the State Highway Number 21.

THENCE, South 45 degrees, 26 minutes and 48.34 seconds East, being said West Right-of-Way of State Highway Number 21. Drive a distance of 112.33 feet towards East Right-of-Way of State Highway Number 21.

THENCE, North 50 degrees, 04 minutes and 54.11 seconds East, being said East Right-of-Way of State Highway Number 21. Drive a distance of 118.08 feet, same being the Right-of-Way limit of State Highway Number 21.

THENCE, North 45 degrees, 26 minutes and 48.34 seconds West, being said East Right-of-Way of State Highway Number 21. Drive a distance of 111.50 feet towards 1/2" Iron rod of said Palace way Property Line, same being West side of said Right-of-Way of State Highway Number 21.

THENCE, North 45 degrees, 25 minutes and 53.13 seconds West, parallel with the adjacent gravel road said Cow Trail, drive a distance of 1,530.10 feet towards 1/2" " Iron rod with a plastic cap.

THENCE, North 46 degrees, 12 minutes and 8.40 seconds East, towards the adjacent gravel road said Cow Trail, drive a distance of 175.99 feet towards 1/2" " Iron rod. Same lying on the lefthand right of way of Cow Trial.

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, with the west right of way of said Cow Trial. Drive a distance of 886.52 feet. Same being the southwest corner of the Industrial lot.

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, of the East side of the property and limiting with Right of way of Cow Trial. Drive a distance of 670.34 feet towards 1/2" Iron rod with plastic cap stamped "Byrn Associates", same being the Northeast corner of the Parcel.

THENCE, North 46 degrees, 39 minutes and 26.79 seconds West, of the northeast corner of the property Drive a distance of 1,088.94 feet towards 1/2" Iron rod with plastic cap located on the West side of the property and limiting with Right of way of Proposed FM110.

THENCE, South 32 degrees, 35 minutes and 25.70 seconds West, of 1/2" Iron rod with plastic cap located on the northwest side of the property. Drive a distance of 25.54 feet towards 1/2" Iron rod with a plastic cap.

THENCE, South 39 degrees, 38 minutes and 23.78 seconds West, of 1/2" Iron rod with plastic cap located on the northwest side of the property. Drive a distance of 199.92 feet towards 1/2" Iron rod with a plastic cap.

THENCE, South 45 degrees, 21 minutes and 22.62 seconds West, Drive a distance of 251.79 feet towards 1/2" Iron rod with a plastic cap.

THENCE, South 38 degrees, 05 minutes and 05.46 seconds West, drive a distance of 483.82 feet to 1/2" Iron rod with plastic cap stamped "Byrn Associates". lying on the east right of way of the Proposed FM 110 Thoroughfare.

THENCE, South 34 degrees, 57 minutes and 58.46 seconds West, drive a distance of 483.82 feet to 1/2" Iron rod with a plastic cap. Same being southwest of Abundant Life Christian Church to Hays County recorded in the public records Volume 5158, Page 87. Public records, Hays County, Texas, and the southwest corner of the proposed property.

THENCE, South 46 degrees, 29 minutes and 03.48 seconds East, being southwest of Abundant Life Christian Church to Hays County recorded in the public records; Volume 5158, Page 87. Public records, Hays County, Texas, and the southwest corner of the proposed property. Drive a distance of 2104.26 feet to 1/2" Iron rod with plastic cap stamped "Byrn Associates".

THENCE, South 45 degrees, 26 minutes and 48.34 seconds East, being part of the edge of road of Dukes road (proposed). Drive a distance of 1,420.16' towards POB-R, same being the west Right of Way of State Highway Number 21.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That Trinity Group, an agent for Palaceway partners, does hereby present this Proposed Annexation description of the above-described property as PALACEWAY DEVELOPMENT, an addition to the City of San Marcos, Texas.

Dr. David L. Joyner, P.E  
*TX Firm 12656*

*TRINITY GROUP*

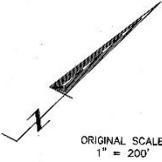
*A Real Estate Development Service Company*

PAGE 3 OF 3

838 Meyer Rd., NB, TX 78638-1503 • Ph. 830.303.3283  
In Austin 512.807.7310 • Eagle Ford 830.303.3283  
Houston 713.574.1949 • San Antonio 210.209.9976  
[www.trinitycompanies.biz](http://www.trinitycompanies.biz)

**SURVEYOR'S NOTES**

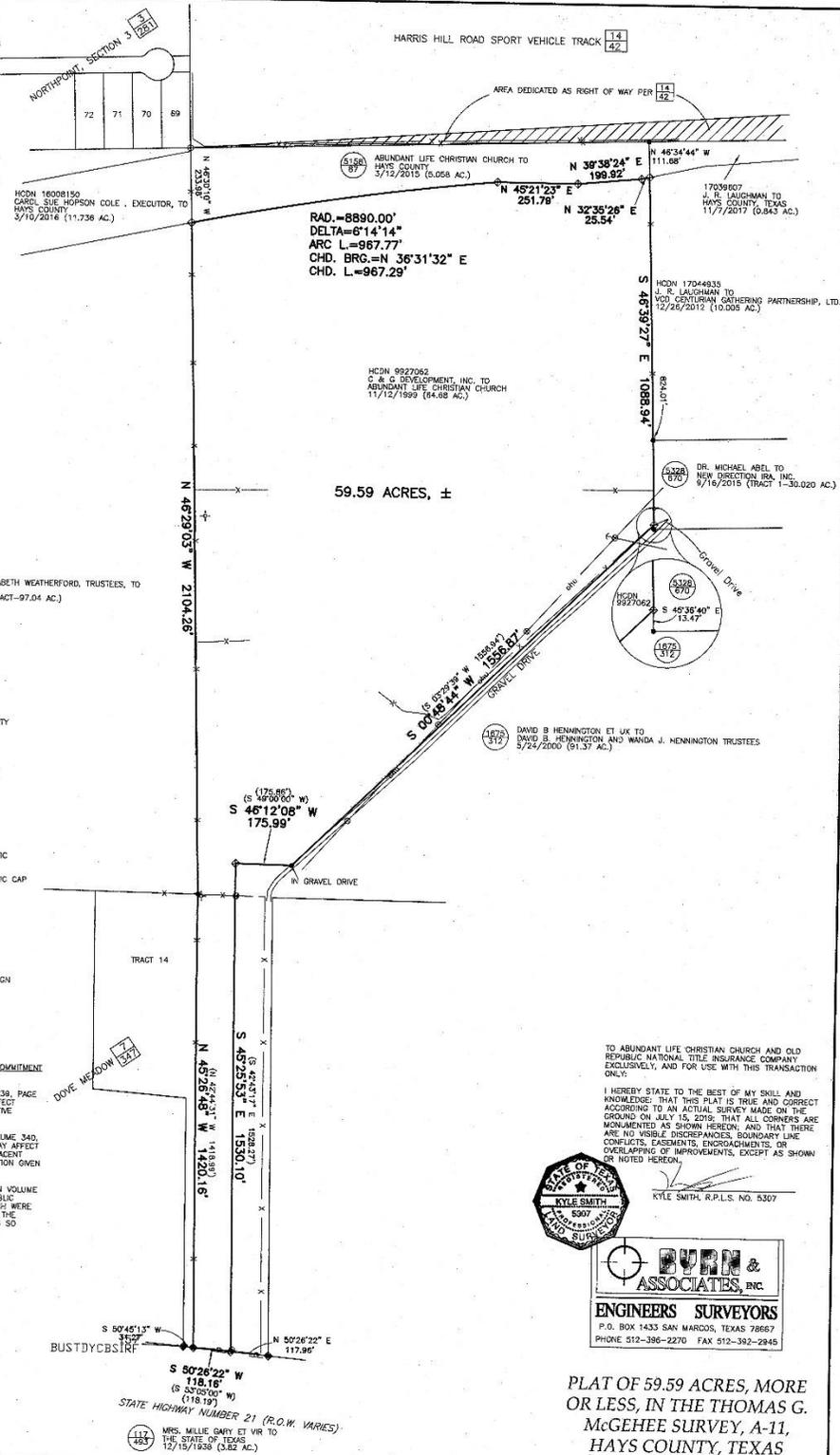
1. FENCES MEANDER.
2. BEARINGS, DISTANCES AND AREAS IN PARENTHESES ARE FROM RECORD INFORMATION.
3. ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO. 482090410F, DATED 9/26/2005, THIS TRACT LIES WITHIN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
4. THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THIS SURVEYOR DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENT, THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.
5. THIS SURVEY PLAT WAS PREPARED IN CONJUNCTION WITH A LAND DESCRIPTION DATED JULY 15, 2019 PREPARED BY BYRN AND ASSOCIATES, INC. OF SAN MARCOS, TEXAS.
6. THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.



- LEGEND**
- (VOL. 230) HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL, PUBLIC RECORDS
  - (VOL. 02) HAYS COUNTY PLAT RECORDS
  - HCON: HAYS COUNTY DOCUMENT NUMBER
  - 1/2" IRON ROD FOUND OR DIAMETER NOTED
  - ⊙ 3/4" IRON PIPE FOUND OR DIAMETER NOTED
  - ⊠ 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
  - 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY"
  - 1/2" IRON ROD FOUND WITH PLASTIC CAP
  - x- WIRE FENCE
  - o- UTILITY LINE, POLE AND CUY
  - WATER METER
  - WATER VALVE
  - △ UTILITY PEDESTAL
  - CLEANOUT
  - ▲ 6" CEDAR FENCE POST
  - ⊔ UNDERGROUND UTILITY WARNING SIGN
  - X WATER SPOUT

- NOTES CORRESPONDING TO SCHEDULE B OF TITLE COMMITMENT OF NO. 20192411 DATED MAY 21, 2019**
- 10(c) WATERLINE EASEMENT RECORDED IN VOLUME 230, PAGE 222 OF THE HAYS COUNTY DEED RECORDS, MAY AFFECT SUBJECT TRACT ALTHOUGH THERE IS NOT ANY LOCATIVE INFORMATION PROVIDED IN DEED.
  - 10(g) INGRESS EGRESS EASEMENT RECORDED IN VOLUME 340, PAGE 668 OF THE HAYS COUNTY DEED RECORDS, MAY AFFECT SUBJECT PROPERTY, THE GRAVEL DRIVE ON THE ADJACENT PROPERTY TO THE EAST FITS THE GENERAL DESCRIPTION GIVEN IN THE DEED.
  - 10(h) STREET MAINTENANCE AGREEMENT RECORDED IN VOLUME 1301, PAGE 165 OF THE HAYS COUNTY OFFICIAL, PUBLIC RECORDS. THIS AGREEMENT IS FOR PROPERTIES WHICH WERE GRANTED EASEMENT RIGHTS TO USE COWPAL LANE. THE SUBJECT TRACT WAS NOT GRANTED EASEMENT RIGHTS SO THEREFORE IS NOT SUBJECT TO THIS AGREEMENT.

CLIENT: ABUNDANT LIFE CHRISTIAN CHURCH  
 DATE: 7/15/2019  
 OFFICE: BRYAN  
 CREW: C. SMITH  
 FB/PG: 753/09  
 PLAT NO. 27042-19-2-c



**BYRN & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS**  
 P.O. BOX 1433 SAN MARCOS, TEXAS 78667  
 PHONE 512-396-2270 FAX 512-392-2945

**PLAT OF 59.59 ACRES, MORE OR LESS, IN THE THOMAS G. McGEHEE SURVEY, A-11, HAYS COUNTY, TEXAS**

STATE HIGHWAY NUMBER 21 (R.O.W. VARIES)  
 MRS. MILLIE GARY ET VIR TO THE STATE OF TEXAS 12/15/1938 (3.82 AC.)

# AN-20-05 (Palace Way) Location Map Annexation — 4087 Hwy 21



- ★ Site Location**
- ▨ Subject Property**
- Parcel**
- City Limit**

N

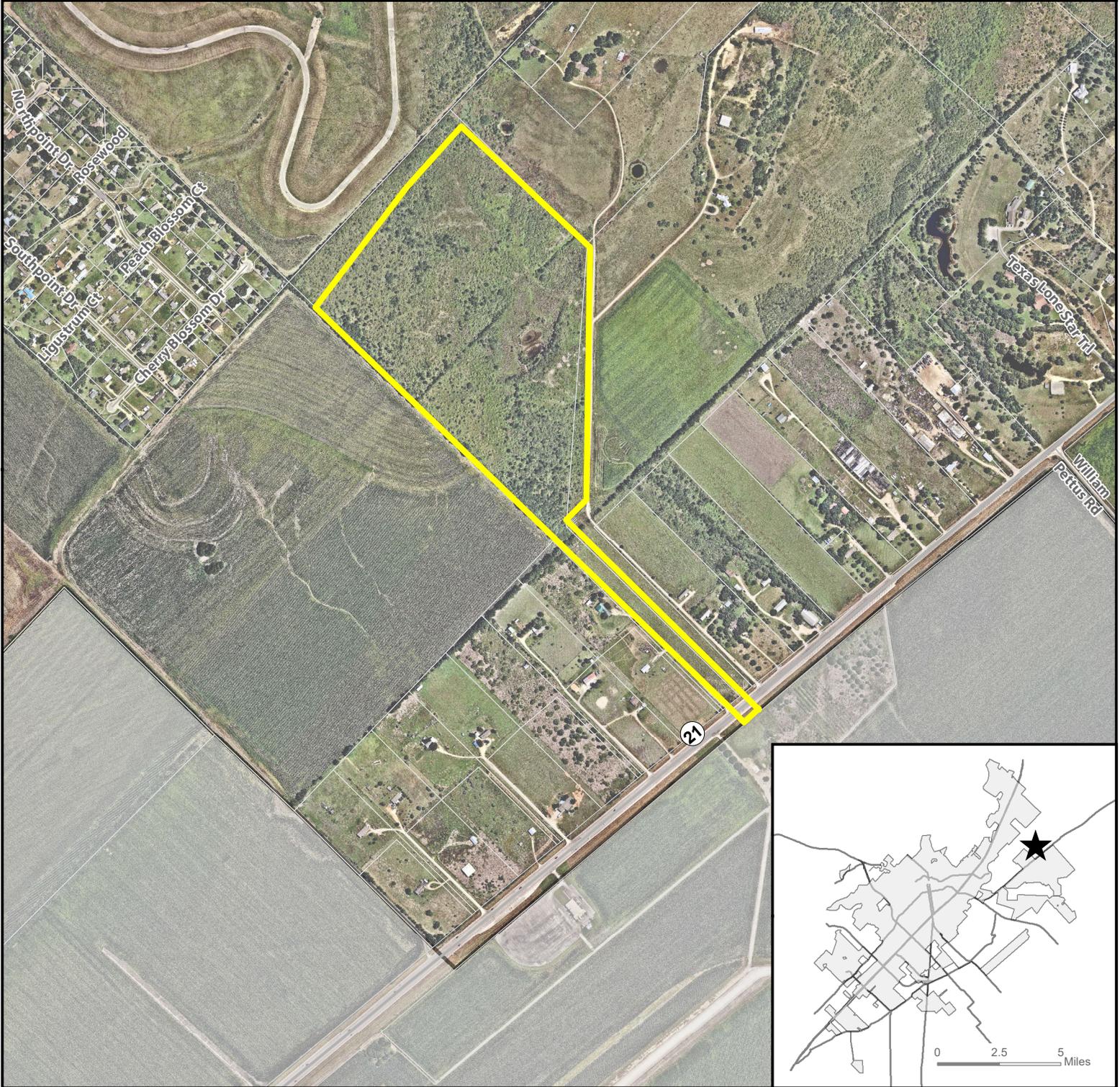
0
485
970
1,940

Feet

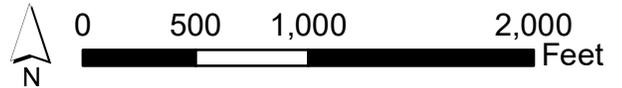
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 3/25/2020

# AN-20-05 (Palace Way) Aerial View Annexation — 4087 Hwy 21



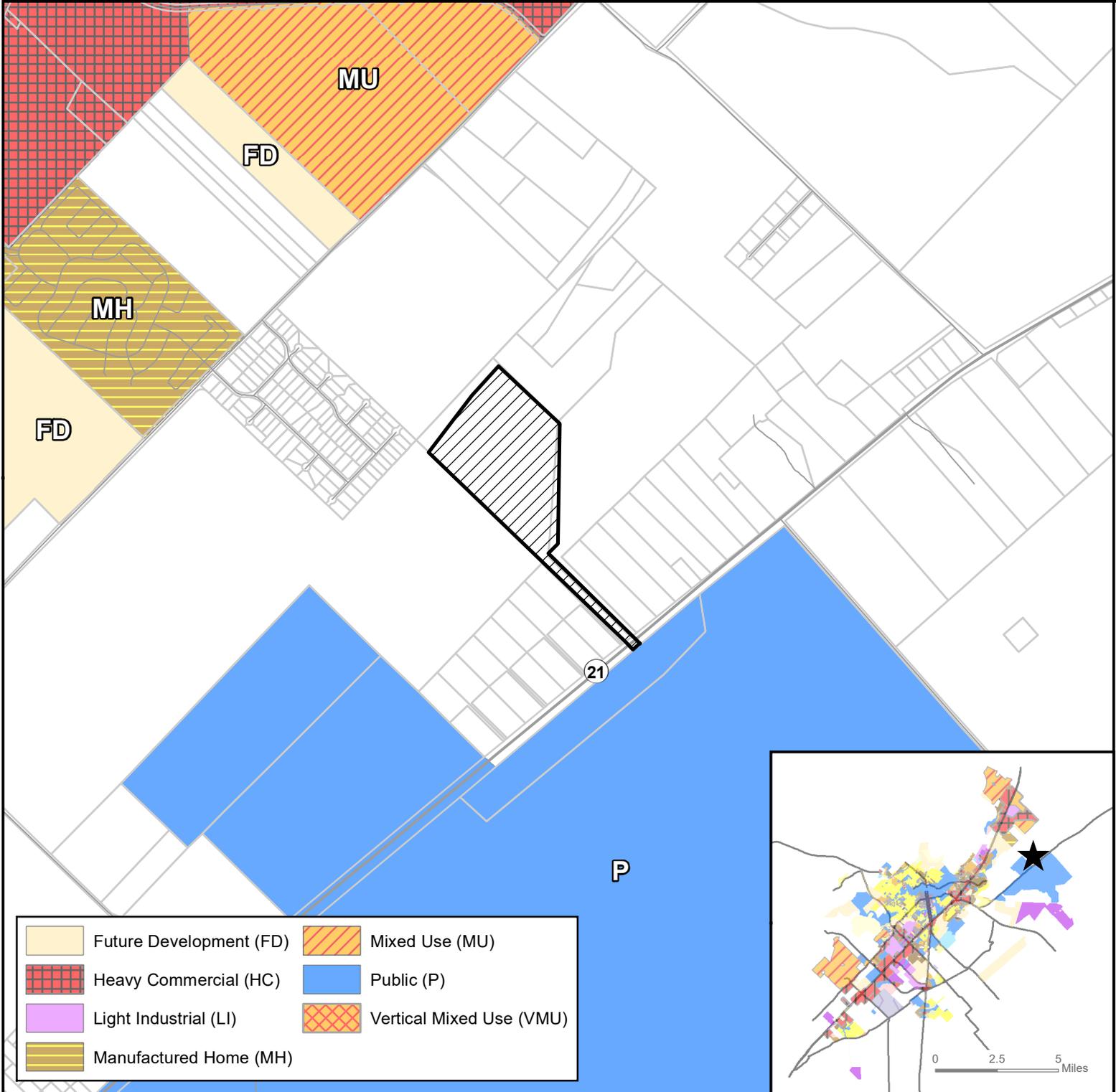
- ★ Site Location
- ▭ Subject Property
- ▭ Parcel
- ▭ City Limit



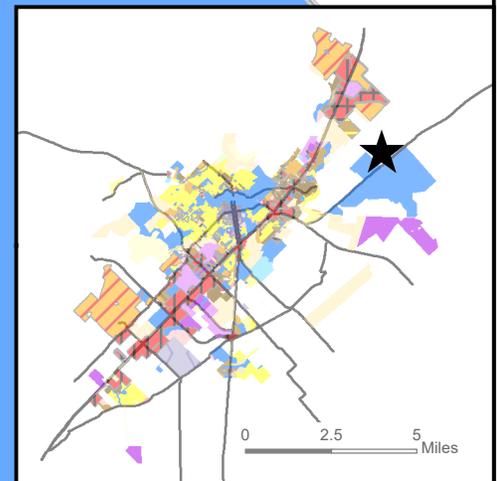
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 3/25/2020

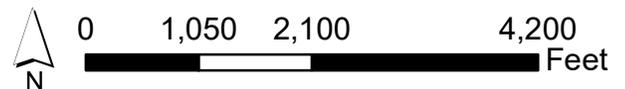
# AN-20-05 (Palace Way) Existing Zoning Map Annexation — 4087 Hwy 21



	Future Development (FD)		Mixed Use (MU)
	Heavy Commercial (HC)		Public (P)
	Light Industrial (LI)		Vertical Mixed Use (VMU)
	Manufactured Home (MH)		



-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**



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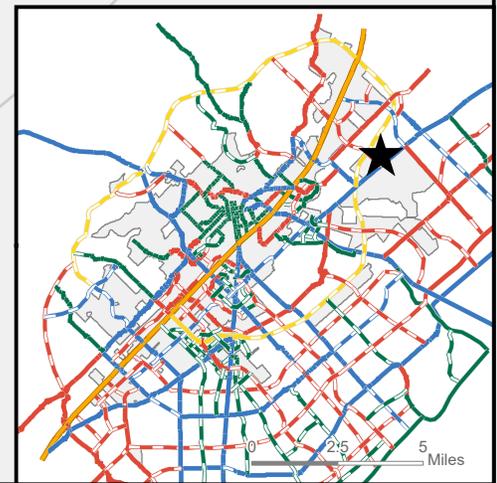
Map Date: 3/25/2020

# AN-20-05 (Palace Way) Transportation Master Plan Annexation - 4087 Hwy 21



## Thorough Fare Street Plan

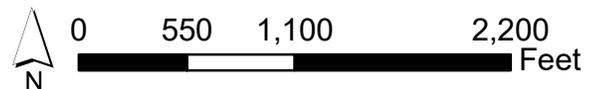
- Enhanced Facilities Thoroughfare, Ave
- Enhanced Facilities Thoroughfare, Blvd
- - - Proposed Facilities Thoroughfare, Ave
- - - Proposed Facilities Thoroughfare, Blvd
- - - Proposed Facilities Thoroughfare, Pkwy



**Subject Property**

**Parcels**

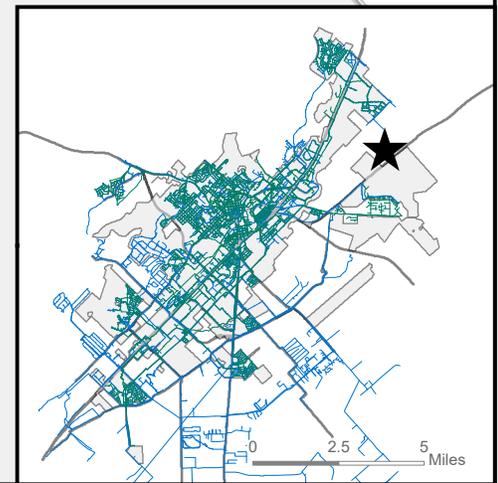
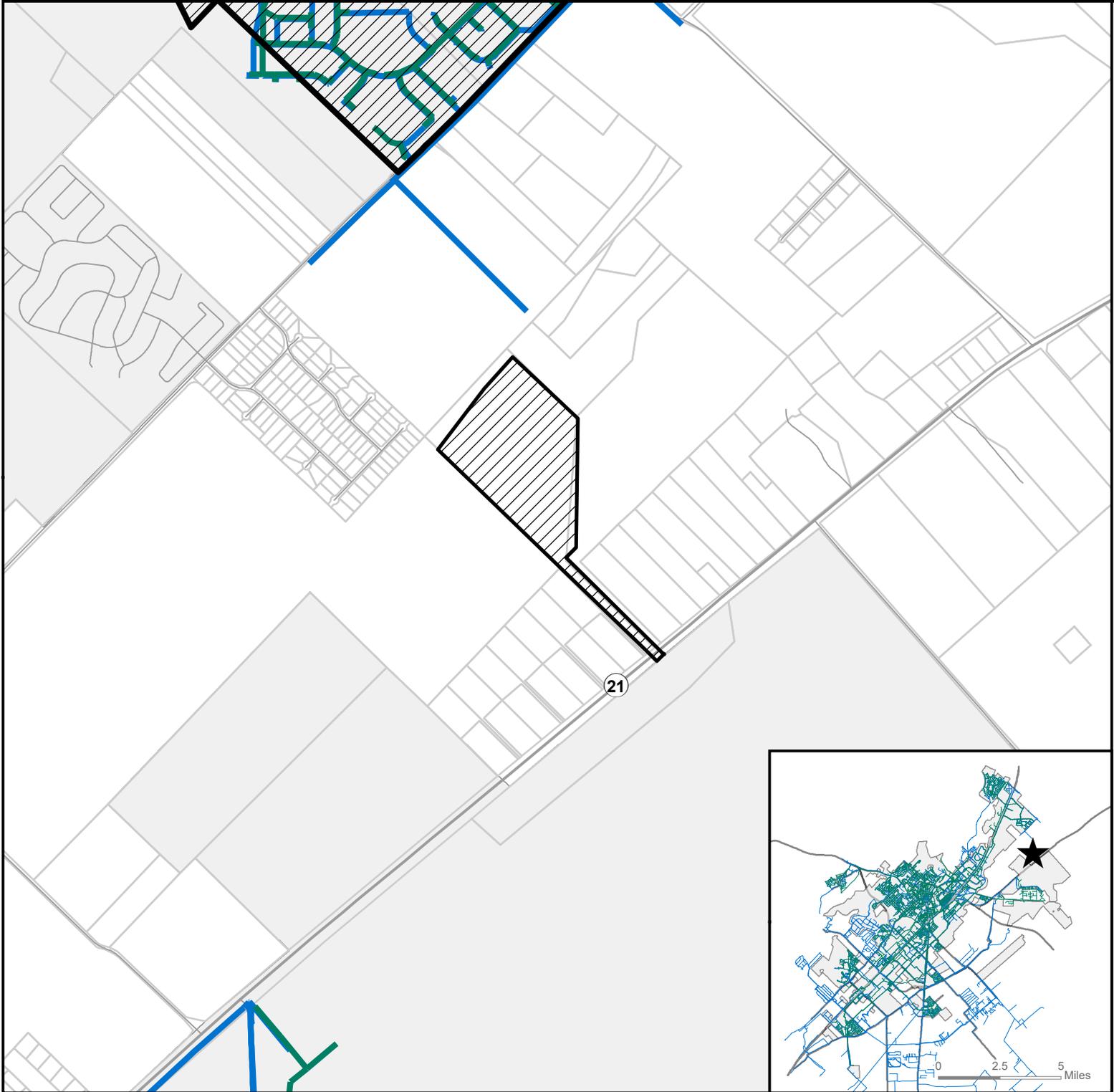
**City Limit**



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Map Date: 3/25/2020

# AN-20-05 (Palace Way) Water/Wastewater Lines Annexation — 4087 Hwy 21



- ★ Site Location
- ▨ Subject Property
- Parcels
- City Limit
- Sanitary Main
- Water Main



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Map Date: 3/25/2020



**Metes & Bonds description of property to be  
Annexed into The City of San Marcos**

STATE OF TEXAS - CITY OF SAN MARCOS

Palaceway Partners LLC presents a tract of land situated in the Thomas G. McGehee survey, A-11, Hays County, Texas, conveyed in volume 723 page 39, Plat record 7042-19-2-c; Hays County, TX. Same being a tract of land described to Palace Way Partners as conveyed in Instrument number 9927062, official public records, Hays County, Texas. Being more particularly described as 59.89 acres by the following metes and bounds as follows: Grid north of the Texas state plane coordinate system, NAD 83, South central zone.

Beginning at 1/2" Iron rod with plastic cap found at the southeast corner said POB-R same being southeast of Mrs. Millie Gary Et Vir to the State of Texas recorded in the public records Volume 117, Page 493. Hays County, Texas. And lying on the north Right of Way of the State Highway Number 21.

THENCE, South 45 degrees, 26 minutes and 48.34 seconds East, being said West Right-of-Way of State Highway Number 21. Drive a distance of 112.33 feet towards East Right-of-Way of State Highway Number 21.

THENCE, North 50 degrees, 04 minutes and 54.11 seconds East, being said East Right-of-Way of State Highway Number 21. Drive a distance of 118.08 feet, same being the Right-of-Way limit of State Highway Number 21.

THENCE, North 45 degrees, 26 minutes and 48.34 seconds West, being said East Right-of-Way of State Highway Number 21. Drive a distance of 111.50 feet towards 1/2" Iron rod of said Palace way Property Line, same being West side of said Right-of-Way of State Highway Number 21.

THENCE, North 45 degrees, 25 minutes and 53.13 seconds West, parallel with the adjacent gravel road said Cow Trail, drive a distance of 1,530.10 feet towards 1/2" " Iron rod with a plastic cap.

THENCE, North 46 degrees, 12 minutes and 8.40 seconds East, towards the adjacent gravel road said Cow Trail, drive a distance of 175.99 feet towards 1/2" " Iron rod. Same lying on the lefthand right of way of Cow Trial.

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, with the west right of way of said Cow Trial. Drive a distance of 886.52 feet. Same being the southwest corner of the Industrial lot.

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, of the East side of the property and limiting with Right of way of Cow Trial. Drive a distance of 670.34 feet towards 1/2" Iron rod with plastic cap stamped "Byrn Associates", same being the Northeast corner of the Parcel.

THENCE, North 46 degrees, 39 minutes and 26.79 seconds West, of the northeast corner of the property Drive a distance of 1,088.94 feet towards 1/2" Iron rod with plastic cap located on the West side of the property and limiting with Right of way of Proposed FM110.

THENCE, South 32 degrees, 35 minutes and 25.70 seconds West, of 1/2" Iron rod with plastic cap located on the northwest side of the property. Drive a distance of 25.54 feet towards 1/2" Iron rod with a plastic cap.

THENCE, South 39 degrees, 38 minutes and 23.78 seconds West, of 1/2" Iron rod with plastic cap located on the northwest side of the property. Drive a distance of 199.92 feet towards 1/2" Iron rod with a plastic cap.

THENCE, South 45 degrees, 21 minutes and 22.62 seconds West, Drive a distance of 251.79 feet towards 1/2" Iron rod with a plastic cap.

THENCE, South 38 degrees, 05 minutes and 05.46 seconds West, drive a distance of 483.82 feet to 1/2" Iron rod with plastic cap stamped "Byrn Associates". lying on the east right of way of the Proposed FM 110 Thoroughfare.

THENCE, South 34 degrees, 57 minutes and 58.46 seconds West, drive a distance of 483.82 feet to 1/2" Iron rod with a plastic cap. Same being southwest of Abundant Life Christian Church to Hays County recorded in the public records Volume 5158, Page 87. Public records, Hays County, Texas, and the southwest corner of the proposed property.

THENCE, South 46 degrees, 29 minutes and 03.48 seconds East, being southwest of Abundant Life Christian Church to Hays County recorded in the public records; Volume 5158, Page 87. Public records, Hays County, Texas, and the southwest corner of the proposed property. Drive a distance of 2104.26 feet to 1/2" Iron rod with plastic cap stamped "Byrn Associates".

THENCE, South 45 degrees, 26 minutes and 48.34 seconds East, being part of the edge of road of Dukes road (proposed). Drive a distance of 1,420.16' towards POB-R, same being the west Right of Way of State Highway Number 21.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That Trinity Group, an agent for Palaceway partners, does hereby present this Proposed Annexation description of the above-described property as PALACEWAY DEVELOPMENT, an addition to the City of San Marcos, Texas.

Dr. David L. Joyner, P.E  
*TX Firm 12656*

*TRINITY GROUP*

PAGE 3 OF 3

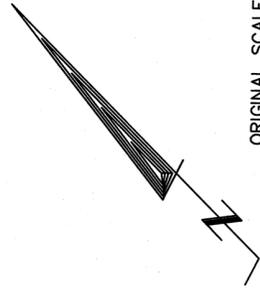
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*A Real Estate Development Service Company*

838 Meyer Rd., NB, TX 78638-1503 • Ph. 830.303.3283  
In Austin 512.807.7310 • Eagle Ford 830.303.3283  
Houston 713.574.1949 • San Antonio 210.209.9976  
[www.trinitycompanies.biz](http://www.trinitycompanies.biz)

**SURVEYOR'S NOTES**

- FENCES MEANDER.
- BEARINGS, DISTANCES AND AREAS IN PARENTHESES ARE FROM RECORD INFORMATION.
- ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48209C0415F, DATED 9/28/2005, THIS TRACT LIES WITHIN ZONE X. (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
- THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THIS SURVEYOR DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENT. THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.
- THIS SURVEY PLAT WAS PREPARED IN CONJUNCTION WITH A LAND DESCRIPTION DATED JULY 15, 2019, PREPARED BY BYRN AND ASSOCIATES, INC. OF SAN MARCOS, TEXAS.
- THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.



HCDN 18008882  
WILLIAM OHREN HOPSON & LAURA ELIZABETH WEATHERFORD, TRUSTEES, TO  
WILLIAM OHREN HOPSON ET AL  
3/13/2016 (1/2 INTEREST; SECOND TRACT--97.04 AC.)

**LEGEND**

- |  |  |
|--|--|
|  | HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS |
|  | HAYS COUNTY PLAT RECORDS                                   |
|  | HAYS COUNTY DOCUMENT NUMBER                                |
|  | 1/2" IRON ROD FOUND OR DIAMETER NOTED                      |
|  | 3/4" IRON PIPE FOUND OR DIAMETER NOTED                     |
|  | 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"   |
|  | 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY" |
|  | 1/2" IRON ROD FOUND WITH PLASTIC CAP                       |
|  | WIRE FENCE   |
|  | UTILITY LINE, POLE AND GUY                                 |
|  | WATER METER  |
|  | WATER VALVE  |
|  | UTILITY PEDESTAL   |
|  | CLEANOUT   |
|  | 6" CEDAR FENCE POST  |
|  | UNDERGROUND UTILITY WARNING SIGN                           |
|  | WATER SPIGOT   |

NOTES CORRESPONDING TO SCHEDULE B OF TITLE COMMITMENT G.E. NO. 20190411 DATED MAY 2, 2019

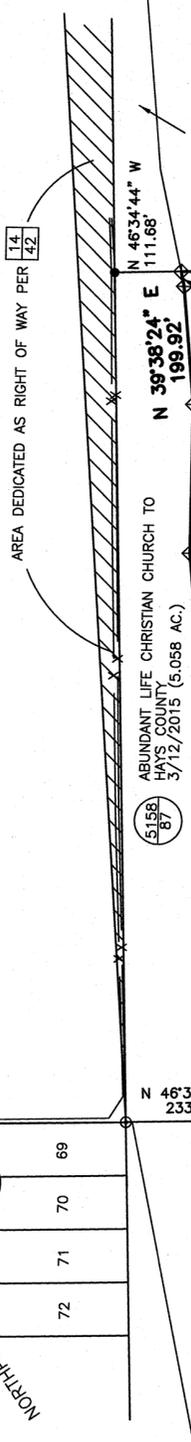
10(c) WATERLINE EASEMENT RECORDED IN VOLUME 239, PAGE 222 OF THE HAYS COUNTY DEED RECORDS. MAY AFFECT SUBJECT TRACT ALTHOUGH THERE IS NOT ANY LOCATIVE INFORMATION PROVIDED IN DEED.

10(c) INGRESS EGRESS EASEMENT RECORDED IN VOLUME 340, PAGE 666 OF THE HAYS COUNTY DEED RECORDS. MAY AFFECT SUBJECT PROPERTY. THE GRAVEL DRIVE ON THE ADJACENT PROPERTY TO THE EAST FITS THE GENERAL DESCRIPTION GIVEN IN THE DEED.

10(g) STREET MAINTENANCE AGREEMENT RECORDED IN VOLUME 1301, PAGE 165 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS. THIS AGREEMENT IS FOR PROPERTIES WHICH WERE GRANTED EASEMENT RIGHTS TO USE COWTRAIL LANE. THE SUBJECT TRACT WAS NOT GRANTED EASEMENT RIGHTS SO THEREFORE IS NOT SUBJECT TO THIS AGREEMENT.

CLIENT: ABUNDANT LIFE CHRISTIAN CHURCH  
DATE: 7/15/2019  
OFFICE: BRYANT  
CREW: C. SMITH  
FB/PG: 723/39  
PLAT NO. 27042-19-2-c

HARRIS HILL ROAD SPORT VEHICLE TRACK



HCDN 16008150  
CAROL SUE HOPSON COLE, EXECUTOR, TO  
HAYS COUNTY  
5/10/2016 (11.736 AC.)

RAD.=8890.00'  
DELTA=6°14'14"  
ARC L.=967.77'  
CHD. BRG.=N 36°31'32" E  
CHD. L.=967.29'

HCDN 9927062  
C & G DEVELOPMENT, INC. TO  
ABUNDANT LIFE CHRISTIAN CHURCH  
11/12/1999 (64.88 AC.)

59.59 ACRES, ±

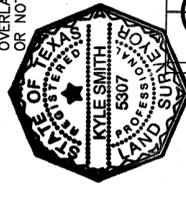
HCDN 17044935  
J. R. LAUGHMAN TO  
VCD CENTURIAN GATHERING PARTNERSHIP, LTD.  
12/26/2012 (10.005 AC.)

DR. MICHAEL ABEL TO  
NEW DIRECTOR, INC.  
9/16/2015 (TRACT 1--30.020 AC.)

DAVID B HENNINGTON ET UX TO  
DAVID B. HENNINGTON AND WANDA J. HENNINGTON TRUSTEES  
5/24/2000 (91.37 AC.)

TO ABUNDANT LIFE CHRISTIAN CHURCH AND OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY EXCLUSIVELY, AND FOR USE WITH THIS TRANSACTION ONLY.

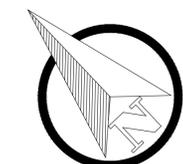
I HEREBY STATE TO THE BEST OF MY SKILL AND KNOWLEDGE: THAT THIS PLAT IS TRUE AND CORRECT ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND ON JULY 15, 2019; THAT ALL CORNERS ARE MONUMENTED AS SHOWN HEREON; AND THAT THERE ARE NO VISIBLE DISCREPANCIES, BOUNDARY LINE CONFLICTS, EASEMENTS, ENCROACHMENTS, OR OVERLAPPING OF IMPROVEMENTS, EXCEPT AS SHOWN OR NOTED HEREON.



KYLE SMITH, R.P.L.S. NO. 5307

**BYRN & ASSOCIATES, INC.**  
**ENGINEERS SURVEYORS**  
P.O. BOX 1433 SAN MARCOS, TEXAS 78667  
PHONE 512-396-2270 FAX 512-392-2945

PLAT OF 59.59 ACRES, MORE OR LESS, IN THE THOMAS G. MCGEEHEE SURVEY, A-11, HAYS COUNTY, TEXAS



HCDN 17044935  
J. R. LAUGHMAN TO  
VCD CENTURIAN GATHERING PARTNERSHIP, LTD.  
12/26/2012 (10.005 AC.)

5328  
670 DR. MICHAEL ABEL TO  
NEW DIRECTION IRA, INC.  
9/16/2015 (TRACT 1-30.020 AC.)

1675  
312 DAVID B HENNINGTON ET UX TO  
DAVID B. HENNINGTON AND WANDA J. HENNINGTON TRUSTEES  
5/24/2000 (91.37 AC.)

CERTIFICATION  
I CERTIFY THAT THESE SURVEY SHEETS ARE COMPLETE, ACCURATE,  
AND ADEQUATE FOR THE INTENDED PURPOSES, INCLUDING  
CONSTRUCTION BUT ARE NOT AUTHORIZED FOR CONSTRUCTION  
PRIOR TO COUNTY APPROVAL. THE RESPONSIBILITY FOR THE  
ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER WHO  
PREPARED THEM. IN REVIEWING THESE PLANS, THE CITY OF SAN  
MARCOS MUST RELY UPON THE ADEQUACY OF THE WORK OF THE  
DESIGN ENGINEER.

Dr. David Joyner, PE TX PE 79569

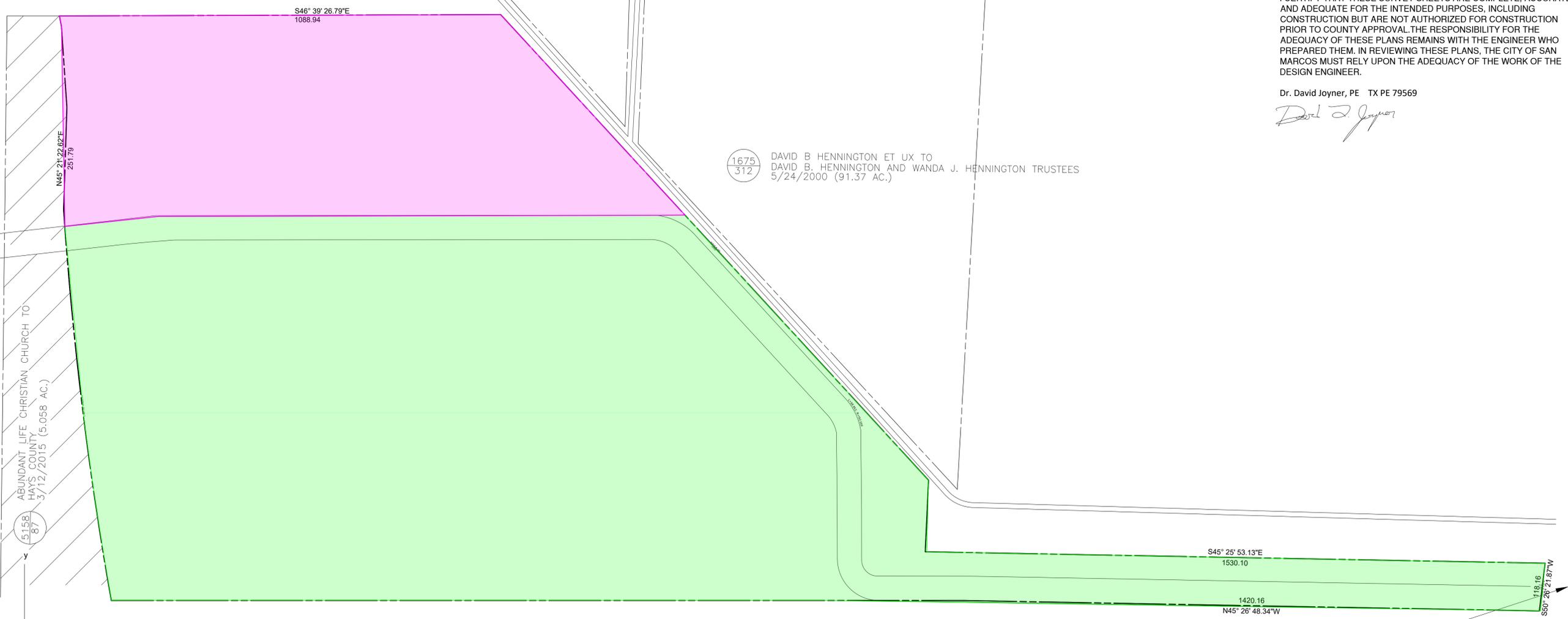
**PALACE WAY DEVELOPMENT**  
Location:  
**4087 ST. HIGHWAY 21**  
San Marcos, Texas

**TRINITY GROUP**  
A REAL-ESTATE SERVICE COMPANY  
888 MEYER RD. NEW BRAUNFELS, TX 78638  
PH. (830) 303-2983 FAX (877) 842-7001  
www.trinitycompany.com  
"We Help Build Your Future"

PROJECT NO.	12418
REVISIONS	
TX Firm #	12656
DATE	Feb 2020
SCALE	3/32" = 1'
DRAWN BY	D. Aldana
DESIGNED BY	Trinity Group
CHECKED BY	D. Joyner

**ZONING PLAN**  
SHEET NO.  
**C-01**  
VERSION A

HARRIS HILL ROAD SPORT VEHICLE TRACK



HCDN 16008150  
CAROL SUE HOPSON COLE, EXECUTOR, TO  
HAYS COUNTY  
3/10/2016 (11.736 AC.)

HCDN 18008882  
WILLIAM OHREN HOPSON & LAURA ELIZABETH WEATHERFORD, TRUSTEES, TO  
WILLIAM OHREN HOPSON ET AL  
3/13/2018 (1/2 INTEREST: SECOND TRACT-97.04 AC.)

STATE HIGHWAY NUMBER 21 (R.O.W. VARIES)

117  
493 MRS. MILLIE GARY ET VIR TO  
THE STATE OF TEXAS  
12/15/1938 (3.82 AC.)

**SURVEYORS NOTES**

- FENCES MEANDER.
- ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48209C0415F, DATED 9/28/2005, THIS TRACT LIES WITHIN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
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**LEGEND**

	HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
	HAYS COUNTY PLAT RECORDS
	HAYS COUNTY DOCUMENT NUMBER
	1/2" IRON ROD FOUND OR DIAMETER NOTED
	3/4" IRON PIPE FOUND OR DIAMETER NOTED
	1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
	1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY"
	1/2" IRON ROD FOUND WITH PLASTIC CAP
	WIRE FENCE
	UTILITY LINE, POLE AND GUY
	WATER METER
	WATER VALVE
	UTILITY PEDESTAL
	CLEANOUT
	6" CEDAR FENCE POST
	UNDERGROUND UTILITY WARNING SIGN
	WATER SPIGOT

**NOTES CORRESPONDING TO SCHEDULE B OF TITLE COMMITMENT G.F. NO. 20190411 DATED MAY 2, 2019**

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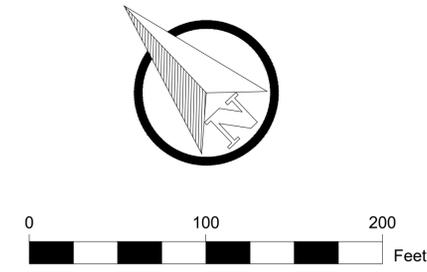
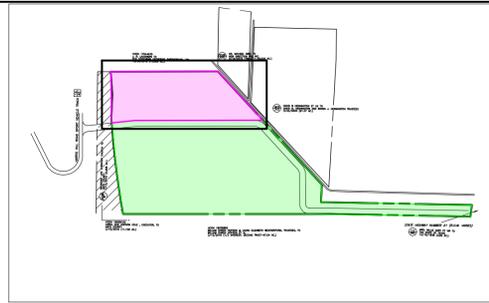
10(d) INGRESS EGRESS EASEMENT RECORDED IN VOLUME 340, PAGE 666 OF THE HAYS COUNTY DEED RECORDS, MAY AFFECT SUBJECT PROPERTY, THE GRAVEL DRIVE ON THE ADJACENT PROPERTY TO THE EAST FITS THE GENERAL DESCRIPTION GIVEN IN THE DEED.

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PROPOSED ZONING	
DESCRIPTION	AREA
TOTAL LOT	59.59ac
INDUSTRIAL PORTION	14.90ac
RESIDENTIAL PORTION	44.69ac

**ZONING**  
HIGHWAY 21 LAND DEVELOPMENT  
BEING A ZONING OF 59.59 ACRES,  
MORE OR LESS, IN THE THOMAS G.  
McGEHEE SURVEY, A-11, HAYS  
COUNTY, TEXAS

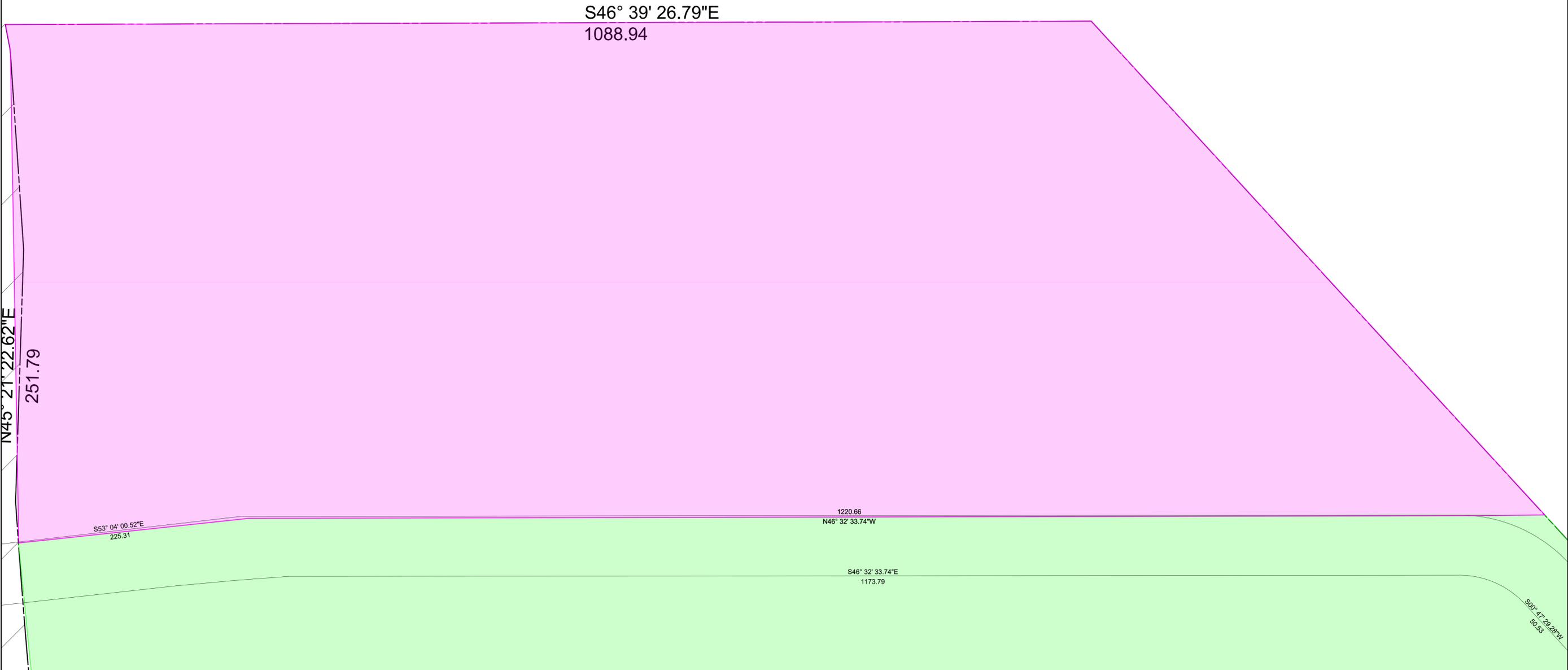
PROPOSED ZONING	
DESCRIPTION	AREA
TOTAL LOT	59.59ac
INDUSTRIAL PORTION	14.90ac



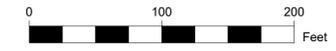
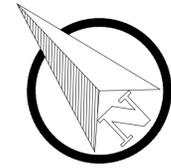
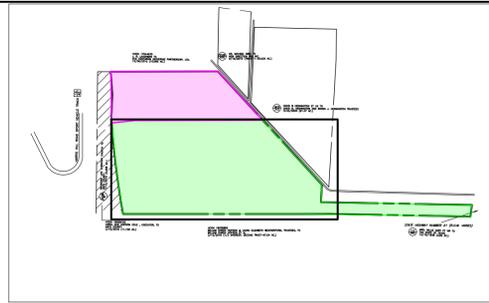
**PALACE WAY DEVELOPMENT**  
 Location:  
**4087 ST. HIGHWAY 21**  
 San Marcos, Texas

**TRINITY GROUP**  
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 888 MEYER RD. NEW BRAUNFELS, TX 78038  
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 www.trinitycompany.com trinity@trinitycompany.com  
 "We Help Build Your Future"

PROJECT NO. <b>12418</b>
REVISIONS
TX Firm # 12656
DATE Feb 2020
SCALE 1/4" = 1'
DRAWN BY D. Aldana
DESIGNED BY Trinity Group
CHECKED BY D. Joyner
<b>PROPOSED INDUSTRIAL ZONING</b>
<small>Unless otherwise noted this is scaled to fit a 24" x 36" sheet</small>
SHEET NO. <b>C-02</b>
VERSION A

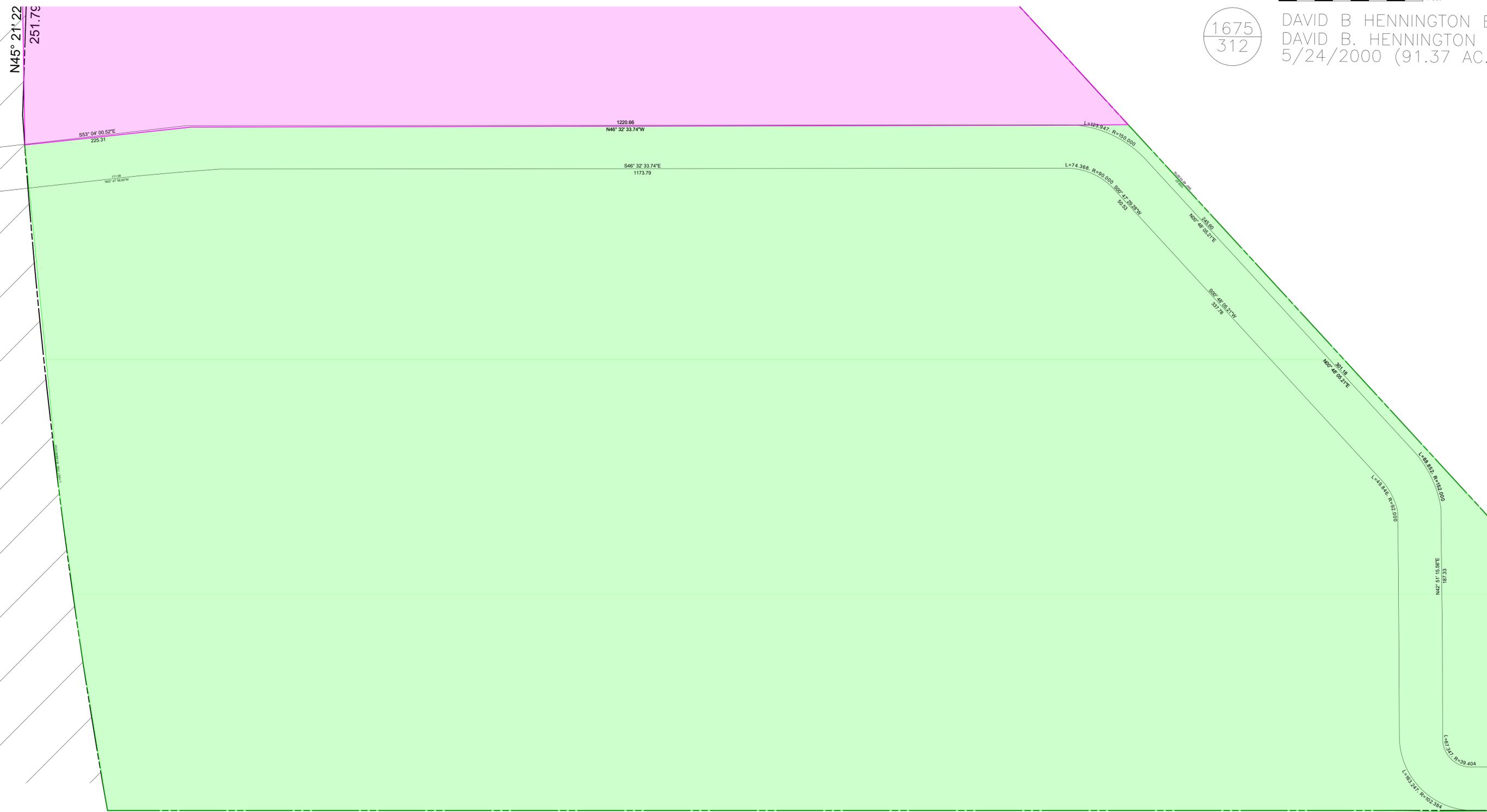


PROPOSED ZONING	
DESCRIPTION	AREA
TOTAL LOT	59.59ac
RESIDENTIAL PORTION	44.69ac



1675  
312

DAVID B HENNINGTON E  
DAVID B. HENNINGTON  
5/24/2000 (91.37 AC.)



**PALACE WAY DEVELOPMENT**  
Location:  
4087 ST. HIGHWAY 21  
San Marcos, Texas

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PH. (830) 303-2883 FAX (877) 842-7001  
www.trinitycompany.com trinity@trinitycompany.com  
"We Help Build Your Future"

PROJECT NO. <b>12418</b>
REVISIONS
TX Firm # 12656
DATE Feb 2020
SCALE $\frac{3}{16}'' = 1'$
DRAWN BY D. Aldana
DESIGNED BY Trinity Group
CHECKED BY D. Joyner
<b>PROPOSED ZONING</b> RESIDENTIAL
<small>Unless otherwise noted this is scaled to fit a 24x36" sheet</small>
SHEET NO. <b>C-03</b>
VERSION A

## Comparison Table – City Limits vs. Outside City Limits

Development Standard	City Limits	Outside City Limits
<b>Allowable Uses</b>	Uses are regulated based on the zoning of the property. (ex: an industrial use would not be allowed in a residential zoned property)	Uses cannot be regulated
<b>Transportation Master Plan Roadways</b>	Required	Required
<b>Internal Streets</b>	Based on block perimeter requirements. (5,000' block perimeter max for properties zoned MH or LI)	Based on block perimeter requirements. (3,000' block perimeter max for properties in ETJ)
<b>Zoning Development Standards</b>	Required, including: <ul style="list-style-type: none"> <li>• Property setbacks</li> <li>• Unit maximums</li> <li>• Landscaping</li> <li>• Screening</li> <li>• Tree mitigation</li> <li>• Parking</li> <li>• Lighting</li> <li>• Trash/recycling</li> <li>• Building height / articulation</li> </ul>	Not required
<b>Environmental</b>	Required per Chapter 5 of the Development Code, including: <ul style="list-style-type: none"> <li>• Stormwater / Detention</li> <li>• Water Quality</li> <li>• Floodplain</li> </ul>	Required per Chapter 5 of the Development Code, including: <ul style="list-style-type: none"> <li>• Stormwater / Detention</li> <li>• Water Quality</li> <li>• Floodplain</li> </ul>

Application	City Limits	Outside City Limits
<b>Subdivision Plat</b> – formally divides and provides the layout of the property.	Required	Required
<b>Public Improvement Construction Plan</b> – the construction documents submitted to the city for public infrastructure including utilities and streets.	Required	Required
<b>Watershed Protection Plan</b> – the environmental reports and proposal for environmental engineering on the property.	Required	Required
<b>Building Permit</b> – the construction documents for the structures proposed on the property.	Required	Not required
<b>Site Development Permit</b> – construction of site related items	Required	Required



# ANNEXATION APPLICATION

Updated: October, 2018

Case # AN-\_\_\_\_-\_\_\_\_

## CONTACT INFORMATION

Applicant's Name	James Glasgow	Property Owner	Palace Way Partners llc
Applicant's Mailing Address	6531 fox run San Antonio, Texas 78233	Owner's Mailing Address	6531 fox run San Antonio, Texas 78233
Applicant's Phone #	210-413-7230	Owner's Phone #	6531 fox runSan Antonio, Texas 78233
Applicant's Email	jeglasgow@yahoo.com	Owner's Email	6531 fox runSan Antonio, Texas 78233

## PROPERTY INFORMATION

Is the property adjacent to city limits  YES  NO

Is the property less than 1/2 mile in width  YES  NO

Are there less than 3 qualified voters living on the property  YES  NO

Proposed Use: Manufactured housing Proposed Zoning: MH and LI

Reason for Annexation / Other Considerations: \_\_\_\_\_

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee \$1,151      Technology Fee \$12      TOTAL COST \$1,163

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

**APPLY ONLINE – [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

PROPERTY OWNER AUTHORIZATION

I, James E Glasgow (owner) acknowledge that I am the rightful owner of the property located at 6531 Fox Run (address).

I hereby authorize \_\_\_\_\_ (agent name) to file this application for \_\_\_\_\_ (application type), and, if necessary, to work with the Responsible Official / Department on my behalf throughout the process.

Signature of Property Owner: Jim E Glasgow Date: 3/7/20  
Printed Name: Jim Glasgow

Signature of Agent: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

### OWNER'S CONSENT TO ANNEXATION OF LAND

**Date:** April 21, 2020

**City:** City of San Marcos, Texas, a home rule municipal corporation

**Owner:** PALACE WAY PARTNERS, LLC, 6531 Fox Run, San Antonio, Texas 78233

**Property:** 59.59 +/- acres out of the Thomas G. McGehee Survey, A-11, Hays County, Texas

---

Owner petitioned the City to initiate proceedings to annex the Property. Owner acknowledges and agrees that, in connection with annexation of the Property:

1. Owner does not wish to enter into a development agreement with the City under Section 212.172 and has declined the offer by the City of such a development agreement.
2. Unless specifically authorized by a written agreement with Owner approved by the City Council under applicable ordinances, the City has no obligation to extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property at the City's expense, and the City has made no offers, representations or promises that the City will, at the City's expense, extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property. Such extensions to the Property shall be made available in the same manner and on the same basis as available to other areas of the City, whereby it shall be Owner's sole obligation, and at Owner's sole expense, to construct and install all infrastructure necessary to extend such services to the Property under applicable ordinances.
3. Owner waives any and all rights of Owner to assert any claim or demand, or to file suit against, and covenants not to sue, the City on the basis that the annexation of the Property by the City is invalid, void or voidable, in whole or in part.
4. This instrument is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings concerning this instrument shall lie in State courts having jurisdiction located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.
5. If any word, phrase, clause, sentence, or paragraph of this instrument is held to be unconstitutional or invalid by a court of competent jurisdiction, the other

provisions of this instrument will continue in force if they can be given effect without the invalid portion.

**6.** This instrument may be recorded in the Official Public Records of the County or Counties in which the Property is located and is binding on Owner's successors, heirs and assigns, and any future owners of the Property.

[SIGNATURE(S) ON NEXT PAGE]



## DECLINATION OF OFFER OF DEVELOPMENT AGREEMENT

The attached Development Agreement was offered by the City of San Marcos to the owner of the property subject to the following application/petition (check one):

Out of City Utility Connection of Extension Application

Petition for Annexation (without OCU Request)

By signing below, the owner of the subject property declines the offer to enter into such Development Agreement.

### OWNER (Entity):

By: James E. Glasgow Jr - E. Glasgow

Name: Palace Way Partners LLC.

Title: MCA.

Date: 3/21/2020

**DEVELOPMENT AGREEMENT PURSUANT TO  
CHAPTERS 43 AND 212 OF THE TEXAS LOCAL GOVERNMENT CODE**

This Development Agreement (the “Agreement”) is entered into pursuant to Section 43.016 and 212.172 of the Texas Local Government Code (“LGC”) by and between the City of San Marcos, Texas (the “City”) and the undersigned property owner(s) (the “Owner”). The term “Owner” includes all owners of the Property.

**WHEREAS**, the Owner owns a parcel of real property (the “Property”) in \_\_\_\_\_ County, Texas which is more particularly and separately described in the attached Exhibit “A” which is made a part of this Agreement and incorporated herein; and

**WHEREAS**, the City desires to annex the Property; and

**WHEREAS**, the Owner desires to have the Property remain in the City’s extraterritorial jurisdiction (“ETJ”), in consideration for which the Owner agrees to enter into this Agreement; and

**WHEREAS**, this Agreement is entered into pursuant to Sections 43.016 and 212.172, LGC, in order to address the desires of the Owner and the procedures of the City; and

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**SECTION 1.** The City guarantees the continuation of the ETJ status of the Owner’s Property, its immunity from annexation by the City, and its immunity from City property taxes, for the term of this Agreement, subject to the provisions of this Agreement. Except as provided in this Agreement, the City agrees not to annex the Property, agrees not to institute proceedings to annex the Property, and further agrees not to include the Property in a statutory annexation plan for the term of this Agreement. However, if the Property is annexed pursuant to the terms of this Agreement, then the City shall provide services to the Property pursuant to the provisions of Chapter 43, LGC.

**SECTION 2.** The Owner covenants and agrees not to use the Property for any use other than for agriculture, wildlife management, and/or timber land consistent with Chapter 23, Texas Tax Code, except for existing single-family residential use of the Property without the prior written consent of the City.

The Owner covenants and agrees that it will not file for a concept plat, subdivision plat, or related development document for the Property with \_\_\_\_\_ County or the City until the Property has been annexed into, and zoned, or another development agreement has been entered into, by the City. This provision does not include permits for improvements, repairs, or utility connections to structures existing on the execution date of this Agreement.

The Owner covenants and agrees not to construct, or allow to be constructed, any buildings on the Property that would require a building permit if the Property were in the city limits, until the

Property has been annexed into, and zoned, or another development agreement has been entered into, by the City; however, the Owner may construct an accessory structure or addition to an existing structure that is consistent with the use of the Property for agriculture, wildlife management, and/or timber land or as an existing single-family residence provided that same is done in compliance with all applicable City ordinances and codes.

The Owner acknowledges that each and every owner of the Property must sign this Agreement in order for the Agreement to take full effect, and the Owner who signs this Agreement covenants and agrees, jointly and severally, to indemnify, hold harmless and defend the City against any and all legal claims, by any person claiming an ownership interest in the Property who has not signed the Agreement, arising in any way from the City's reliance on this Agreement.

**SECTION 3.** The Owner acknowledges that if any concept plat, subdivision plat, or related development document is filed in violation of this Agreement, or if the Owner commences development of the Property in violation of this Agreement, then in addition to the City's other remedies, such act will constitute a petition for voluntary annexation by the Owner, and the Property will be subject to annexation at the discretion of the City Council of the City. The Owner agrees that such annexation will be voluntary and the Owner hereby consents to such annexation as though a petition for such annexation had been tendered by the Owner.

Furthermore, Owner hereby waives any and all vested rights and claims that it may have under Section 43.002(a)(2) and Chapter 245, LGC, that would otherwise exist by virtue of any actions Owner has taken in violation of Section 2 herein.

**SECTION 4.** The City is authorized to enforce all of the City's regulations and planning authority that do not materially interfere with the use of the Property for agriculture, wildlife management, or timber, in the same manner the regulations are enforced within the City's boundaries. The City states and specifically reserves its authority pursuant to Chapter 251, LGC, to exercise eminent domain over property that is subject to a Chapter 43 and/or Chapter 212 development agreement.

**SECTION 5.** The term of this Agreement (the "Term") is fifteen (15) years from the date that the City Manager's signature to this Agreement is acknowledged by a notary public. The parties to this Agreement may renew or extend the Term only by mutual written agreement, subject to any other agreed terms and conditions.

This Agreement is deemed to be a petition for voluntary annexation upon the expiration of the Term and the Property will be subject to annexation at the discretion of the City Council of the City. Thus, without further consent or petition by the Owner, the City may initiate the process for voluntary annexation of the Property: a) before the end of the Term, to be effective after the last day of the Term; or b) at any time after the end of the Term. In connection with annexation pursuant to this section, the Owners hereby waive any vested rights they may have under Section 43.002(a)(2) and Chapter 245, LGC, that would otherwise exist by virtue of any plat or construction that any of the owners may initiate during the time between the expiration of this Agreement and the institution of annexation proceedings by the City.

**SECTION 6.** Property annexed pursuant to this Agreement will be zoned in accordance with the City's Code of Ordinances and applicable law.

**SECTION 7.** Owner recognizes that for purposes of Section 43.003(2), LGC, or another law, including the City's Charter or an ordinance of the City, the Property that is the subject of this Agreement is, for the purposes relating to the City's authority to annex an area adjacent to the City, considered adjacent or contiguous to the City.

**SECTION 8.** Any person who sells or conveys any portion of the Property shall, prior to such sale or conveyance, give written notice of this Agreement to the prospective purchaser or grantee, and shall give written notice of the sale or conveyance to the City. Furthermore, the Owner and the Owner's heirs, successors, and assigns shall give the City written notice within 14 days of any change in the agricultural exemption status of the Property. A copy of either notice required by this section shall be forwarded to the City at the following address:

City of San Marcos  
Attn: City Manager  
630 East Hopkins Street  
San Marcos, Texas 78666

With a copy to:

City of San Marcos  
Attn: Director of Planning  
630 East Hopkins Street  
San Marcos, Texas 78666

**SECTION 9.** This Agreement shall run with the Property and be recorded in the real property records of \_\_\_\_\_ County, Texas.

**SECTION 10.** If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable, including the covenants regarding voluntary annexation, then the remainder of this Agreement shall remain in full force and effect.

**SECTION 11.** This Agreement may be enforced by any Owner or the City by any proceeding at law or in equity. Failure by any Owner or the City to enforce any covenant shall in no event be deemed a waiver of the right to do so thereafter.

**SECTION 12.** No subsequent change in the law shall affect the validity or enforceability of this Agreement or the City's ability to annex the properties covered herein pursuant to the terms of this Agreement.

**SECTION 13.** This Agreement shall be construed in accordance with the laws of the state of Texas. Venue for any dispute or matter arising under this Agreement shall be in the state courts in \_\_\_\_\_ County, Texas, or if in federal court, the United States District Court for the Western District of Texas, Austin Division.

**SECTION 14.** This Agreement shall survive its termination to the extent necessary for the implementation of the provisions of Sections 3, 4 and 5 herein.

**SECTION 15.** This Agreement shall be recorded in the Official Public Records of the County in which the Property is located, and is binding upon the Owner's heirs, successors and assigns and future owners of the Property.

**SECTION 16.** This Agreement may be separately executed in any number of individual counterparts, and such counterpart signatures, when assembled together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** this Agreement shall become effective as of the date of the last properly authorized signature.

**[SIGNATURES ON NEXT PAGE]**

SAMPLE

**CITY OF SAN MARCOS, TEXAS:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Manger

**STATE OF TEXAS**                   §  
   §  
**COUNTY OF** \_\_\_\_\_       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by \_\_\_\_\_, City Manager of the City of San Marcos, in such capacity, on  
behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

SAMPLE

**OWNER (Individual):**

\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

SAMPLE



**EXHIBIT A**  
[ATTACH PROPERTY DESCRIPTION]

SAMPLE

## AGREEMENT FOR THE PROVISION OF SERVICES

(Pursuant to Tex. Local Gov't Code §43.0672)

**Date:** April 21, 2020

**Owner:** PALACE WAY PARTNERS, LLC, 6531 Fox Run, San Antonio, Texas 78233

**City:** City of San Marcos, Texas, a home rule municipal corporation, 630, East Hopkins Street, San Marcos, Texas 78666

**Property:** As described in Exhibit A.

---

1. The Owner has petitioned the City and the City has elected to annex the Property into the corporate limits of the City. Pursuant to Tex. Local Gov't Code §43.0672, the Owner and the City enter this agreement (the "Agreement") for the provision of services to the Property when annexed.

2. By this Agreement, the Owner affirms its consent to such annexation of the Property by the City and that Owner does not wish to enter into and has declined the offer from the City of a development agreement under Sections 43.016 and 212.172 of the Texas Local Government Code

3. In consideration of the mutual benefits to the Owner and the City arising from the annexation of the Property, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Owner and the City enter into this Agreement and agree that services to the Property will be provided as described in Exhibit B.

4. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in state courts located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

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

6. This Agreement shall be binding upon Owner, and Owner's heirs, successors and assigns, and all future owners of all or any portion of the Property.

7. This Agreement will become effective as of the date an ordinance annexing the Property is finally passed, approved and adopted by the City's city council (the Effective Date).

[SIGNATURES ON NEXT PAGE]

**CITY:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS           §

§

COUNTY OF HAYS       §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the City of San Marcos, in such capacity, on behalf of said municipality.

\_\_\_\_\_  
Notary Public, State of Texas

OWNER:  
PALACE WAY PARTNERS, LLC

By:

Name:

Title:

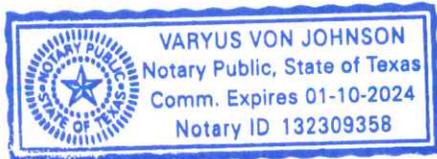
*James Glasgow*  
*JAMES glasgow*  
*mgr.*

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on 16 May, 2020 by James Glasgow, MANAGER of PALACE WAY LLC in such capacity on behalf of said entity.



*[Signature]*  
Notary Public, State of TEXAS

## EXHIBIT B

When the Property is annexed, services will be provided to the Property as follows:

### **1. Police Protection**

Police services, including patrolling, response to calls and other routine services, will begin on the Effective Date of the annexation using existing personnel and equipment.

### **2. Fire Protection**

Fire protection services, including emergency response calls, will begin on the Effective Date of the annexation using existing personnel and equipment and within the limitations of the available water supply.

### **3. Emergency Medical Services**

Emergency medical services, including emergency response calls, will continue at the same level of service after the annexation. The City of San Marcos contracts for emergency medical services through the San Marcos – Hays County EMS, which already provides service to the area being annexed.

### **4. Solid Waste Collection**

Solid waste collection services, provided under contract with a private company, will be made available to all properties on the Effective Date of the annexation. Residents of the Property may elect to continue using the services of a private solid waste hauler for a period of two years after the Effective Date of the annexation. Businesses and institutions must make arrangements with private solid waste haulers.

### **5. Operation and Maintenance of Water and Wastewater Facilities**

**a. Water.** The Property is located within the Maxwell Water Supply Corporation Certificate of Convenience and Necessity (CCN) for water service, thus, the City is not providing water service to the Property. The Owner is solely responsible for the cost to construct and extend all infrastructure, facilities, and lines necessary to serve the Property.

**b. Wastewater.** The Property is not covered by a CCN for wastewater service, however, the City of San Marcos has wastewater lines near the Property and agrees to make wastewater service available to the Property on the Effective Date of the annexation on the same basis as available to other owners of property in the City, i.e., the Owner is solely responsible for the cost to construct and extend all infrastructure, facilities, and lines necessary to serve the Property. In addition, the City is in the process of adding the Property as an area covered by the City's CCN for wastewater service.

### **6. Construction, Operation and Maintenance of Roads and Streets**

As new development occurs within the Property, the Owner(s) of Property will be required to construct streets at the Owner's sole expense in accordance with applicable ordinances of the City.

### **7. Electric Service**

The Property is located in the Pedernales Electric service area. Thus, the City will not provide electric service to the Property.

### **8. Operation and Maintenance of Parks, Playgrounds, and/or Swimming Pools**

No parks, playgrounds, and/or swimming pools currently exist within the Property. The same standards and policies now established and in force within the city limits will be followed in maintaining and expanding recreational facilities to serve the Property. Upon annexation, the owners and residents of property located within the Property shall be entitled to the use of all municipal parks and recreational facilities, subject to the same restrictions, fees, and availability that pertains to the use of those facilities by other citizens of the city.

### **9. Operation and Maintenance of Other Public Facilities, Buildings, and Services**

No other public facilities, buildings, or services currently exist within the Property. The same standards and policies now established and in force within the city limits will be followed in maintaining and expanding other public facilities, building, and services. Upon annexation, the owners and residents of property located within the Property shall be entitled to the use of all municipal facilities, buildings, and services, subject to the same restrictions, fees, and availability that pertains to the use of those facilities and services by other citizens of the city.



TRINITY GROUP

*A Real Estate Development Service Company*

## Metes & Bonds description of property to be Annexed into The City of San Marcos

STATE OF TEXAS - CITY OF SAN MARCOS

Palaceway Partners LLC presents a tract of land situated in the Thomas G. McGehee survey, A-11, Hays County, Texas, conveyed in volume 723 page 39, Plat record 7042-19-2-c; Hays County, TX. Same being a tract of land described to Palace Way Partners as conveyed in Instrument number 9927062, official public records, Hays County, Texas. Being more particularly described as 59.89 acres by the following metes and bounds as follows: Grid north of the Texas state plane coordinate system, NAD 83, South central zone.

Beginning at 1/2" Iron rod with plastic cap found at the southeast corner said POB-R same being southeast of Mrs. Millie Gary Et Vir to the State of Texas recorded in the public records Volume 117, Page 493. Hays County, Texas. And lying on the north Right of Way of the State Highway Number 21.

THENCE, South 45 degrees, 26 minutes and 48.34 seconds East, being said West Right-of-Way of State Highway Number 21. Drive a distance of 112.33 feet towards East Right-of-Way of State Highway Number 21.

THENCE, North 50 degrees, 04 minutes and 54.11 seconds East, being said East Right-of-Way of State Highway Number 21. Drive a distance of 118.08 feet, same being the Right-of-Way limit of State Highway Number 21.

THENCE, North 45 degrees, 26 minutes and 48.34 seconds West, being said East Right-of-Way of State Highway Number 21. Drive a distance of 111.50 feet towards 1/2" Iron rod of said Palace way Property Line, same being West side of said Right-of-Way of State Highway Number 21.

THENCE, North 45 degrees, 25 minutes and 53.13 seconds West, parallel with the adjacent gravel road said Cow Trail, drive a distance of 1,530.10 feet towards 1/2" " Iron rod with a plastic cap.

THENCE, North 46 degrees, 12 minutes and 8.40 seconds East, towards the adjacent gravel road said Cow Trail, drive a distance of 175.99 feet towards 1/2" " Iron rod. Same lying on the lefthand right of way of Cow Trial.

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, with the west right of way of said Cow Trial. Drive a distance of 886.52 feet. Same being the southwest corner of the Industrial lot.

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, of the East side of the property and limiting with Right of way of Cow Trial. Drive a distance of 670.34 feet towards 1/2" Iron rod with plastic cap stamped "Byrn Associates", same being the Northeast corner of the Parcel.

THENCE, North 46 degrees, 39 minutes and 26.79 seconds West, of the northeast corner of the property Drive a distance of 1,088.94 feet towards 1/2" Iron rod with plastic cap located on the West side of the property and limiting with Right of way of Proposed FM110.

THENCE, South 32 degrees, 35 minutes and 25.70 seconds West, of 1/2" Iron rod with plastic cap located on the northwest side of the property. Drive a distance of 25.54 feet towards 1/2" Iron rod with a plastic cap.

THENCE, South 39 degrees, 38 minutes and 23.78 seconds West, of 1/2" Iron rod with plastic cap located on the northwest side of the property. Drive a distance of 199.92 feet towards 1/2" Iron rod with a plastic cap.

THENCE, South 45 degrees, 21 minutes and 22.62 seconds West, Drive a distance of 251.79 feet towards 1/2" Iron rod with a plastic cap.

THENCE, South 38 degrees, 05 minutes and 05.46 seconds West, drive a distance of 483.82 feet to 1/2" Iron rod with plastic cap stamped "Byrn Associates". lying on the east right of way of the Proposed FM 110 Thoroughfare.

THENCE, South 34 degrees, 57 minutes and 58.46 seconds West, drive a distance of 483.82 feet to 1/2" Iron rod with a plastic cap. Same being southwest of Abundant Life Christian Church to Hays County recorded in the public records Volume 5158, Page 87. Public records, Hays County, Texas, and the southwest corner of the proposed property.

THENCE, South 46 degrees, 29 minutes and 03.48 seconds East, being southwest of Abundant Life Christian Church to Hays County recorded in the public records; Volume 5158, Page 87. Public records, Hays County, Texas, and the southwest corner of the proposed property. Drive a distance of 2104.26 feet to 1/2" Iron rod with plastic cap stamped "Byrn Associates".

THENCE, South 45 degrees, 26 minutes and 48.34 seconds East, being part of the edge of road of Dukes road (proposed). Drive a distance of 1,420.16' towards POB-R, same being the west Right of Way of State Highway Number 21.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That Trinity Group, an agent for Palaceway partners, does hereby present this Proposed Annexation description of the above-described property as PALACEWAY DEVELOPMENT, an addition to the City of San Marcos, Texas.

Dr. David L. Joyner, P.E  
*TX Firm 12656*

*TRINITY GROUP*

PAGE 3 OF 3

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*A Real Estate Development Service Company*

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In Austin 512.807.7310 • Eagle Ford 830.303.3283  
Houston 713.574.1949 • San Antonio 210.209.9976  
[www.trinitycompanies.biz](http://www.trinitycompanies.biz)



## Legislation Text

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**File #:** Ord. 2020-35(b), **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-35, on the second of two readings, amending the Official Zoning Map of the City by rezoning approximately 14.90 acres of land located at 4087 State Highway 21, from "FD" Future Development District to "LI" Light Industrial District; and including procedural provisions.

**Meeting date:** June 2, 2020

**Department:** Planning and Development Services

**Amount & Source of Funding**

**Funds Required:** n/a

**Account Number:** n/a

**Funds Available:** n/a

**Account Name:** n/a

**Fiscal Note:**

**Prior Council Action:** n/a

**City Council Strategic Initiative:**

N/A

**Comprehensive Plan Element (s):**

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Direct Growth, Compatible with Surrounding Uses
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Safe, Well coordinated transportation system implemented in an environmentally sensitive manner
- Core Services
- Not Applicable

**Master Plan:**

Vision San Marcos - A River Runs Through Us

**Background Information:**

The subject property is currently located outside the City Limits in the Extraterritorial Jurisdiction (ETJ). The property is currently vacant and is adjacent to existing single family and rural/agricultural property as well as adjacent to the Harris Hill Race Track. In addition, FM 110 is proposed to be located to the north of the property. The subject property has already dedicated right-of-way in order to provide for the future construction of FM 110.

The purpose of this zoning change to "Light Industrial" zoning is to allow the development of a 14 acre industrial warehouse project. According to the applicant, the project is designed for small businesses needing 4,000 to 10,000 square foot warehouse buildings on ½ acres lots for lease. The subject property is proposed to be subdivided into 20 ½ acre lots.

The applicant is also requesting a rezoning to Manufactured Home, "MH" for approximately 45 acres abutting the subject property to the west. This request is being considered as part of a separate zoning request (ZC-20-08). Both zoning requests are being processed concurrently with an annexation request for the property.

The City of San Marcos will provide wastewater services at the site and the Maxwell Water Supply Corporation will provide water service. The developer will be responsible for extending water and wastewater facilities through the site. Pedernales Electric Service will provide electric service.

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

**Planning and Zoning Commission Meeting: April 28, 2020**

**Speakers in favor or opposed:**

1. (1) David Joyner (in favor)
2. (1) Paul Hennington (in opposition)

**Recommendation from the Planning and Zoning Commission meeting held April 28, 2020:**

A motion was made by Commissioner Haverland, seconded by Commissioner McCarty, to approve ZC-20-07. The motion carried 8-0.

- **For:** (8) Chairperson Gleason, Commissioner Rand, Commissioner McCarty, Commissioner Haverland, Commissioner Dillon, Commissioner Moore, Commissioner Agnew, Commissioner Spell.
- **Against:** 0
- **Absent:** (1) Vice Chairperson Kelsey

**Alternatives:**

n/a

**Recommendation:**

The Development Code states that a request for Light Industrial zoning in an Area of Stability - Low Intensity designation is "Not Preferred" and requires additional scrutiny as outlined in the staff report. The proposed zoning change to Light Industrial is not compatible with surrounding existing uses such as rural residential and agricultural land, however, the subject property's location abutting the proposed FM 110 San Marcos eastern loop may provide justification for support as it meets the intent of an "Employment Corridor" identified on the Preferred Scenario Map. FM 110 is identified as a major transportation network and will be initially funded by a Transportation Reinvestment Zone (TRZ) to capture a portion of the increased value of development occurring along the alignment.

Due to the varying factors regarding current and future land configurations around the subject property, staff is providing a **neutral recommendation** and leaves a decision of approval, denial, or a recommendation of a lesser zoning district up to the City Council.

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY REZONING APPROXIMATELY 14.90 ACRES OF LAND LOCATED AT 4087 STATE HIGHWAY 21 FROM “FD” FUTURE DEVELOPMENT DISTRICT TO “LI” LIGHT INDUSTRIAL DISTRICT; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

1. On April 28, 2020, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “FD” Future Development District to “LI” Light Industrial District for approximately 14.90 acres of land located at 4087 State Highway 21.
2. The Planning and Zoning Commission voted to recommend that the request be approved by the City Council.
3. The City Council held a public hearing on May 19, 2020 regarding the request.
4. All requirements pertaining to Zoning Map amendments have been met.
5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

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

**SECTION 1.** The Official Zoning Map of the City is amended to rezone the tract of land described in Exhibit A, attached hereto and made a part hereof, from “FD” Future Development District to “LI” Light Industrial District.

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

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

**SECTION 4.** This ordinance will take effect after its passage, approval and adoption on second reading.

**PASSED AND APPROVED** on first reading on May 19, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney

## EXHIBIT A



### INDUSTRIAL ZONING

#### STATE OF TEXAS - CITY OF SAN MARCOS

WHEREAS, Palaceway Partners LLC owns a 59.89ac tract of land situated in the Thomas G. McGehee survey, A-11, Hays County, Texas. Conveyed in volume 723 page 39, Plat record 7042-19-2-c; Hays County, TX. Same being a tract of land described to Trinity Group as conveyed in Instrument number 9927062, official public records, Hays County, Texas. And being more particularly described by metes and bounds as follows: Grid north of the Texas state plane coordinate system, NAD 83, South central zone.

The proposed development divides the existing property into two plats for different zoning purposes. This industrial portion being 14.90 acres.

Beginning at 1/2" Iron rod with plastic cap found at north center of the property line said POB-I

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, of the East side of the property and limiting with Right of way of Cow Trial. Drive a distance of 670.34 feet towards 1/2" Iron rod with plastic cap being the southeast corner of the industrial zone.

THENCE, North 46 degrees, 39 minutes and 26.79 seconds West, of the northeast corner of the property. Drive a distance of 1,088.94 feet towards 1/2" Iron rod with plastic cap located on the East side of the property and limiting with Right of way of Cow Trial

THENCE, South 32 degrees, 35 minutes and 25.70 seconds West, of 1/2" Iron rod with plastic cap located on the northeast side of the property. Drive a distance of 25.54 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 39 degrees, 38 minutes and 23.78 seconds West, of 1/2" Iron rod with plastic cap located on the northeast side of the property. Drive a distance of 199.92 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 45 degrees, 21 minutes and 22.62 seconds West, Drive a distance of 251.79 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 38 degrees, 05 minutes and 05.46 seconds West, Drive a distance of 40.23 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 53 degrees, 02 minutes and 00.38 seconds East, Drive a distance of 224.38 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 46 degrees, 32 minutes and 33.95 seconds East, Drive a distance of 1,220.67 feet towards 1/2" Iron rod with plastic cap, same being the Point of Beginning POB-I.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, TRINITY GROUP, does hereby presents this Proposed Plat for zoning designation for the above described property as PALACE WAY DEVELOPMENT, an addition to the City of San Marcos, Texas. Said utility easements being hereby reserved for the mutual use and accommodation of all public utilities using or desiring to use same.



Dr. David L. Joyner, P.E.  
TX Firm 12656



*April 28, 2020*

TRINITY GROUP

A Real Estate Development Service Company

PAGE 2 OF 2

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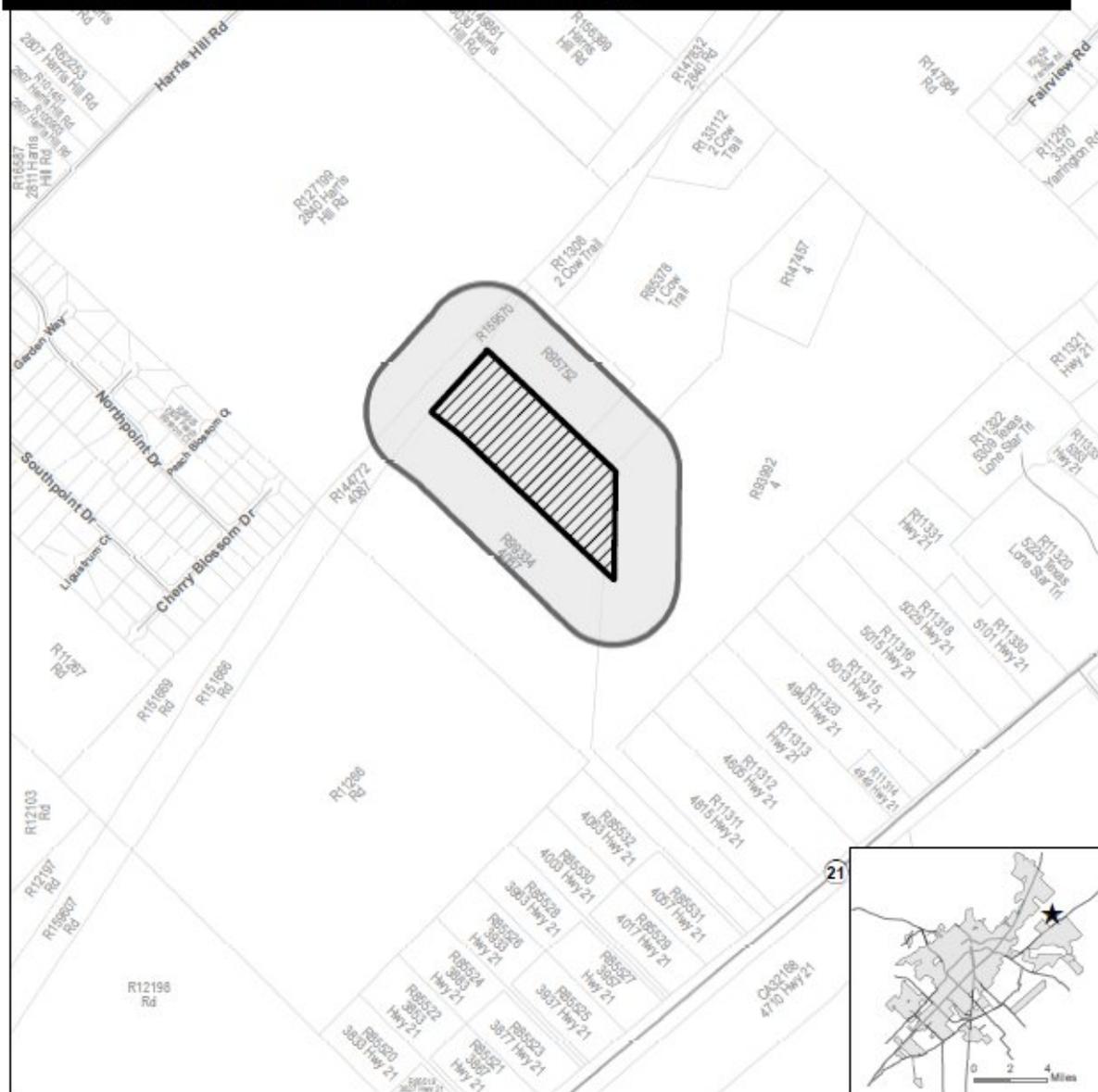
## ZC-20-07 (Palace Way LI)

Receive a Staff Presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-XX, amending the Official Zoning Map of the City by rezoning approximately 14.90 acres, more or less, out of the Thomas G. McGehee Survey, Abstract No. 11, Hays County, located at 4087 Hwy 21, from “FD” Future Development District to “LI” Light Industrial District; and including procedural provisions; and consider approval of Ordinance 2020-XX on the first of two readings.

## Location:

- Approximately 14.90 acres
- **Current Configuration:**  
Vacant / Agricultural land
- Surrounding uses include:
  - Single-family / rural (ETJ)
  - Agricultural
  - Harris Hill Race Track / proposed FM 110
- Located outside the City Limits (Extraterritorial Jurisdiction)

## ZC-20-07 400' Notification Buffer Palace Way LI Zoning — 4087 Hwy 21



- ★ Site Location
- ▨ Subject Property
- 400' Buffer
- Parcel
- City Limit

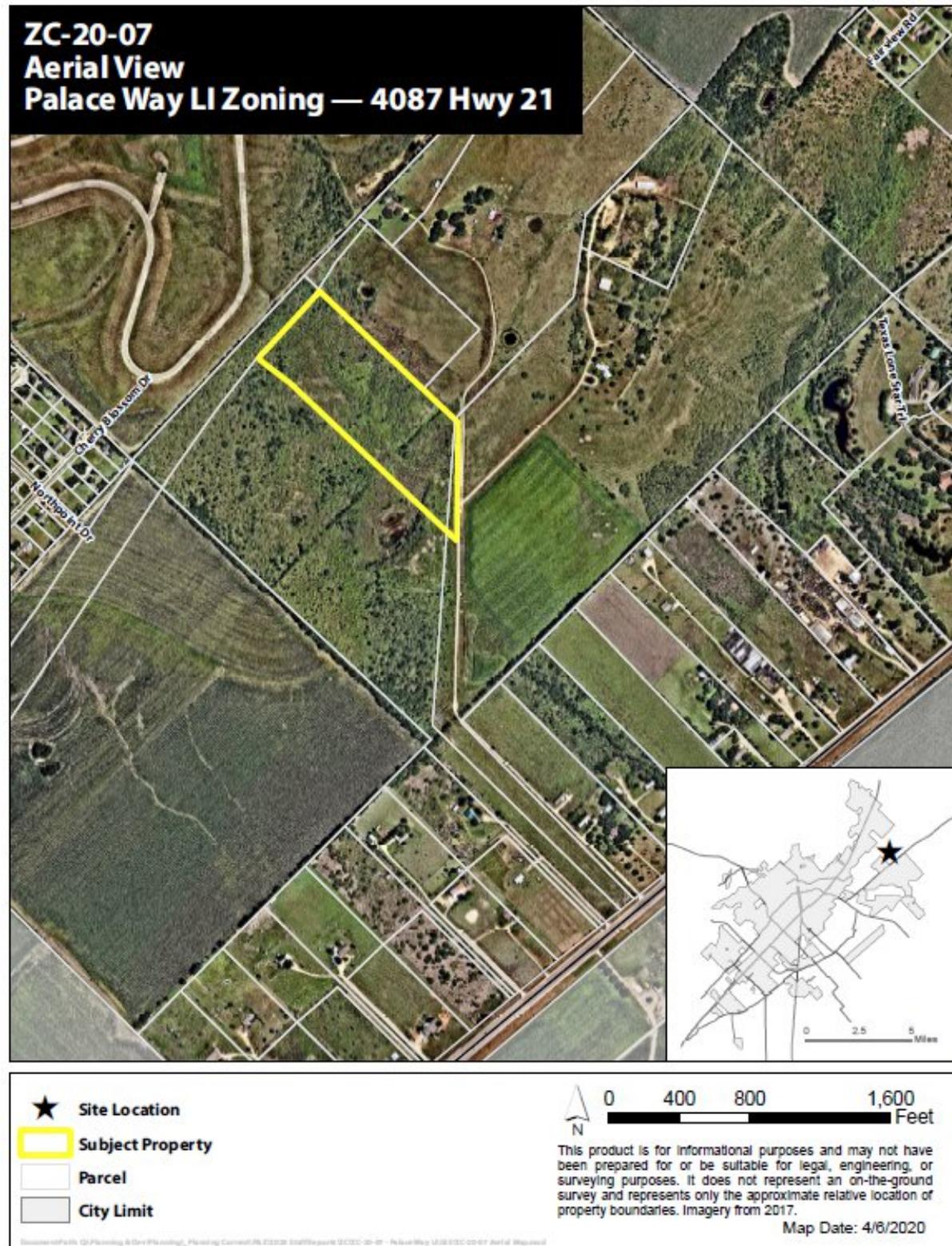


This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

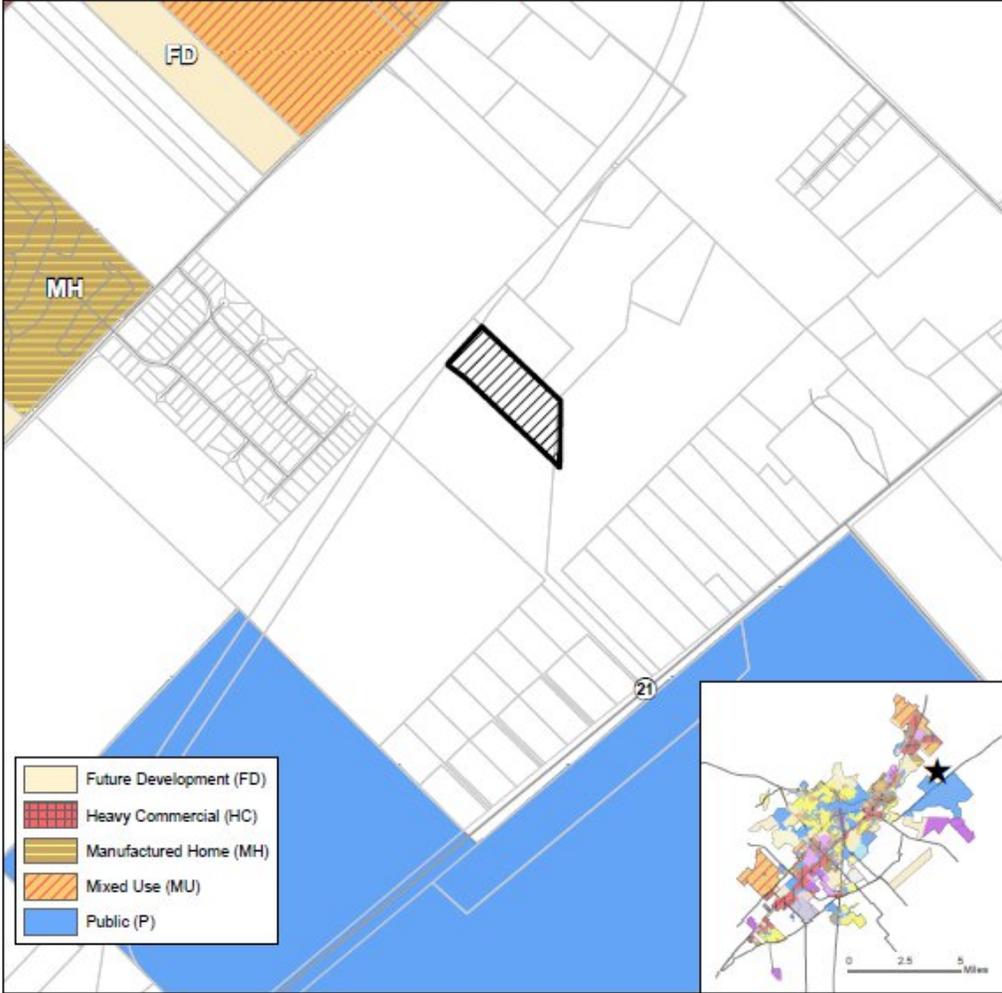
Map Date: 4/7/2020

## Context & History

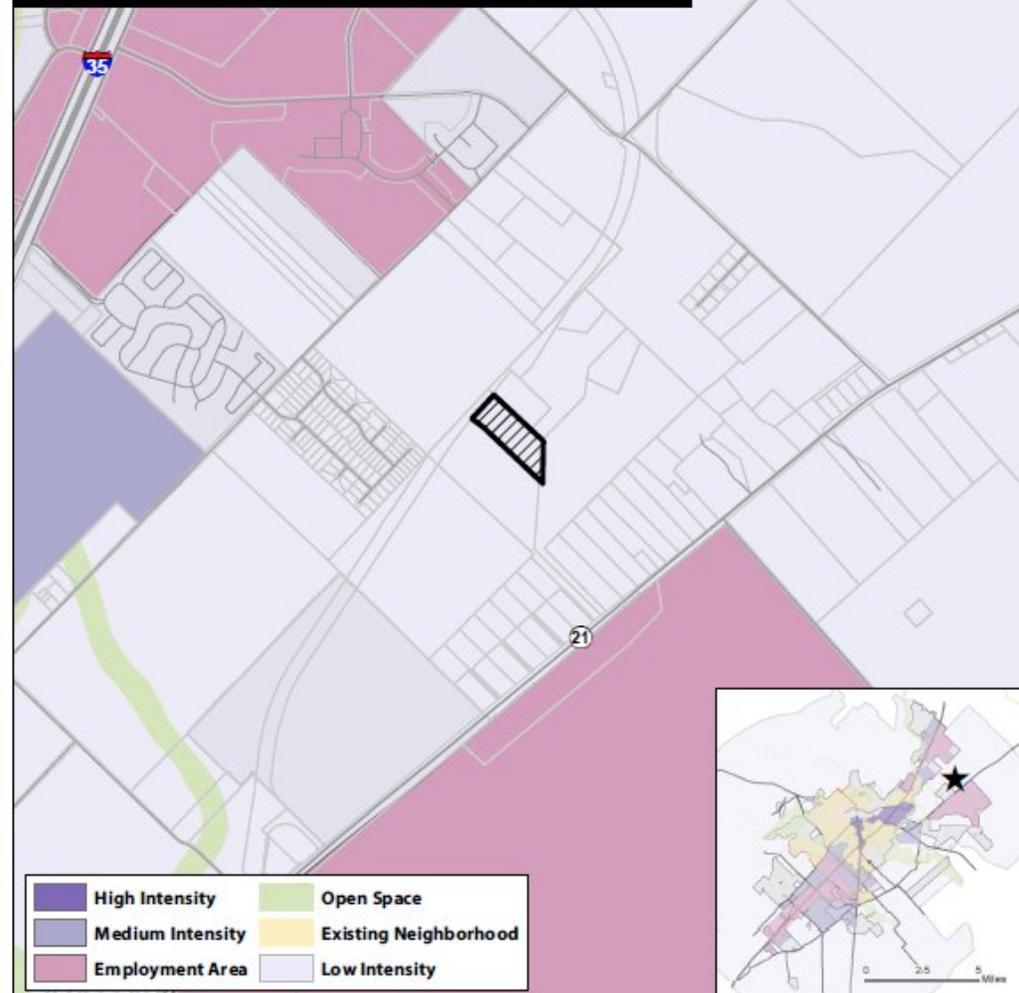
- **Existing Zoning:** Outside City Limits (ETJ)
- **Proposed Zoning:** Light Industrial (LI)
- Proposed LI zoning allows for primarily industrial uses with some agricultural, public/institutional, and commercial uses
- Applicant is currently proposing a warehouse project.
- Annexation request is being processed concurrently for property located outside City Limits



## ZC-20-07 Zoning Map Palace Way LI Zoning — 4087 Hwy 21



## ZC-20-07 Preferred Scenario Palace Way LI Zoning — 4087 Hwy 21



- Site Location
- Subject Property
- Parcels
- City Limit



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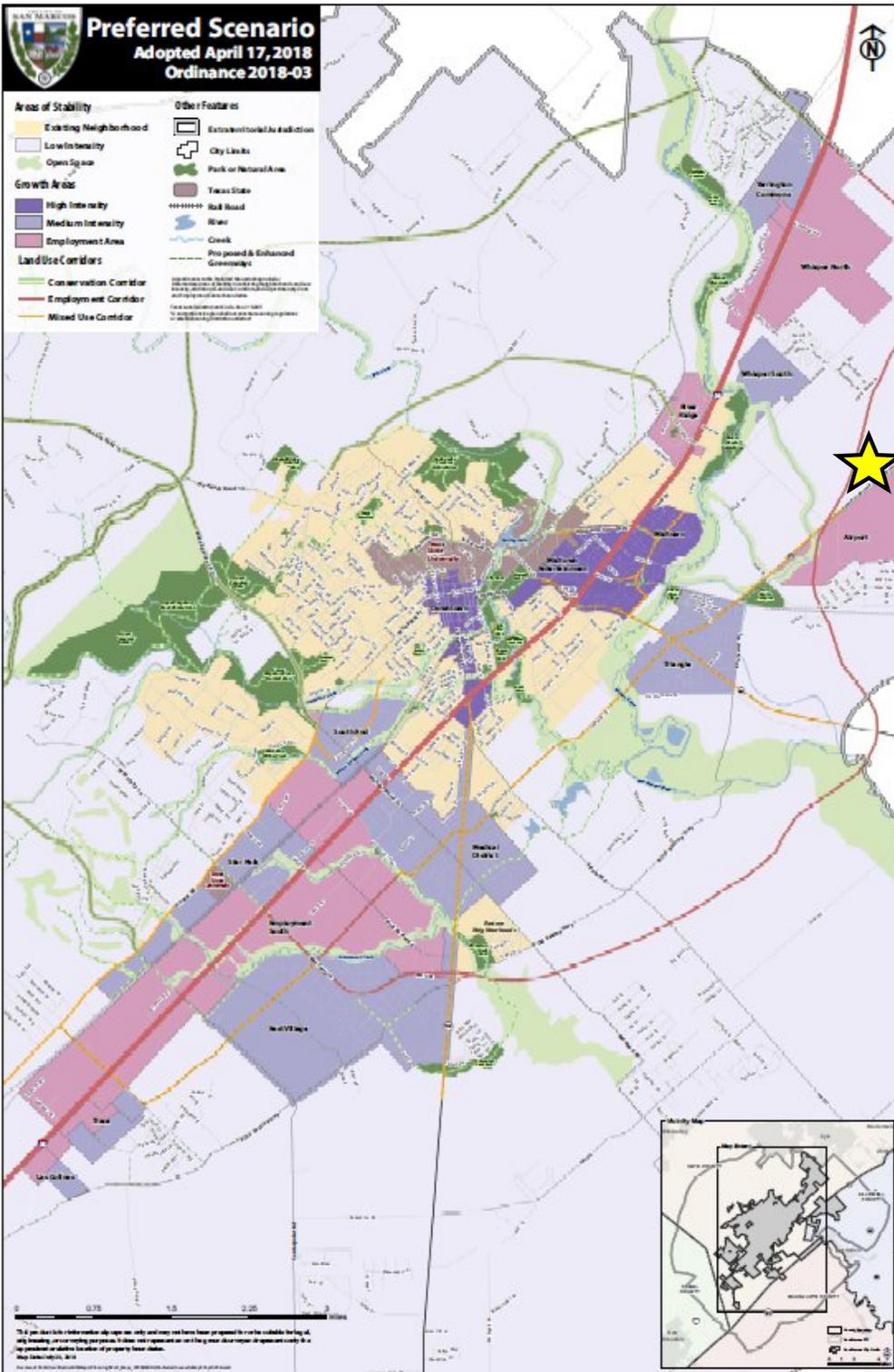
Map Date: 4/6/2020

- Site Location
- Subject Property
- Parcels
- City Limit



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Map Date: 4/6/2020



# Comprehensive Plan Analysis

**Step 1:** Where is the property located on the Comprehensive Plan?

**Located in an Area of Stability – Low Intensity**

“Being located in an area of stability does not mean that these areas should or will not change. It means that any changes, whether new developments, zoning requests, or public improvements, should be carefully planned and implemented so that the character of the area remains.”  
(Comprehensive Plan, pg. 77)

# Comprehensive Plan Analysis

**Step 2:** Is the request consistent with the Comprehensive Plan / District Translation Table?

Applicant is requesting a “Special District” (Light Industrial zoning) within a Area of Stability – Low Intensity.

**TABLE 4.1 COMPREHENSIVE PLAN / DISTRICT TRANSLATION**

DISTRICT CLASSIFICATION	COMPREHENSIVE PLAN DESIGNATIONS					
	OPEN SPACE/ AGRICULTURAL	LOW INTENSITY	EXISTING NEIGHBORHOOD	MEDIUM OR HIGH INTENSITY ZONE	EMPLOYMENT CENTER	CORRIDOR
Conventional Residential	NP	NP	C	--	--	--
Neighborhood Density Districts	NP	NP	See Section 4.1.2.4 - 4.1.2.5	NP	NP	C
Character Districts	NP	C	--	C	NP	C
Special Districts	--	NP	NP	NP	C	C
Legend	-- = Not Allowed (PSA Required)		NP = Not Preferred		C = Consider	

# LI Zoning Analysis:

- LI zoning is intended to “accommodate manufacturing and light industrial uses in order to promote economic vitality, encourage employment growth, and limit the encroachment of non-industrial development within established industrial areas. Development should be operated in a relatively quiet manner, and should not be obnoxious to nearby residential or commercial areas.”
- **Allowable Building Types:** *General Commercial, Civic Building*
- Surrounding area is not comprised of industrial uses and is primarily single-family, rural, and agricultural uses along with an outdoor entertainment use at the Harris Hill Race Track.
- The city does not have zoning authority to regulate the use of surrounding property located outside the city limits.

LI

SECTION 4.4.5.3 LIGHT INDUSTRIAL

The diagram illustrates a rectangular lot with a central grey building footprint. A dashed black line indicates setbacks from the lot boundaries. A red dashed line represents the property line (ROW). A green circle labeled 'A' is positioned near the bottom-left corner of the lot, indicating metrics on this and facing pages. The lot is divided into 'PRIMARY' and 'SECONDARY' zones by a red dashed line.

**KEY**

- - - Property Line (ROW)
- A Metrics on This and Facing Page
- Setbacks
- Building Footprint

**DISTRICT INTENT STATEMENTS**

LI is intended to accommodate manufacturing and light industrial uses in order to promote economic viability, encourage employment growth, and limit the encroachment of non-industrial development within established industrial areas. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.

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**DENSITY**

Impervious Cover	80% max.
------------------	----------

**TRANSPORTATION**

Block Perimeter	5,000 ft. max.	Section 3.6.2.1
Streetscape Type	Conventional	Section 3.8.1.7

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**BUILDING TYPES ALLOWED**

General Commercial	Section 4.4.6.13
Civic Building	Section 4.4.6.15

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**BUILDING STANDARDS**

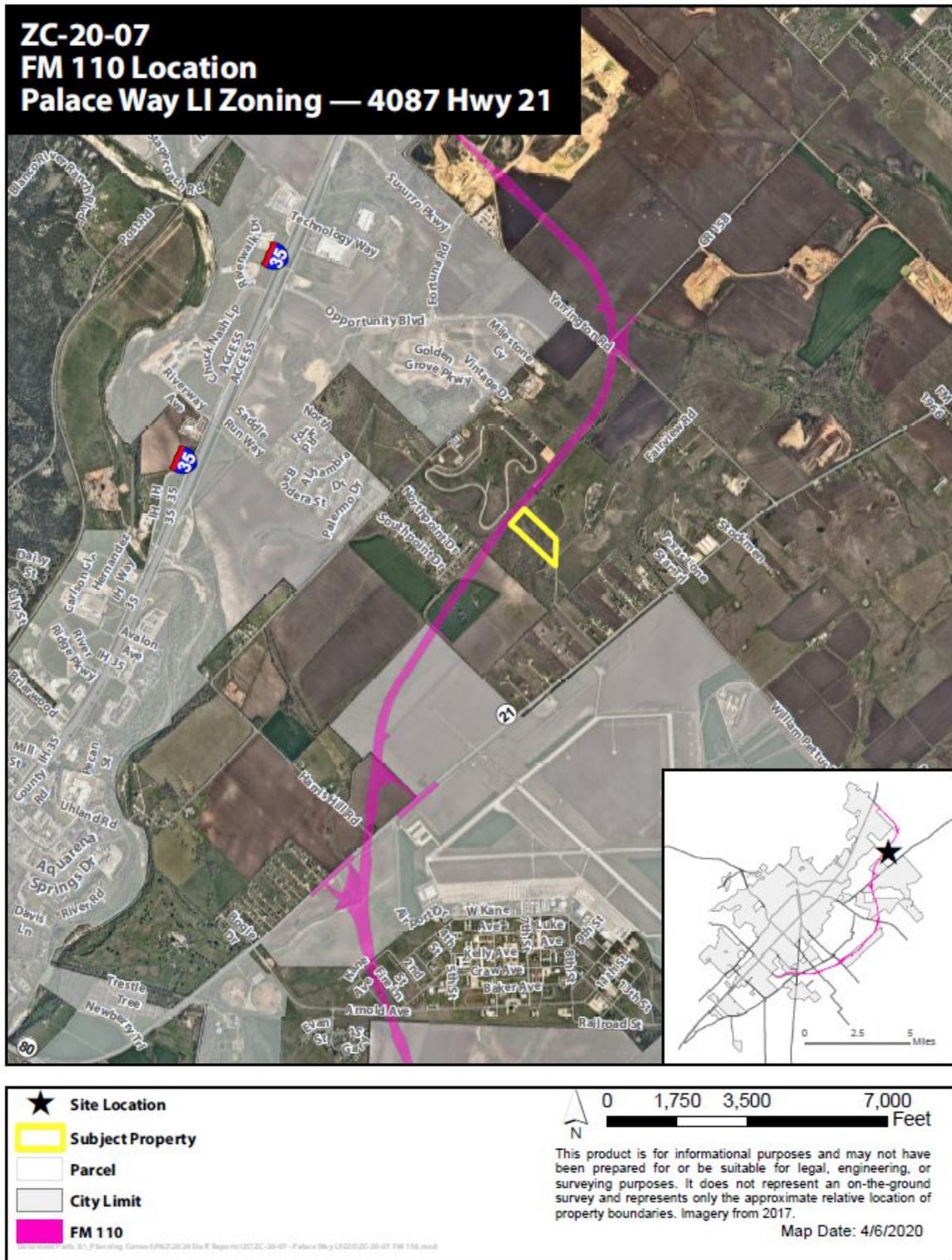
Principle Building Height	4 stories max.	62 ft. max.
Accessory Structure Height	N/A	24 ft. max.

## Proposed FM 110

- Hays County / San Marcos / TxDOT
- East loop includes two travel lanes with potential of four lanes
- **Funding:** Transportation Reinvestment Zones (TRZs) which captures a portion of the increased value of development along the alignment

## Preferred Scenario Employment Corridor

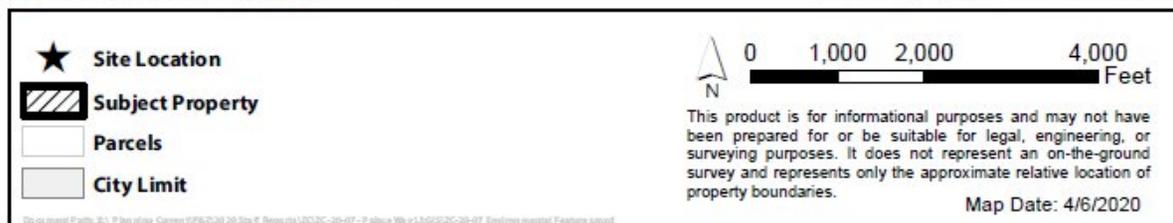
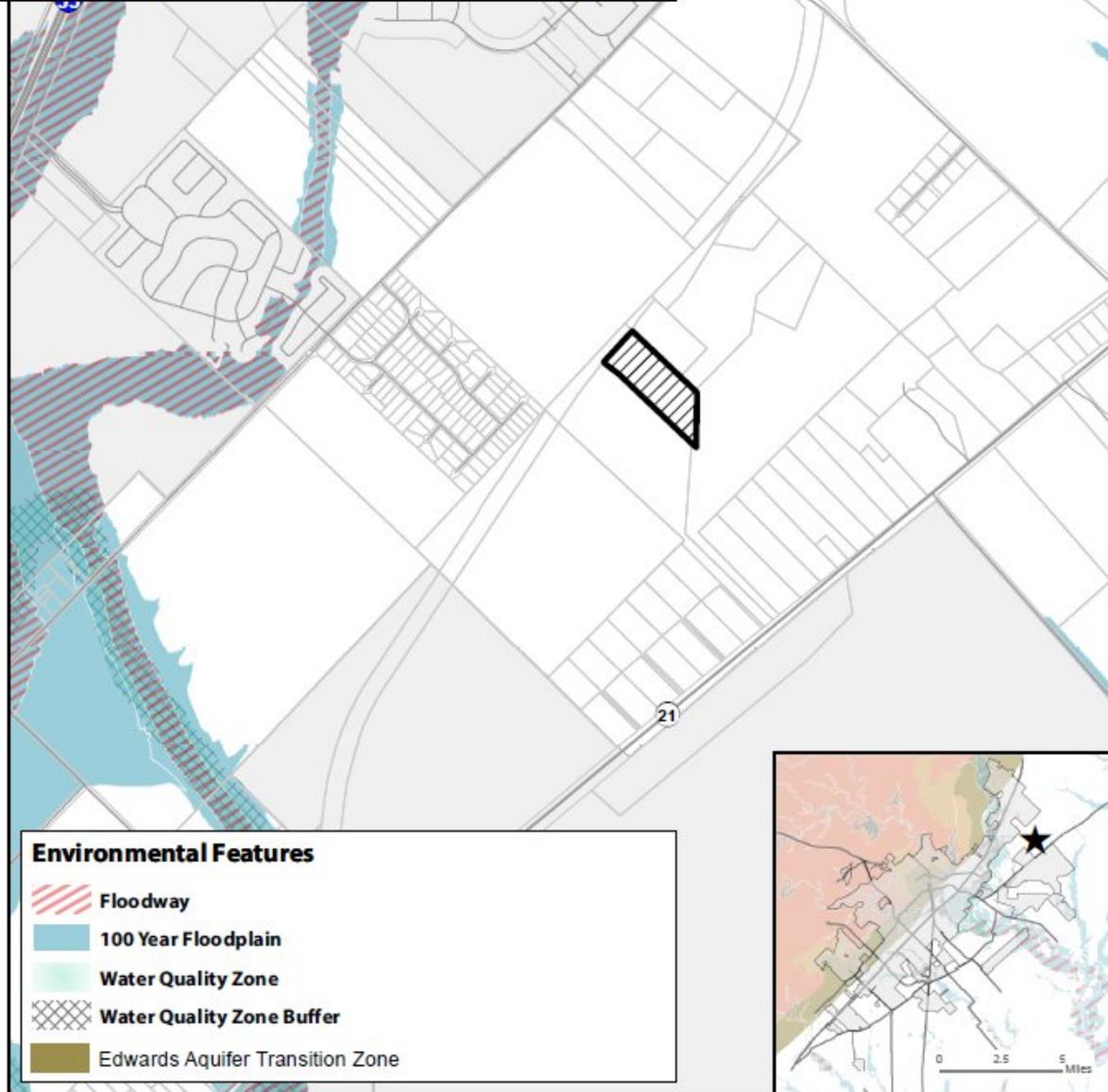
- **Employment Corridors:** “intended to serve major employment related land uses. Some mixture in uses including limited residential and supportive pedestrian and bicycle facilities should be incorporated.”
- FM 110 abuts the subject property and may attract a diversity of uses seeking access and development along the roadway.



## Environmental Analysis

- Located in a low to moderately constrained area on the Land Use Suitability map
- Not located in floodplain
- Watershed Protection Plan Phase 2
  - Detention
  - Drainage
  - Environmental Reports

### ZC-20-07 Environmental Features Palace Way LI Zoning — 4087 Hwy 21



## Additional Requirements

### • Street Requirements

- Transportation Master Plan
- Block perimeter requirements (5,000 feet)
- Bike facility requirements
- Sidewalk connections
- Traffic Impact Analysis (TIA)

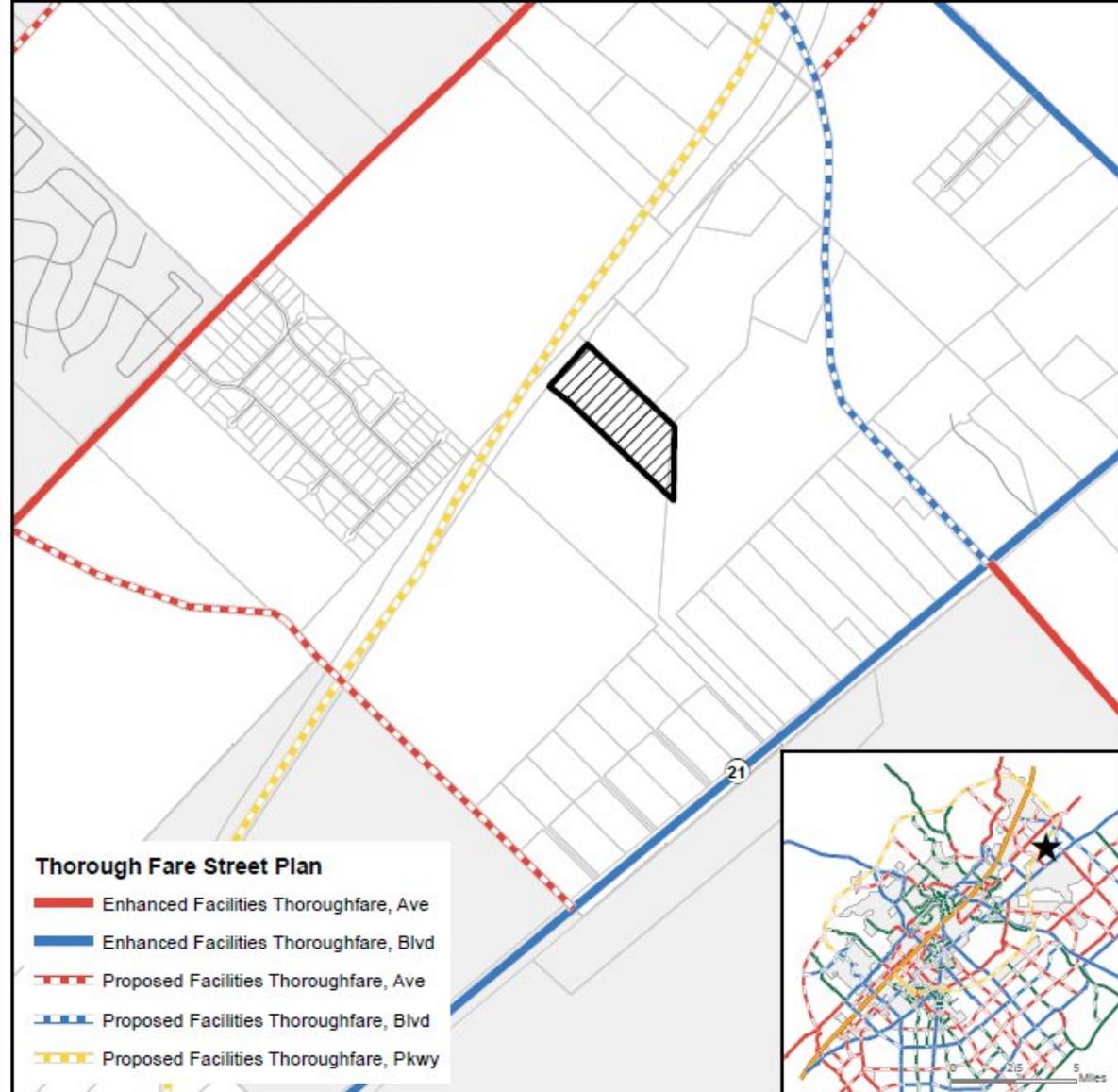
### • Subdivision Requirements

- Subdivision plat in accordance with lot and block standards

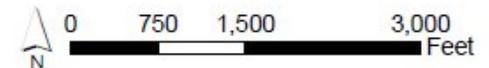
### • Utility Requirements

- Extension of water and wastewater facilities in accordance with City standards

## ZC-20-07 Transportation Master Plan Palace Way LI Zoning — 4087 Hwy 21



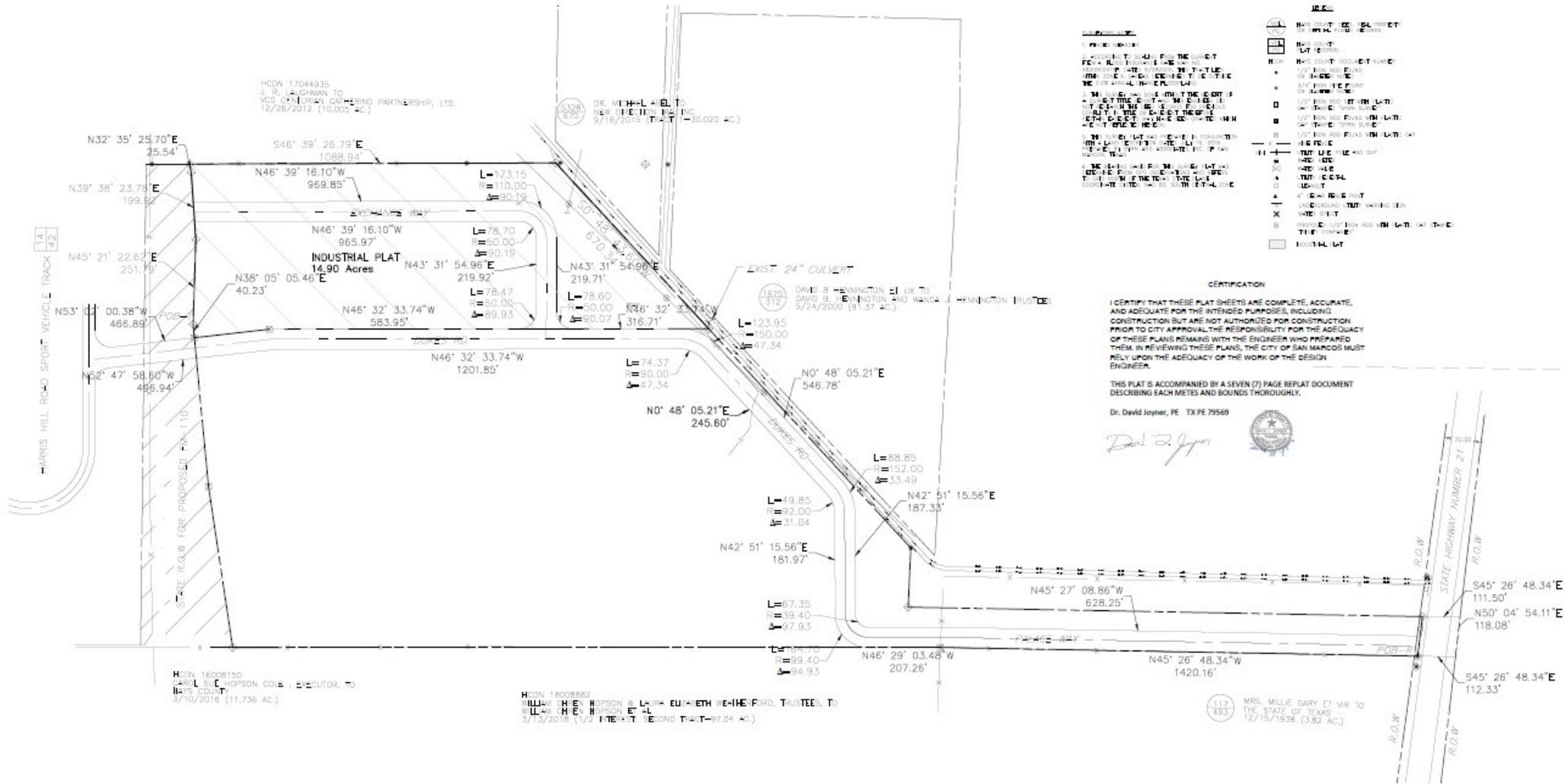
- ★ Site Location
- ▨ Subject Property
- Parcels
- City Limit



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Map Date: 4/6/2020

# Proposed Plat (not approved)



CENTRAL

**PUBLIC NOTICE**

40+ ACRE FARM HOUSE  
AMAZING VIEWS / ROLLING HAY FIELDS  
3 PONDS / GREAT TREES  
512-656-5544 / 512-657-1731

Public Hearing Notice Case: ZC-20-07  
Meeting Date: 4/28/20  
5/19/20  
FD LI

Public Hearing Notice Case: ZC-20-08  
Meeting Date: 4/28/20  
5/19/20  
FDMH

## Additional Analysis

- **Compatibility:** Light Industrial is not compatible with surrounding existing uses such as rural residential and agricultural land, however, the future FM 110 adjacent to the property will most likely attract a diverse array of uses.
- **Preferred Scenario:** “Light Industrial” is designated as “NP” Not Preferred within an “Area of Stability – Low Intensity” designation on the Preferred Scenario Map.
  - Alternatively, “Light Industrial” is to be “C” Considered in an Employment Area on the Preferred Scenario Map. While the subject property is not located in an “Employment Area”, it is located between two existing areas, Whisper development and the Municipal Airport.
- **FM 110:** The property is located along the proposed FM 110, which is designated as an “Employment Corridor” on the Preferred Scenario Map.
  - FM 110 is identified as a major transportation network and will be initially funded by a Transportation Reinvestment Zone (TRZ) to capture a portion of the increased value of development occurring along the alignment.



## Staff Recommendation:

At their April 28, 2020 Meeting, the Planning and Zoning Commission recommended approval of the zoning change with a 8-0 vote.

The Development Code states that a request for Light Industrial zoning in an Area of Stability – Low Intensity designation is “Not Preferred” and requires additional scrutiny as outlined in the staff report.

Due to the varying factors regarding current and future land configurations around the subject property, staff is providing a **neutral recommendation** and leaves a decision of approval or denial of the request up to the City Council.

# Zoning District Comparison Chart

Topic	Existing Zoning: Future Development (FD)	Proposed Zoning: Light Industrial (LI)
Zoning Description	The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.	Light Industrial is intended to accommodate manufacturing and light industrial uses in order to promote economic viability, encourage employment growth, and limit the encroachment of non-industrial development within established industrial areas. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.
Uses	Primarily agricultural, residential, and public/institutional (See Land Use Matrix)	Primarily Industrial with some commercial and public/institutional (See Land Use Matrix)
Parking Location	No location standards	No location standards
Parking Standards	Depends on use	Depends on use. For example, warehouse and distribution uses require 1 space for each 2,000 square feet of gross floor area excluding office space, which shall be calculated separately depending on office use.
Max Residential Units per acre	0.4 units per acre (max)	Residential uses are not allowed
Occupancy Restrictions	N/A	N/A
Landscaping	Tree and shrub requirements	Tree and shrub requirements
Building Height (max)	2 stories (40 feet)	4 stories (62 feet)
Setbacks	50' minimum front; 20' min side; minimum rear setback is 20% of total lot depth	20' minimum front, side, and rear
Impervious Cover (max)	30%	80%
Lot Sizes	Allows a variety of lot sizes depending on Building Type.	Allows a variety of lot sizes depending on Building Type.
Streetscapes	Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area between sidewalk and street required.	Conventional Street: 6' sidewalk, street trees every 40' on center average, 7' planting area between sidewalk and street required.
Blocks	No Block Perimeter Required	5,000 ft. Block Perimeter max

# Industrial Park

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- 14 Acres
- 20-Warehouse Type Buildings
- 4,000-10,0000 Sq. Ft. each
- ½ Acre fenced lots
- Lease to small business



**Zoning Request****4087 Hwy 21****ZC-20-07****Summary**

<b>Request:</b>	Zoning change from “FD” Future Development to “LI” Light Industrial		
<b>Applicant:</b>	Jim Glasgow 6531 Fox Run San Antonio, TX 78233	<b>Property Owner:</b>	Palace Way Partners, LLC 6531 Fox Run San Antonio, TX 78233

**Notification**

<b>Application:</b>	March 24, 2020	<b>Neighborhood Meeting:</b>	N/A
<b>Published:</b>	April 12, 2020	<b># of Participants</b>	N/A
<b>Posted:</b>	April 10, 2020	<b>Personal:</b>	April 10, 2020
<b>Response:</b>	1 letter of opposition (attached in packet)		

**Property Description**

<b>Legal Description:</b>	+/- 14.90 acre tract out of the Thomas G. McGehee Survey, Abstract No. 11, Hays County		
<b>Location:</b>	4087 Hwy 21		
<b>Acreage:</b>	14.90	<b>PDD/DA/Other:</b>	Pending Annexation
<b>Existing Zoning:</b>	“FD” Future Development	<b>Proposed Zoning:</b>	“LI” Light Industrial
<b>Existing Use:</b>	Vacant / Rural	<b>Proposed Use:</b>	Light Industrial
<b>Preferred Scenario:</b>	Area of Stability – Low Intensity	<b>Proposed Designation:</b>	Area of Stability – Low Intensity
<b>CONA Neighborhood:</b>	N/A	<b>Sector:</b>	N/A
<b>Utility Capacity:</b>	Developer is responsible for extended utilities.	<b>Floodplain:</b>	No
<b>Historic District</b>	N/A		

**Surrounding Area**

	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Preferred Scenario</b>
<b>North of Property:</b>	ETJ	FM 110; Harris Hill Race Track	Area of Stability – Low Intensity
<b>South of Property:</b>	ETJ	Single Family / Rural / Agriculture	Area of Stability – Low Intensity
<b>East of Property:</b>	ETJ	Single Family / Rural / Agriculture	Area of Stability – Low Intensity
<b>West of Property:</b>	ETJ	Rural / Agriculture	Area of Stability – Low Intensity

<b>Zoning Request</b>	<b>4087 Hwy 21</b>
<b>ZC-20-07</b>	



**Staff Recommendation**

Approval as Submitted	<input checked="" type="checkbox"/> <b>Approval with Conditions / Alternate</b>	Denial
<p>The Development Code states that a request for Light Industrial zoning in an Area of Stability – Low Intensity designation is “Not Preferred” and requires additional scrutiny as outlined in the staff report. The proposed zoning change to Light Industrial is not compatible with surrounding existing uses such as rural residential and agricultural land, however, the subject property’s location abutting the proposed FM 110 San Marcos eastern loop may provide justification for support as it meets the intent of an “Employment Corridor” identified on the Preferred Scenario Map. FM 110 is identified as a major transportation network and will be initially funded by a Transportation Reinvestment Zone (TRZ) to capture a portion of the increased value of development occurring along the alignment.</p> <p>Due to the varying factors regarding current and future land configurations around the subject property, staff is providing a neutral recommendation and leaves a decision of approval, denial, or a recommendation of a lesser zoning district up to the City Council.</p>		
<b>Staff:</b> Andrea Villalobos, AICP, CNU-A	<b>Title:</b> Senior Planner	<b>Date:</b> April 29, 2020

**Commission Recommendation**

Approval as Submitted	<input checked="" type="checkbox"/> <b>Approval with Conditions / Alternate</b>	Denial
<p><b><u>Planning and Zoning Commission Meeting: April 28, 2020</u></b></p> <p><b>Speakers in favor or opposed:</b></p> <ol style="list-style-type: none"> <li>(1) David Joyner (in favor)</li> <li>(1) Paul Hennington (in opposition)</li> </ol> <p><b>Recommendation from the Planning and Zoning Commission meeting held April 28, 2020:</b>  A motion was made by Commissioner Haverland, seconded by Commissioner McCarty, to approve ZC-20-07. The motion carried 8-0.</p> <ul style="list-style-type: none"> <li><b>For:</b> (8) Chairperson Gleason, Commissioner Rand, Commissioner McCarty, Commissioner Haverland, Commissioner Dillon, Commissioner Moore, Commissioner Agnew, Commissioner Spell.</li> <li><b>Against:</b> 0</li> <li><b>Absent:</b> (1) Vice Chairperson Kelsey</li> </ul>		

## Zoning Request

4087 Hwy 21

ZC-20-07



### History

The subject property is currently located outside the City Limits in the Extraterritorial Jurisdiction (ETJ). The property is currently vacant and is adjacent to existing single family and rural/agricultural property as well as adjacent to the Harris Hill Race Track. In addition, FM 110 is proposed to be located to the north of the property. The subject property has already dedicated right-of-way in order to provide for the future construction of FM 110.

The purpose of this zoning change to "Light Industrial" zoning is to allow the development of a 14 acre industrial warehouse project. According to the applicant, the project is designed for small businesses needing 4,000 to 10,000 square foot warehouse buildings on ½ acres lots for lease. The subject property is proposed to be subdivided into 20 ½ acre lots.

The applicant is also requesting a rezoning to Manufactured Home, "MH" for approximately 45 acres abutting the subject property to the west. This request is being considered as part of a separate zoning request (ZC-20-08). Both zoning requests are being processed concurrently with an annexation request for the property.

The City of San Marcos will provide wastewater services at the site and the Maxwell Water Supply Corporation will provide water service. The developer will be responsible for extending water and wastewater facilities through the site. Pedernales Electric Service will provide electric service.

### Additional Analysis

Upon annexation, the property will be zoned "FD", the default classification for newly annexed land. The annexation request will be considered prior to the zoning change by City Council.

Analysis of the proposed zoning request includes deliberation of existing surrounding land uses, proposed transportation networks, and the goals and policies of the Comprehensive Plan. A few major points for consideration in the analysis are as follows:

- The proposed zoning change to Light Industrial is not compatible with surrounding existing uses such as rural residential and agricultural land, however, the future FM 110 (see attached FM 110 map) adjacent to the property will most likely attract a diverse array of uses.
- The subject property's request for "Light Industrial" is designated as "NP" Not Preferred within an "Area of Stability – Low Intensity" designation on the Preferred Scenario Map as part of the Comprehensive Plan. Alternatively, the Comprehensive Plan states that "Light Industrial" zoning is to be "C" Considered in an Employment Area on the Preferred Scenario Map. While the subject property is not located in an "Employment Area", it is located between two existing areas, Whisper development and the Municipal Airport.
- The subject property is located along the proposed FM 110, which is designated as an "Employment Corridor" on the Preferred Scenario Map.

# Zoning Request

# 4087 Hwy 21

## ZC-20-07



- Hays County provides the following overview of the FM 110 project:

*This project continues the loop east of San Marcos and involves initially constructing two travel lanes (one in each direction) with 10-foot shoulders where no road currently exists for the approximately 11.3-mile corridor and includes an interchange at SH 21 and a railroad overpass at the Union Pacific Railroad tracks. As traffic increases over time, two additional travel lanes and additional interchanges would be constructed. Initial construction costs will be funded through Transportation Reinvestment Zones (TRZs) created by Hays County and the City of San Marcos to capture a portion of the increased value of development occurring along the alignment. Caldwell County will also contribute to the project cost. The County is funding and conducting project development simultaneously for the initial stage of all three sections. TxDOT will let and manage construction of the project. Water line relocations will be in construction contracts.*

Additional details regarding this analysis is outlined in the staff report and the Comprehensive Plan Analysis checklist.

### Comments from Other Departments

<b>Police</b>	No issues with the proposed development.
<b>Fire</b>	No issues with the proposed development.
<b>Public Services</b>	No Comment
<b>Engineering</b>	No Comment

Zoning Request

4087 Hwy 21

ZC-20-07



Evaluation			Compatibility of Uses & Density Criteria (Sec.4.1.2.5)
Consistent	Inconsistent	Neutral	
	<u>X</u>		<p><b>Helps prevent the impacts of high density uses on low density areas</b>  <i>The subject property is located within an “Area of Stability – Low Intensity” designation on the Preferred Scenario Map as part of the Comprehensive Plan (see Preferred Scenario Map). “Special Districts”, which include the Light Industrial zoning district, are “NP” Not Preferred within this designation on the Preferred Scenario Map. Where a zoning map amendment is Not Preferred, further scrutiny is required to determine consistency with the Comprehensive Plan based on the criteria in Section 2.5.1.4 and the district intent under Division 4, Chapter 4, Article 1.</i></p> <p><i>Per the Comprehensive Plan, “Special Districts” such as Light Industrial zoning are to be “Considered” in Employment Areas on the Preferred Scenario Map. The subject property is located near existing Employment Areas (Whisper subdivision to the north and the Airport to the south), however, the immediately surrounding property is primarily rural residential low density uses. See attached Preferred Scenario Map for a depiction of surrounding Employment Areas.</i></p>
		<u>N/A</u>	<p><b>Limits changes in neighborhood density categories unless directed by a small area plan or neighborhood character study</b>  <i>Studies were not complete at the time of the request.</i></p>
	<u>X</u>		<p><b>Encourages more opportunities for home ownership</b>  <i>The proposed Light Industrial zoning district would not allow for residential uses.</i></p>
	<u>X</u>		<p><b>Ensures a diversity of housing to serve citizens with varying needs and interests</b>  <i>The proposed Light Industrial zoning district would not allow for residential uses.</i></p>

Zoning Request

4087 Hwy 21

ZC-20-07



Evaluation			Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	Neutral	
		<u>X</u>	<p><b>Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan and preferred scenario map</b></p> <p><i>Vision San Marcos Comprehensive Plan states that “Areas of Stability – Low Intensity” will generally maintain their existing character. The Comprehensive Plan states that “being located in an area of stability does not mean that these areas should or will not change. It means that any changes, whether new developments, zoning requests, or public improvements, should be carefully planned and implemented so that the character of the area remains.” The current character of the area is agricultural and rural residential and does not complement the proposed Light Industrial zoning. However, these surrounding properties are located outside the city limits and the city does not have zoning authority to regulate the use of these properties. In addition, the proposed FM 110 abuts the subject property and may attract a diversity of uses seeking access and development along the roadway.</i></p> <p><i>The Preferred Scenario Map identifies FM 110 as an Employment Corridor. Employment Corridors are primarily intended to “serve major employment related land uses. Some mixture in uses including limited residential and supportive pedestrian and bicycle facilities should be incorporated.” While the subject property is located adjacent to this corridor, the Comprehensive Plan states that “Special Districts”, such as Light Industrial zoning are designated as “NP” Not Preferred on the Comprehensive Plan / District Translation Table within an “Area of Stability – Low Intensity” designation. Other potential zoning districts that are identified on the Comprehensive Plan as “C” Considered are Character Districts, such as CD-3, CD-4, or CD-5, etc., however, these districts do not allow many industrial or warehouse and distribution uses and therefore do not meet the needs of the applicant’s proposed project.</i></p> <p><i>Lastly, the Comprehensive Plan states that “Land Use Suitability, preservation of agricultural lands, and floodplain management are the key factors to be considered when analyzing future development requests in Low Intensity Areas.” The subject property is not located in an environmentally sensitive area and is within a low to moderately constrained area on the Land Use Suitability Map.</i></p>

Zoning Request

4087 Hwy 21

ZC-20-07



Evaluation		Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	
		<p><u>N/A</u></p> <p><b>Whether the proposed zoning map amendment is consistent with any adopted small area plan or neighborhood character study for the area</b>  <i>Studies were not complete at time of request.</i></p>
		<p><u>X</u></p> <p><b>Whether the proposed zoning map amendment is consistent with any applicable development agreement in effect</b>  <i>A development agreement is not required because the property is requesting annexation into the city limits.</i></p>
		<p><u>X</u></p> <p><b>Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses shall be appropriate in the immediate area of the land to be reclassified</b>  <i>Light Industrial zoning primarily allows for industrial uses with some allowances for agricultural and public/institutional uses and a few commercial uses such as professional office, urgent care, building material sales, indoor recreation, and gym/health clubs (see attached land use matrix comparison table). Light Industrial zoning is intended to “accommodate manufacturing and light industrial uses in order to promote economic vitality, encourage employment growth, and limit the encroachment of non-industrial development within established industrial areas. Development should be operated in a relatively quiet manner, and should not be obnoxious to nearby residential or commercial areas.” The immediately surrounding area is not comprised of industrial uses and is primarily single-family, rural, and agricultural properties along with an outdoor entertainment use at the Harris Hill Race Track. However, the properties are currently located outside the city limits and the city does not have zoning authority to regulate the use of these properties. A rezoning to Light Industrial would require that all proposed uses meet the standards of the development code.</i></p>

Zoning Request

4087 Hwy 21

ZC-20-07



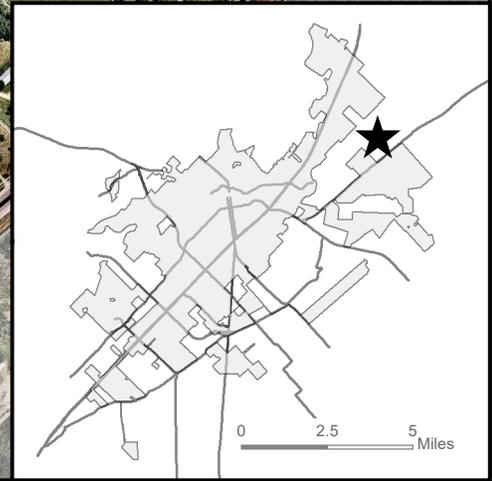
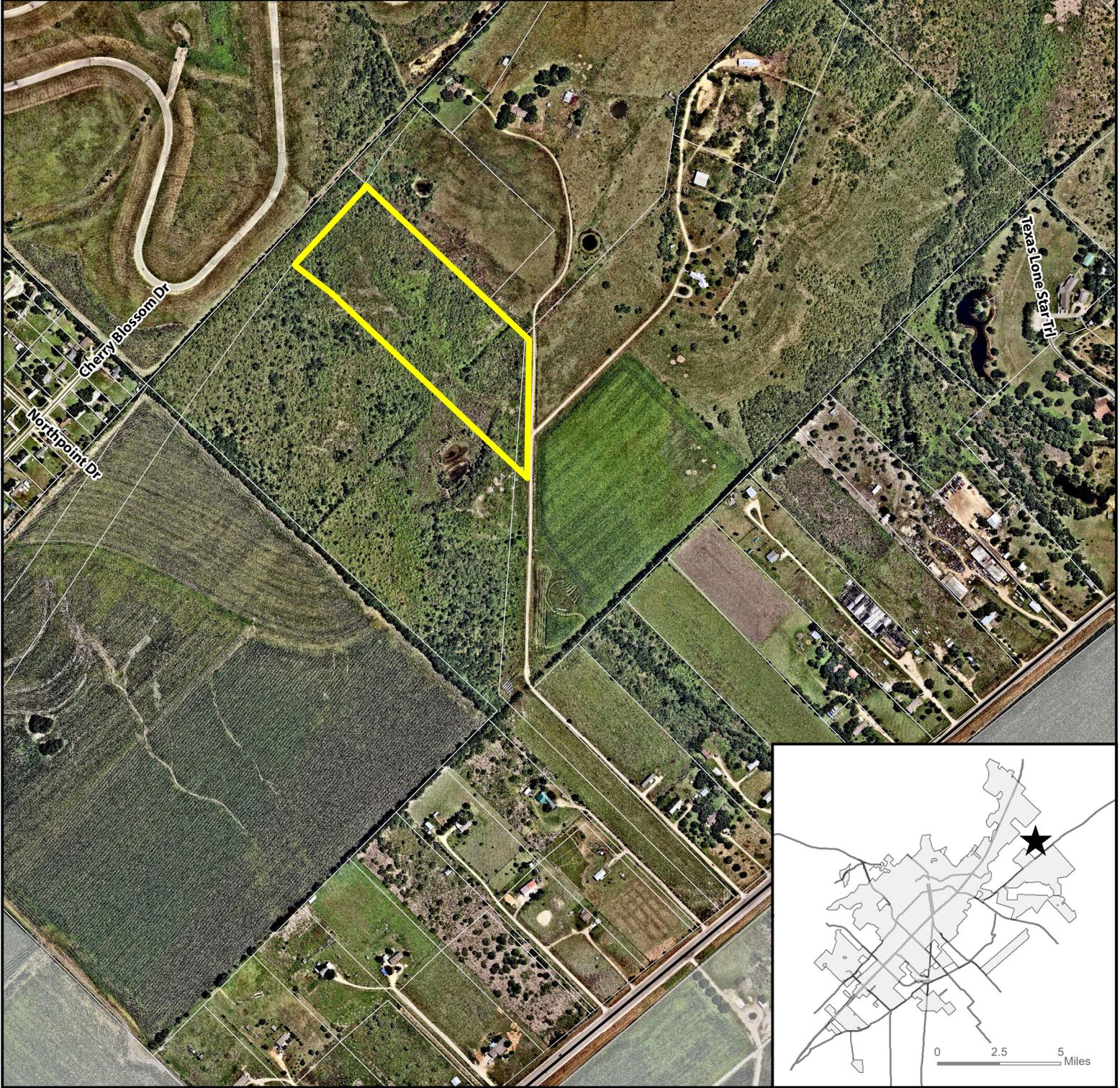
Evaluation			Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	Neutral	
		<u>X</u>	<p><b>Whether the proposed zoning will reinforce the existing or planned character of the area</b>  <i>Approval of this zoning change would allow the property to develop in a manner that is “NP” Not Preferred according to the District Translation Table which states that “Special Districts”, such as a Light Industrial zoning district, is Not Preferred within an “Area of Stability – Low Intensity” designation on the Preferred Scenario Map. The Zoning Translation Table states that zoning changes to Character Districts should be “C” Considered within an Area of Stability – Low Intensity designation. However, the planned FM 110 will alter the existing character of the surrounding area as it will be a major eastern transportation loop.</i></p>
<u>X</u>			<p><b>Whether the site is appropriate for the development allowed in the proposed district</b>  <i>The property is vacant and shown to be in a low to moderately constrained area on the Land Use Suitability Map. The site will have access to the future FM 110 and will be required to construct roadways and utility infrastructure within the development consistent with the Light Industrial zoning district.</i></p>
		<u>N/A</u>	<p><b>Whether there are substantial reasons why the property cannot be used according to the existing zoning</b>  <i>The property is currently not zoned as it is located outside of the City Limits.</i></p>
<u>X</u>			<p><b>Whether there is a need for the proposed use at the proposed location</b>  <i>The proposed rezoning would allow primarily industrial uses with allowances for agricultural, public, and commercial uses. The subject property’s location along FM 110 would allow for such uses to be developed in accordance with city standards with access to a major transportation thoroughfare.</i></p>
<u>X</u>			<p><b>Whether the City and other service providers will be able to provide sufficient public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, public safety, and emergency services, while maintaining sufficient levels of service to existing development</b>  <i>The property is not located within the City’s water service area and is serviced by Maxwell Water Supply. The property is located approximately 4,300 feet from the City’s wastewater service area. The</i></p>

Zoning Request	4087 Hwy 21
ZC-20-07	

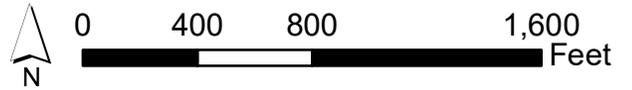


			City is currently updating the wastewater service area and following the update the subject property will be located within this service area.
	<b>Evaluation</b>		<b>Criteria for Approval (Sec.2.5.1.4)</b>
<b>Consistent</b>	<b>Inconsistent</b>	<b>Neutral</b>	
	<u>X</u>		<p><b>Whether the proposed rezoning will have a significant adverse impact on property in the vicinity of the subject property</b>  <i>The surrounding property is primarily agricultural and rural residential and does not complement the proposed Light Industrial zoning.</i></p>
		<u>N/A</u>	<p><b>For requests to a Neighborhood Density District, whether the proposed amendment complies with the compatibility of uses and density in Section 4.1.2.5</b>  <i>This request is not for a Neighborhood Density District.</i></p>
<u>X</u>			<p><b>The impact the proposed amendment has with regard to the natural environment, including the quality and quantity of water and other natural resources, flooding, and wildlife management</b>  <i>The property is located within a low to moderately constrained area according to the Land Use Suitability Map. In addition, there is no floodplain on the property.</i></p>
		<u>X</u>	<p><b>Any other factors which shall substantially affect the public health, safety, morals, or general welfare</b>  <i>The applicant is also requesting a rezoning to Manufactured Home, "MH" for approximately 45 acres abutting the subject property. This request is being considered as part of a separate zoning request (ZC-20-08). Both zoning requests are being processed concurrently with an annexation request for the property. While the request to MH zoning is not considered as part of the current zoning analysis it does serve as additional background information.</i></p>

# ZC-20-07 Aerial View Palace Way LI Zoning — 4087 Hwy 21



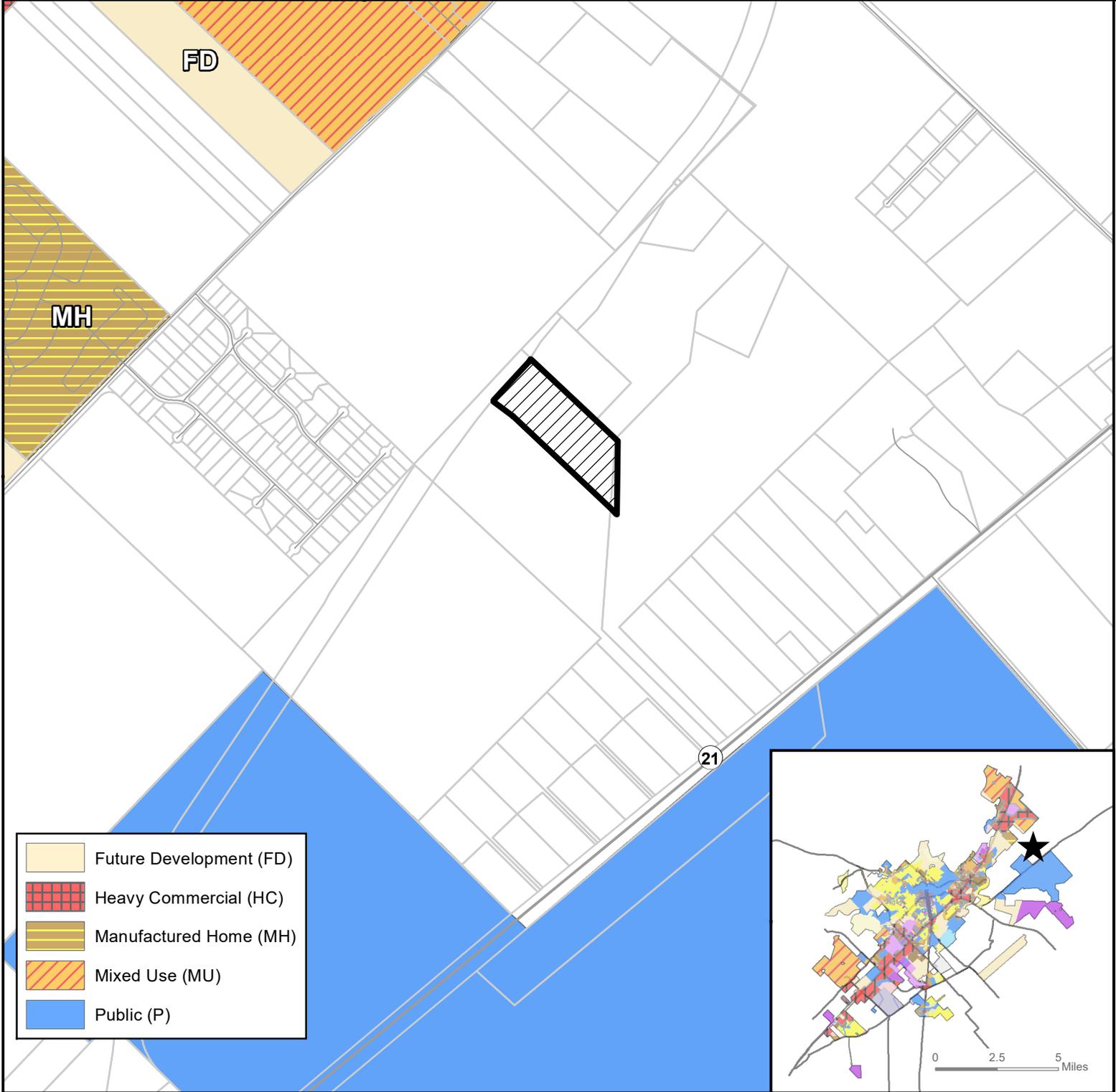
- ★ Site Location
- ▭ Subject Property
- ▭ Parcel
- ▭ City Limit



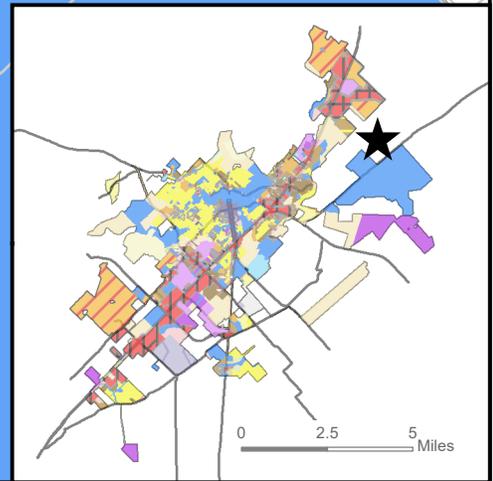
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Map Date: 4/6/2020

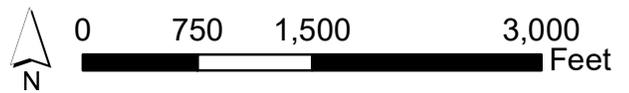
# ZC-20-07 Zoning Map Palace Way LI Zoning — 4087 Hwy 21



-  Future Development (FD)
-  Heavy Commercial (HC)
-  Manufactured Home (MH)
-  Mixed Use (MU)
-  Public (P)



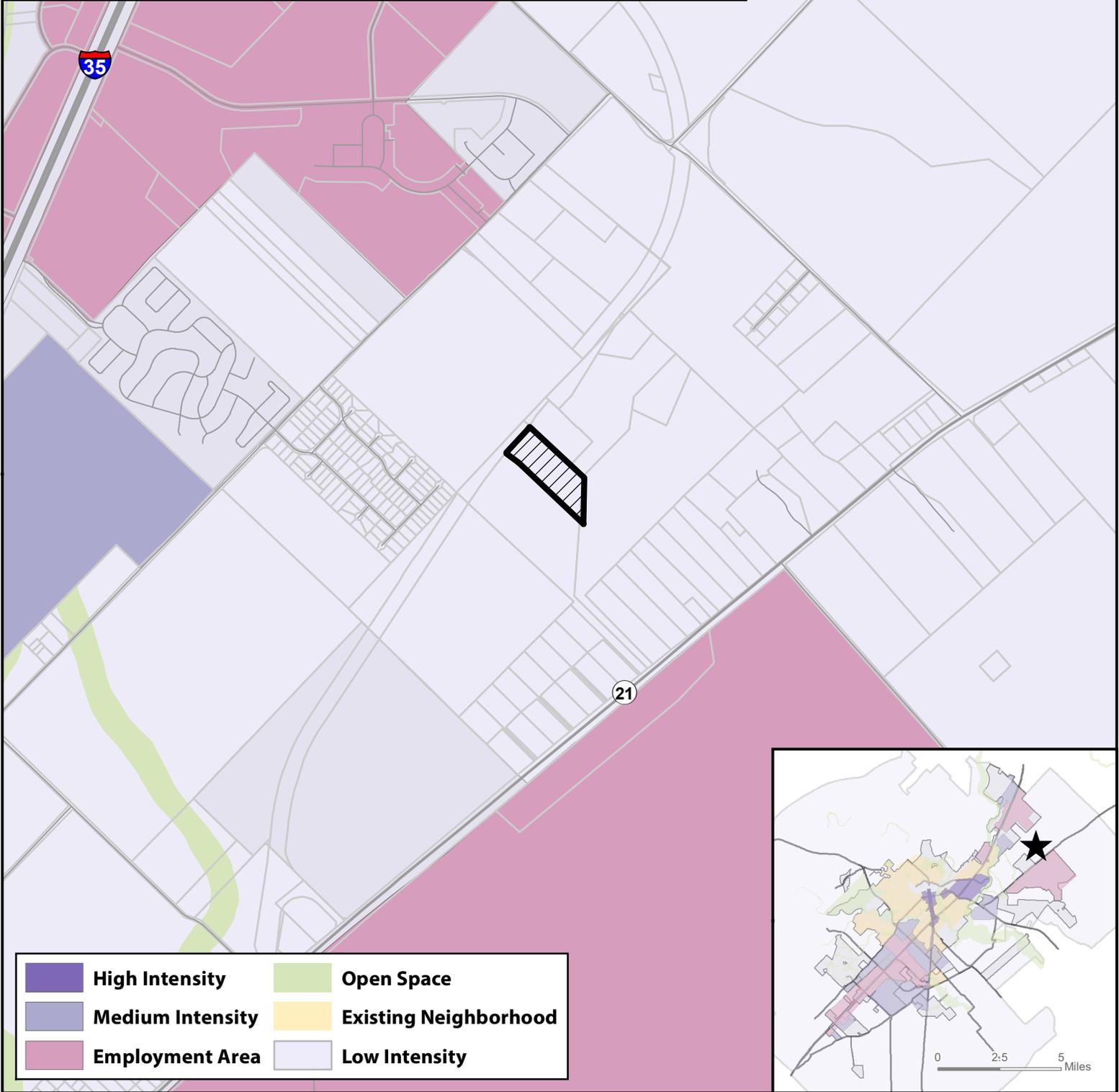
-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**



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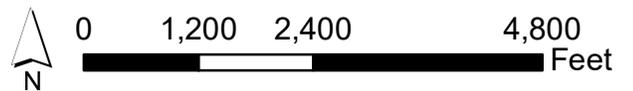
Map Date: 4/6/2020

# ZC-20-07 Preferred Scenario Palace Way LI Zoning — 4087 Hwy 21



	<b>High Intensity</b>		<b>Open Space</b>
	<b>Medium Intensity</b>		<b>Existing Neighborhood</b>
	<b>Employment Area</b>		<b>Low Intensity</b>

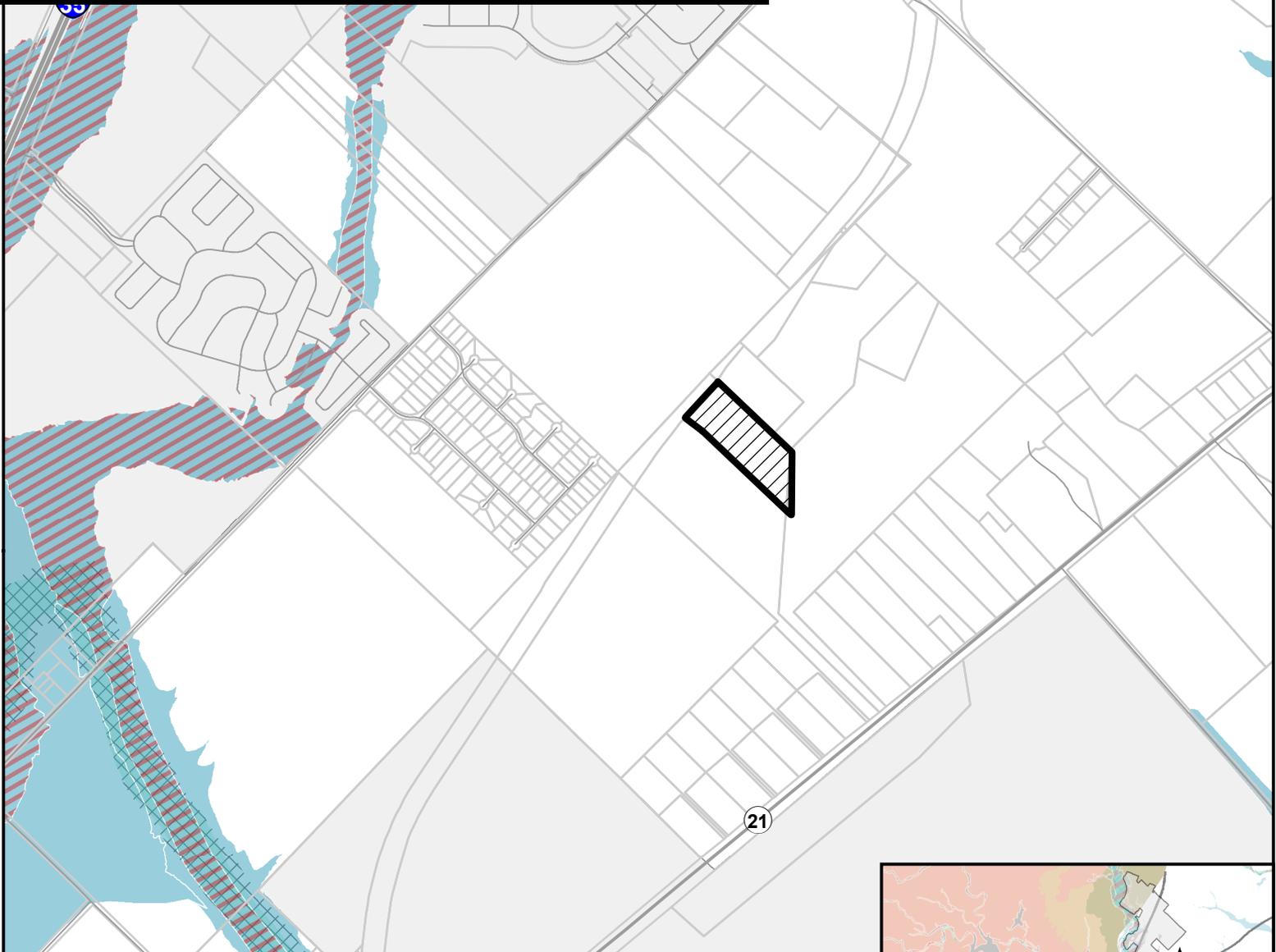
-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**



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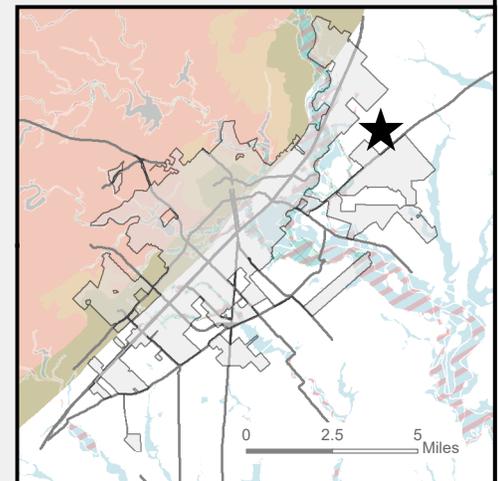
Map Date: 4/6/2020

# ZC-20-07 Environmental Features Palace Way LI Zoning — 4087 Hwy 21

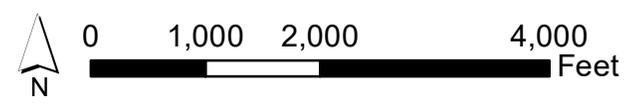


**Environmental Features**

-  Floodway
-  100 Year Floodplain
-  Water Quality Zone
-  Water Quality Zone Buffer
-  Edwards Aquifer Transition Zone



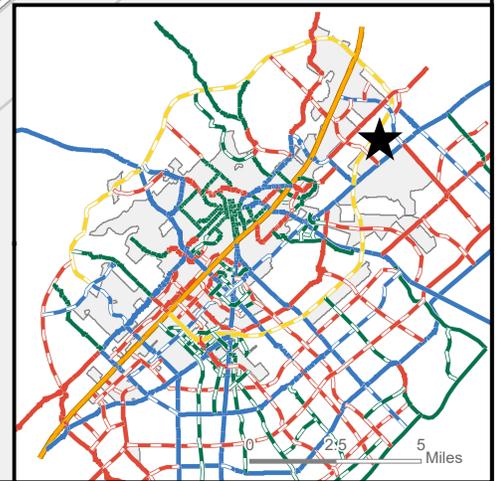
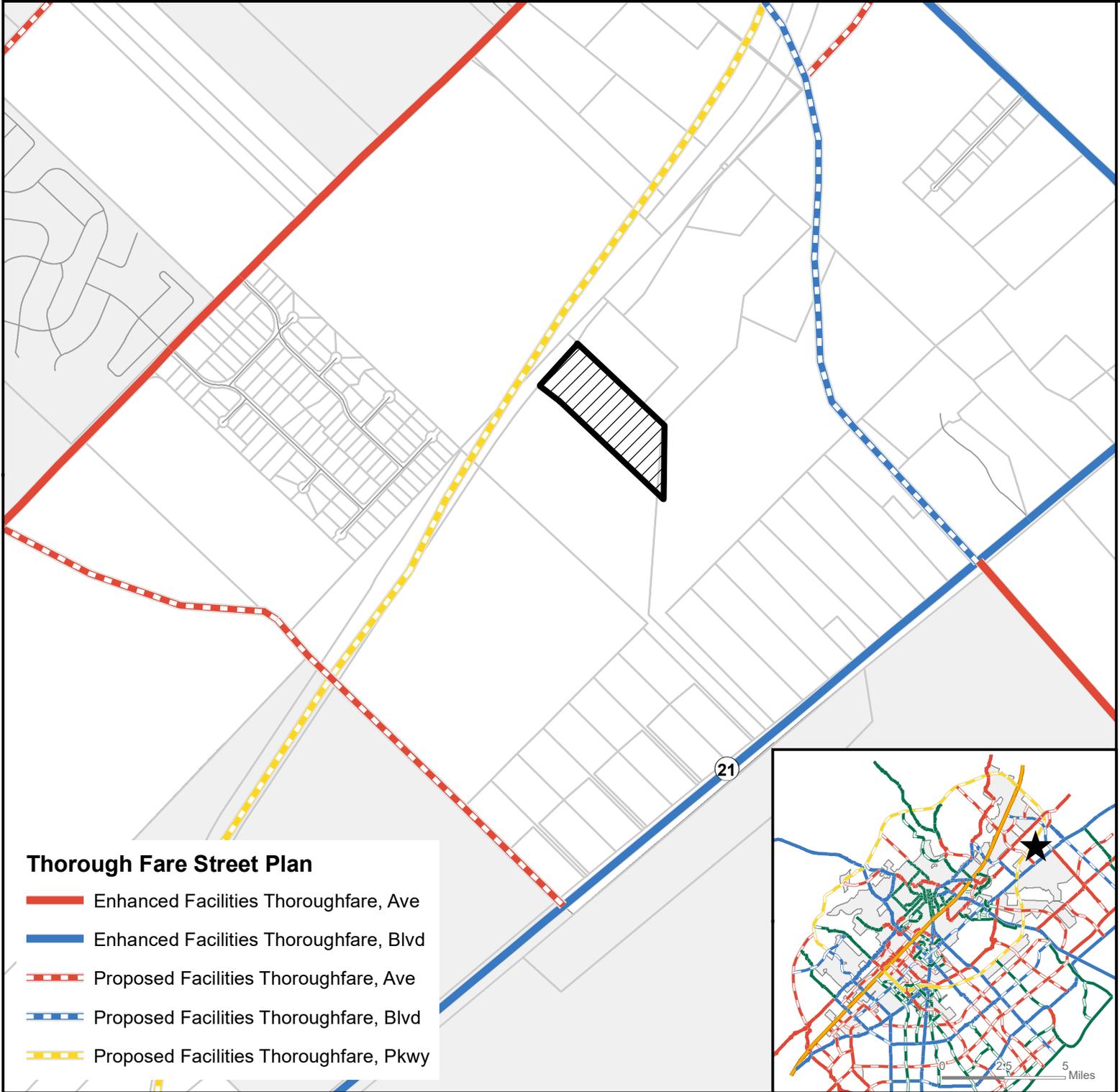
-  Site Location
-  Subject Property
-  Parcels
-  City Limit



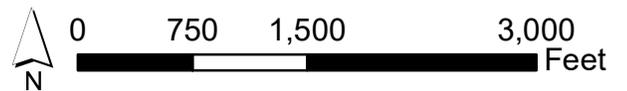
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Map Date: 4/6/2020

# ZC-20-07 Transportation Master Plan Palace Way LI Zoning — 4087 Hwy 21



-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**

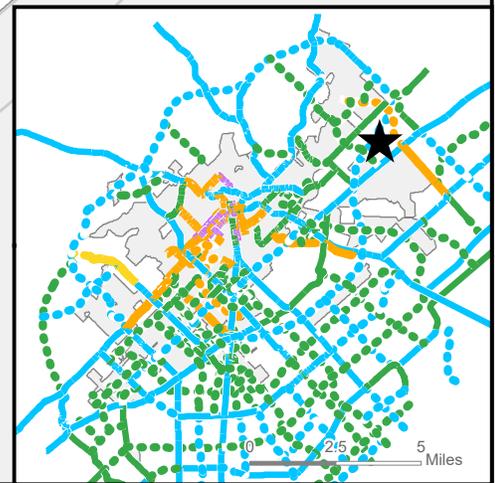
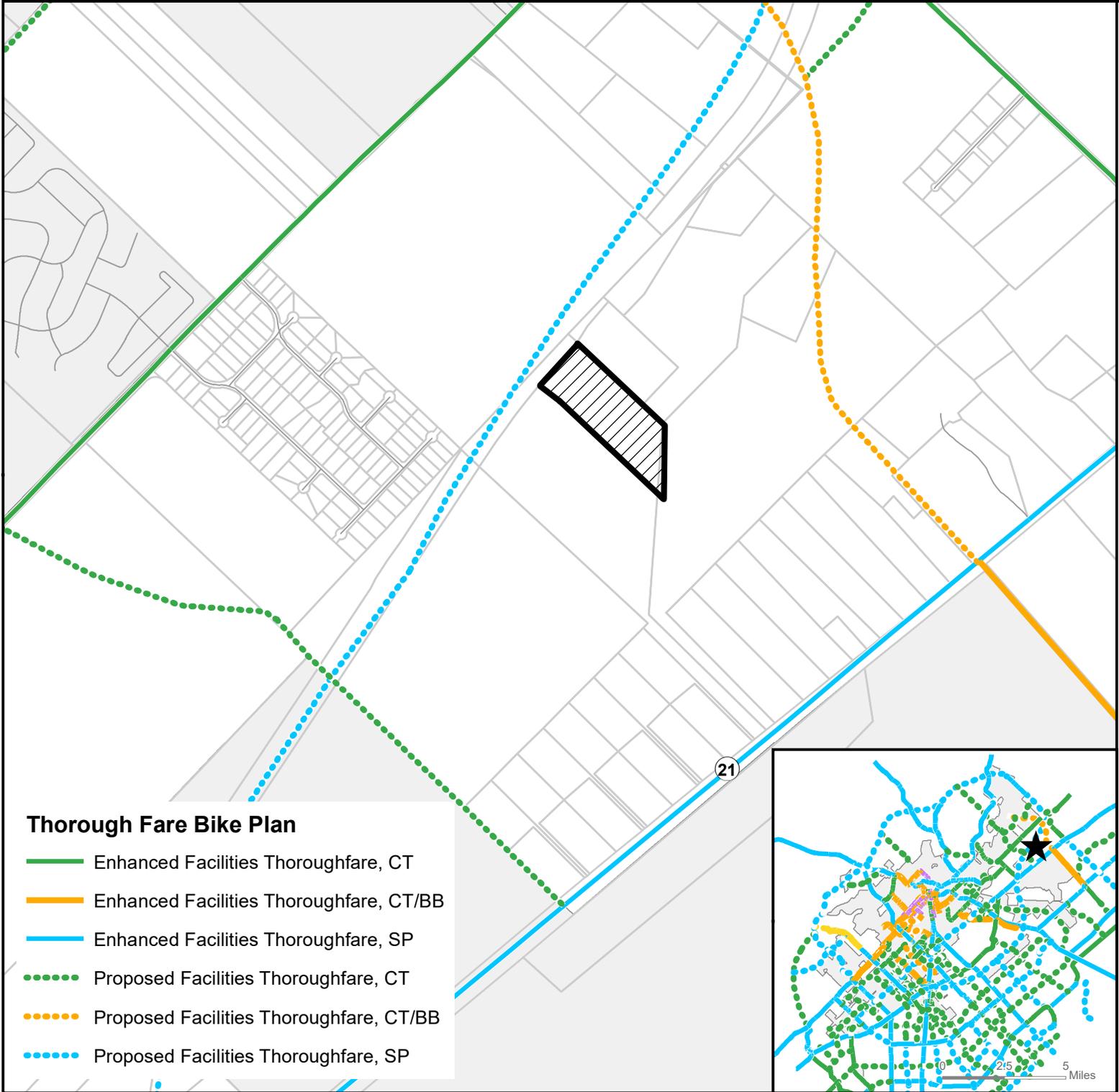


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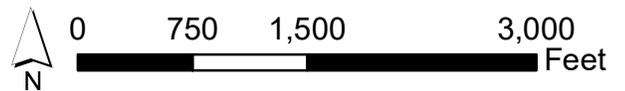
Map Date: 4/6/2020

# ZC-20-07

## Transportation Master Plan - Bicycle Infrastructure Palace Way LI Zoning — 4087 Hwy 21



- ★ **Site Location**
- ▨ **Subject Property**
- **Parcels**
- **City Limit**



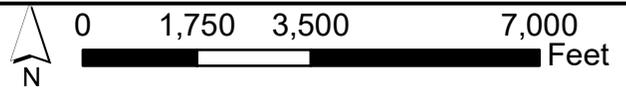
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Map Date: 4/6/2020

# ZC-20-07 FM 110 Location Palace Way LI Zoning — 4087 Hwy 21



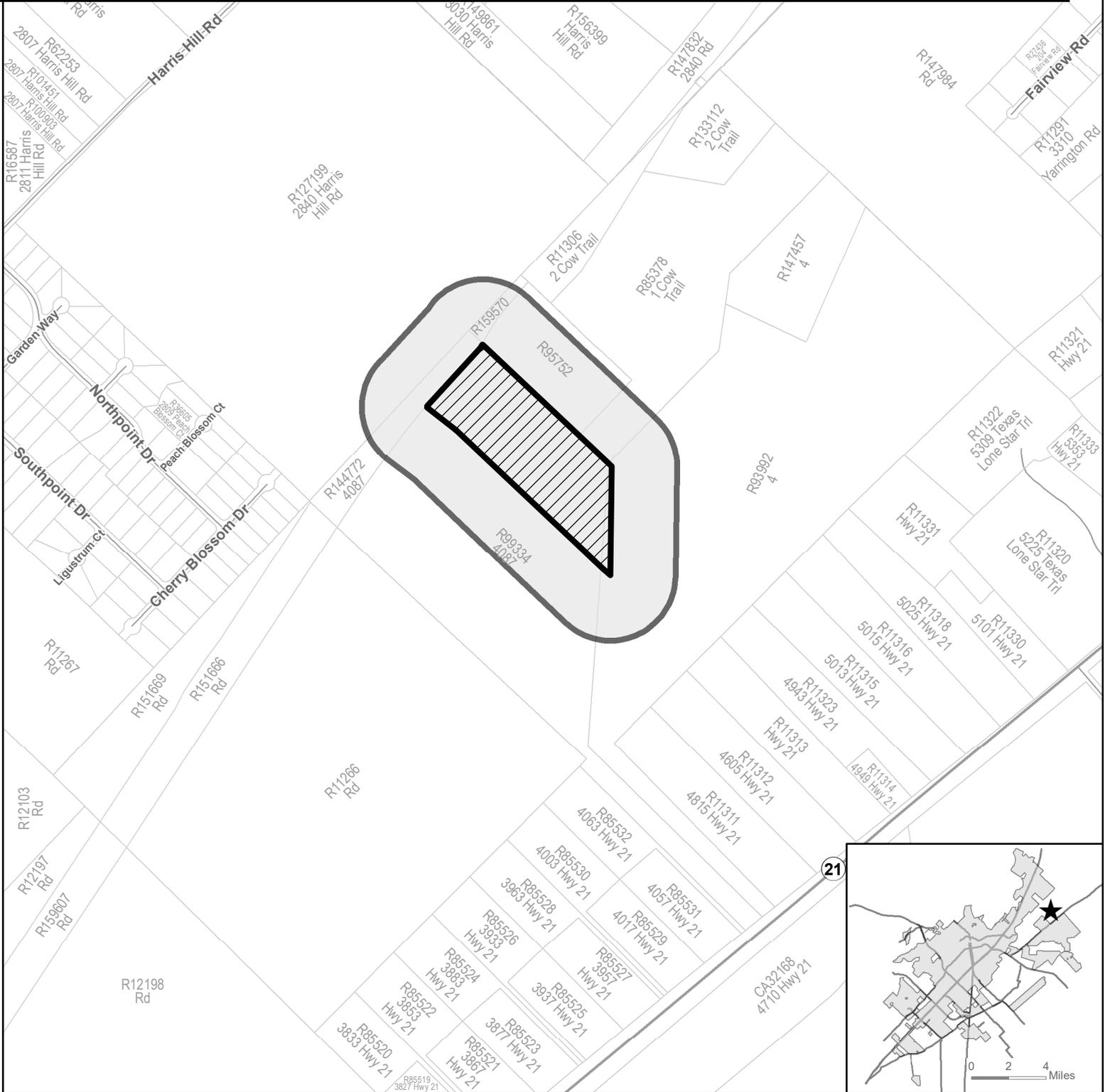
-  **Site Location**
-  **Subject Property**
-  **Parcel**
-  **City Limit**
-  **FM 110**



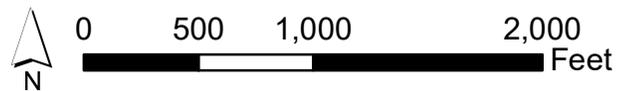
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Map Date: 4/6/2020

# ZC-20-07 400' Notification Buffer Palace Way LI Zoning — 4087 Hwy 21



- ★ Site Location
-  Subject Property
-  400' Buffer
-  Parcel
-  City Limit



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Map Date: 4/7/2020

**Notification List (ZC-20-07)**

<b>Property</b>	<b>Site Address</b>	<b>Owner Name</b>	<b>Owner Address</b>	<b>Ownder Address 2</b>	<b>Owner City</b>	<b>Owner State</b>	<b>Owner Zip</b>
127199	2840 HARRIS HILL	GOSSAMER TRUST II HENNINGTON D B & W J	REX B RIVERS TRUSTEE % HENNINGTON DAVID B &	19901 MOON DANCE LN	SPICEWOOD	TX	78669-6804
93992	4 COW TRAIL	LIVING TRUST	WANDA J TRUSTEES	PO BOX 693	SAN MARCOS	TX	78667-0693
85379	1 COW TRAIL	NEW DIRECTION IRA INC PALACE WAY PARTNERS	% ROMANO EDWARD F IRA	P O BOX 607	WIMBERLEY	TX	78676
11304	4087 SH 21	LLC	6531 FOX RUN		SAN ANTONIO	TX	78233-4706

Section 5.1.1.2 Land Use Matrix Future Development (FD) VS. Light Industrial (LI)

TABLE 5.1 LAND USE MATRIX

TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS				DEFINITION USE STANDARDS	
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH		EC
<b>AGRICULTURAL USES</b>																				
Barns or agricultural buildings	P	L	--	--	--	--	--	--	P	P	L	--	--	--	P	--	--	--	--	Section 5.1.2.1
Stables	P	L	--	--	--	--	--	--	--	P	L	--	--	--	P	--	--	--	--	Section 5.1.2.2
Community Garden	P	P	L	L	L	L	L	--	P	P	L	L	L	L	P	P	P	P	P	Section 5.1.2.3
Urban Farm	P	C	C	C	C	L	L	C	P	P	L	L	C	C	P	P	--	P	C	Section 5.1.2.4
Plant Nursery	L	--	--	--	--	--	--	P	--	L	--	--	P	P	P	P	--	P	--	Section 5.1.2.5
<b>ACCESSORY USES AND STRUCTURES</b>																				
Accessory Building/Structure	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.3.1
Accessory Dwelling Unit	L	L	L	L	L	L	P	P	--	P	L	P	P	P	--	--	--	--	--	Section 5.1.3.1
Accessory Use, except as listed below:	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.3.2
Outdoor Storage	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	L	P	--	L	Section 5.1.3.2
Outdoor Display	--	--	--	--	--	--	--	L	--	--	--	--	L	L	P	--	--	--	L	Section 5.1.3.2
Food Truck	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	--	P	--	Section 5.1.3.1
Drive-thru or Drive-in	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.3.2
Home Occupation	L	L	L	L	L	L	L	--	--	L	L	L	--	--	--	--	--	--	--	Section 5.1.3.4
Family Home Care	P	P	P	P	P	P	P	--	--	P	P	P	--	--	--	--	--	--	--	Section 5.1.3.5
Short Term Rental	L	L	L	L	L	L	L	P	--	L	L	P	P	P	--	--	--	L	P	Section 5.1.3.6
<b>RESIDENTIAL USES</b>																				
Single Family Detached	P	L	L	L	L	L	L	--	--	P	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Cottage Court	--	--	--	--	--	L	L	--	--	--	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Two Family	--	--	--	--	--	L	L	--	--	--	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Single Family Attached	--	--	--	--	L	L	L	L	--	--	P	P	P	P	--	--	--	--	--	Section 5.1.4.1
Small Multi-Family (up to 9 units)	--	--	--	--	--	L	L	L	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Courtyard Housing (up to 24 units)	--	--	--	--	--	--	L	L	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Multi-family (10 or more units)	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Purpose Built Student Housing	--	--	--	--	--	--	--	--	--	--	--	--	C	C	--	--	--	--	--	Section 5.1.4.1
Manufactured Home	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	Section 5.1.4.1
Mobile Home Community	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	Section 5.1.4.1

TABLE 5.1 LAND USE MATRIX

TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS				DEFINITION USE STANDARDS	
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH		EC
Community Home	L	L	L	L	L	L	P	P	--	P	P	P	P	P	--	--	--	L	--	Section 5.1.4.12
Fraternity or Sorority Building	--	--	--	--	--	--	C	C	--	--	--	C	P	P	--	--	--	--	--	Section 5.1.4.12
<b>COMMERCIAL USES</b>																				
Professional Office	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	P	--	--	P	Section 5.1.5.1
Medical, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.2
Urgent care, emergency clinic, or hospital	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	--	--	P	Section 5.1.5.2
Nursing/ retirement home	--	--	--	--	--	--	P	P	--	--	--	P	P	P	P	--	--	--	P	Section 5.1.5.2
Personal Services, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.3
Animal care (indoor)	C	--	--	--	--	--	--	P	--	--	--	--	P	P	P	--	--	--	P	Section 5.1.5.3
Animal care (outdoor)	C	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	C	Section 5.1.5.3
Funeral Home	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.3
Adult Oriented Businesses	See Section 18, Article 6 of the City Code																			
All Retail Sales, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.4
Gasoline Sales	--	--	--	--	--	--	--	L	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.4
Truck stop	--	--	--	--	--	--	--	--	--	--	--	--	--	--	L	--	--	--	L	Section 5.1.5.4
Tattoo, body piercing	--	--	--	--	--	--	C	C	--	--	--	C	P	P	P	--	--	--	P	Section 5.1.5.4
Building material sales	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	P	P	--	P	Section 5.1.5.4
Vehicle Sales/ Rental	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.4
Pawnshop	--	--	--	--	--	--	--	C	--	--	--	C	P	P	P	--	--	--	P	Section 5.1.5.4
Restaurant/ Bar, as listed below:																				
Eating Establishment	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.5
Bar	--	--	--	--	--	--	--	C	--	--	--	--	C	C	C	--	--	--	C	Section 5.1.5.5
Mobile Food Court	--	--	--	--	--	--	--	C	--	--	--	--	P	P	--	--	--	--	--	Section 5.1.5.5
Sale of Alcohol for on premise consumption	--	--	--	--	--	--	C	C	--	--	--	C	C	C	C	--	--	--	C	Section 5.1.5.5
Overnight Lodging, as listed below:																				Section 5.1.5.6
Bed and Breakfast (up to 8 rooms)	L	C	C	C	C	L	L	P	--	P	C	P	P	P	--	--	--	--	P	Section 5.1.5.6
Boutique Hotel (9 - 30 rooms)	--	--	--	--	--	--	C	P	--	--	--	P	P	P	--	--	--	--	P	Section 5.1.5.6

TABLE 5.1 LAND USE MATRIX

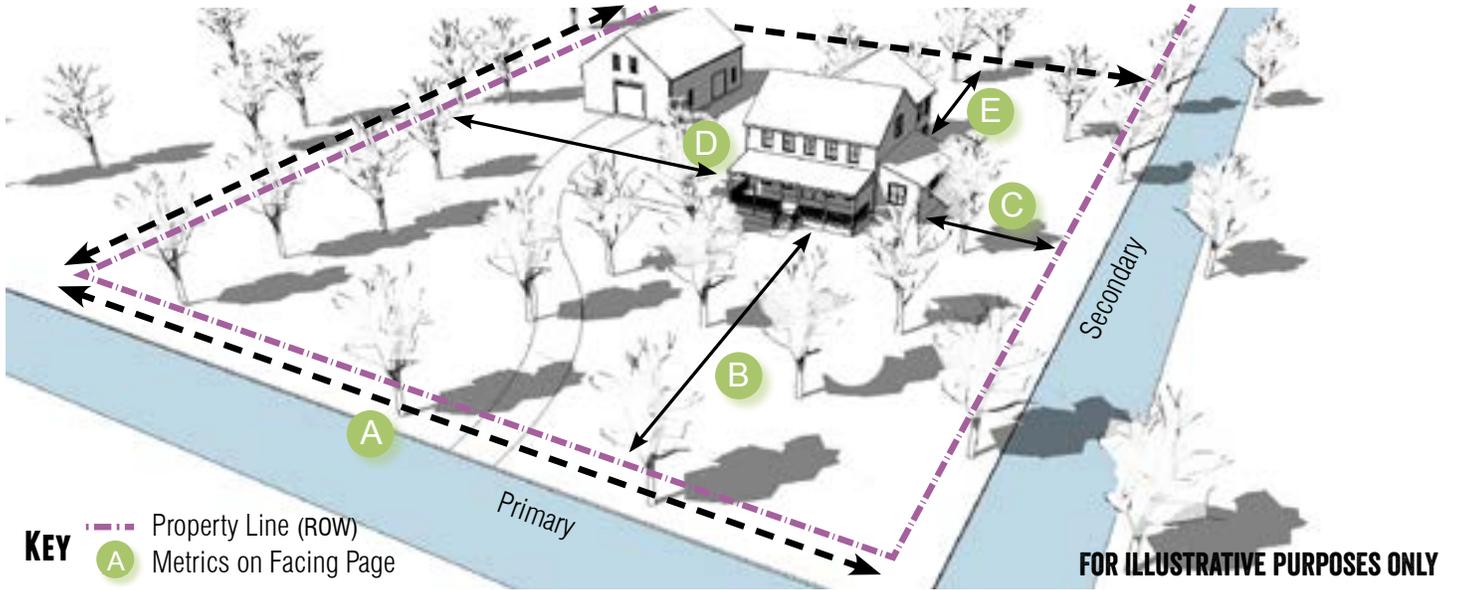
TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS					DEFINITION USE STANDARDS
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH	EC	
Hotel/ Motel (more than 30 rooms)	--	--	--	--	--	--	--	P	--	--	--	--	P	P	--	--	--	--	P	Section 5.1.5.6
Outdoor Recreation, except as listed below:	--	--	--	--	--	--	--	C	--	--	--	--	P	C	P	--	--	--	P	Section 5.1.5.7
Golf Course	C	C	C	C	C	C	C	C	C	C	C	C	C	C	--	--	--	C	C	Section 5.1.5.7
Traveler Trailers/ RVs Short Term stays	P	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	P	--	Section 5.1.5.7
Shooting Range	C	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	C	Section 5.1.5.7
Indoor Recreation, except as listed below:	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.5.8
Gym/ Health club	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	P	P	--	P	Section 5.1.5.8
Smoking Lounge	--	--	--	--	--	--	--	C	--	--	--	--	P	C	--	--	--	--	P	Section 5.1.5.8
Charitable Gaming Facility	--	--	--	--	--	--	--	--	--	--	--	--	C	--	C	--	--	--	C	Section 5.1.5.8
<b>PUBLIC &amp; INSTITUTIONAL</b>																				
Civic, except as listed below:	P	L	L	L	L	L	P	P	L	L	L	P	P	P	P	P	P	P	P	Section 5.1.6.1
Day Care Center	C	--	--	--	C	C	L	P	--	C	C	L	P	P	P	--	--	--	P	Section 5.1.6.1
Parks, Open Space, and Greenways	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.6.2
Minor Utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.6.3
Major Utilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	--	--	Section 5.1.6.3
Antenna	See Section 5.1.6.3D																			
<b>INDUSTRIAL</b>																				
Light Industrial	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	P	P	--	C	Section 5.1.7.1
Light Manufacturing	--	--	--	--	--	--	--	C	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.7.2
Vehicle Service, as listed below:																				
Car Wash	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	C	Section 5.1.7.3
Vehicle repair (minor)	--	--	--	--	--	--	--	C	--	--	--	--	P	P	P	P	P	--	C	Section 5.1.7.3
Vehicle repair (major)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	--	C	Section 5.1.7.3
Warehouse & Distribution	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	P	P	--	P	Section 5.1.7.4
Waste-Related service	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	P	P	--	--	Section 5.1.7.5
Wholesale trade	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	P	Section 5.1.7.6
Self Storage	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	C	Section 5.1.7.7
Research and Development	--	--	--	--	--	--	--	--	--	--	--	--	C	C	P	P	P	--	C	Section 5.1.7.8
Wrecking/Junk Yard	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	Section 5.1.7.9

# Zoning District Comparison Chart

Topic	<i>Existing Zoning:</i> <b>Future Development (FD)</b>	<i>Proposed Zoning:</i> <b>Light Industrial (LI)</b>
<b>Zoning Description</b>	The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.	Light Industrial is intended to accommodate manufacturing and light industrial uses in order to promote economic viability, encourage employment growth, and limit the encroachment of non-industrial development within established industrial areas. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.
<b>Uses</b>	Primarily agricultural, residential, and public/institutional (See Land Use Matrix)	Primarily Industrial with some commercial and public/institutional (See Land Use Matrix)
<b>Parking Location</b>	No location standards	No location standards
<b>Parking Standards</b>	Depends on use	Depends on use. For example, warehouse and distribution uses require 1 space for each 2,000 square feet of gross floor area excluding office space, which shall be calculated separately depending on office use.
<b>Max Residential Units per acre</b>	0.4 units per acre (max)	Residential uses are not allowed
<b>Occupancy Restrictions</b>	N/A	N/A
<b>Landscaping</b>	Tree and shrub requirements	Tree and shrub requirements
<b>Building Height (max)</b>	2 stories (40 feet)	4 stories (62 feet)
<b>Setbacks</b>	50' minimum front; 20' min side; minimum rear setback is 20% of total lot depth	20' minimum front, side, and rear
<b>Impervious Cover (max)</b>	30%	80%
<b>Lot Sizes</b>	Allows a variety of lot sizes depending on Building Type.	Allows a variety of lot sizes depending on Building Type.
<b>Streetscapes</b>	Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area between sidewalk and street required.	Conventional Street: 6' sidewalk, street trees every 40' on center average, 7' planting area between sidewalk and street required.
<b>Blocks</b>	No Block Perimeter Required	5,000 ft. Block Perimeter max

**FD**

**SECTION 4.4.1.1 FUTURE DEVELOPMENT DISTRICT**



**GENERAL DESCRIPTION**

The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.

**DENSITY**

Units Per Gross Acre	.4 max.
Impervious Cover	30% max.

**TRANSPORTATION**

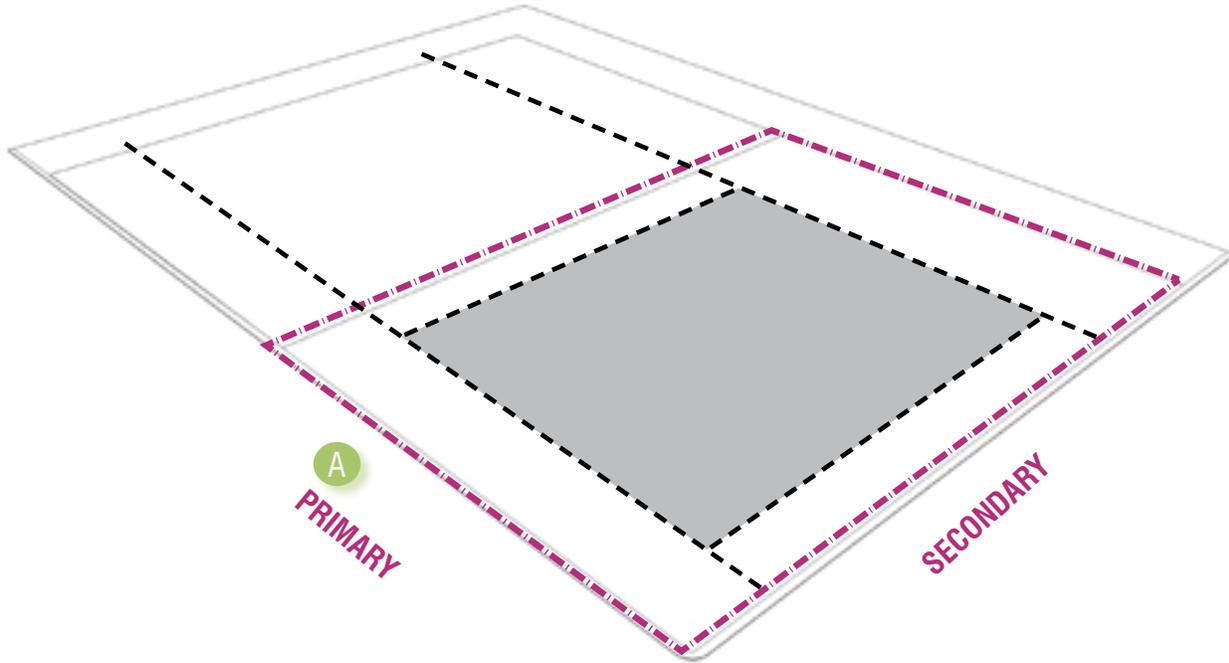
Streetscape Type	Residential	Section 3.8.1.10
Sidewalks are not required for lots greater than 1 acre		

**BUILDING TYPES ALLOWED**

Accessory Dwelling	Section 4.4.6.1
House	Section 4.4.6.2
Civic	Section 4.4.6.15

## LI

### SECTION 4.4.5.3 LIGHT INDUSTRIAL



**KEY**

- - - Property Line (ROW)
- A Metrics on This and Facing Page
- Setbacks
- Building Footprint

**DISTRICT INTENT STATEMENTS**

LI is intended to accommodate manufacturing and light industrial uses in order to promote economic viability, encourage employment growth, and limit the encroachment of non-industrial development within established industrial areas. Development should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or commercial uses.

**DENSITY**

Impervious Cover                      80% max.

**TRANSPORTATION**

Block Perimeter	5,000 ft. max.	Section 3.6.2.1
Streetscape Type	Conventional	Section 3.8.1.7

**BUILDING TYPES ALLOWED**

General Commercial	Section 4.4.6.13
Civic Building	Section 4.4.6.15

**BUILDING STANDARDS**

Principle Building Height	4 stories max.	62 ft. max.
Accessory Structure Height	N/A	24 ft. max.

**ZC-20-07 (Palace Way LI) Zoning Change Review (By Comp Plan Element)**

**LAND USE – Preferred Scenario Map / Land Use Intensity Matrix**

	YES	NO (map amendment required)
Does the request meet the intent of the Preferred Scenario Map and the Land Use Intensity Matrix?	<b>X – It is “Not Preferred” but it does not require a Preferred Scenario Map Amendment</b>	

**ECONOMIC DEVELOPMENT – Furthering the goal of the Core 4 through the three strategies**

STRATEGY	SUMMARY	Supports	Contradicts	Neutral
Preparing the 21 <sup>st</sup> Century Workforce	Provides / Encourages educational opportunities			<b>X</b>
Competitive Infrastructure & Entrepreneurial Regulation	Provides / Encourages land, utilities and infrastructure for business	<b>X</b>		
The Community of Choice	Provides / Encourages safe & stable neighborhoods, quality schools, fair wage jobs, community amenities, distinctive identity			<b>X</b>

**ENVIRONMENT & RESOURCE PROTECTION – Land Use Suitability & Development Constraints**

	1 (least)	2	3 (moderate)	4	5 (most)
Level of Overall Constraint	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	
Constraint by Class					
Cultural	<b>X</b>	<b>X</b>			
Edwards Aquifer	<b>X</b>				
Endangered Species	<b>X</b>				
Floodplains	<b>X</b>				
Geological	<b>X</b>				
Slope	<b>X</b>		<b>X</b>		
Soils	<b>X</b>	<b>X</b>		<b>X</b>	
Vegetation	<b>X</b>				
Watersheds		<b>X</b>			
Water Quality Zone	<b>X</b>				

**ENVIRONMENT & RESOURCE PROTECTION – Water Quality Model Results**

Located in Subwatershed:	<b>Morrison Creek Watershed</b>				
	0-25%	25-50%	50-75%	75-100%	100%+
Modeled Impervious Cover Increase Anticipated for watershed	<b>X</b>				
Notes: <b>The 2013 Comprehensive Plan did not predict any impervious cover changes to the Morrison Creek Watershed from the trend to the preferred scenario.</b>					

**NEIGHBORHOODS** – Where is the property located

CONA Neighborhood(s):	N/A – Outside City Limits
Neighborhood Commission Area(s):	N/A – Outside City Limits
Neighborhood Character Study Area(s):	N/A

**PARKS, PUBLIC SPACES AND FACILITIES** –Availability of parks and infrastructure

				YES	NO
Will Parks and / or Open Space be Provided? <b>Parkland dedication is not required for commercial uses, however, the project will be required to install sidewalk and streetscape infrastructure along proposed roadways.</b>					X
Will Trails and / or Green Space Connections be Provided? <b>The Transportation Master Plan requires a greenway along FM 110.</b>				X	
<b>Maintenance / Repair Density</b>	Low (maintenance)		Medium		High (maintenance)
Wastewater Infrastructure	X				
Water Infrastructure	X				
<b>Public Facility Availability</b>				YES	NO
Parks / Open Space within ¼ mile (walking distance)?					X
Wastewater service available? <b>Wastewater lines will be required throughout the development to service the property.</b>				X	
Water service available? <b>Water lines will be also required throughout the development to service the property.</b>				X	

**TRANSPORTATION** – Level of Service (LOS), Access to sidewalks, bicycle lanes and public transportation

		A	B	C	D	E	F
Existing Daily LOS	Hwy 21		X				
Existing Peak LOS	Hwy 21					X	
Preferred Scenario Daily LOS	Hwy 21 FM 110				X		X
Preferred Scenario Peak LOS	Hwy 21 FM 110						X X
<b>Note: The property will be required to meet the Transportation Master Plan and construct required streets per the Block Standards in the Development Code.</b>							
		N/A	Good	Fair	Poor		
Sidewalk Availability (Required to build.)		X					
<b>Sidewalks will be required to be constructed at the time of development.</b>							
				YES	NO		
Adjacent to existing bicycle lane? <b>The development will be responsible for constructing required bike infrastructure within new proposed streets.</b>					X		
Adjacent to existing public transportation route?					X		



## PLANNING AND DEVELOPMENT SERVICES

4/17/2020

ZC-20-07

### Notice of Public Hearing Zoning Change Request “FD” Future Development to “LI” Light Industrial 4087 Hwy 21

*Hold a public hearing and consider a request by Jim Glasgow, on behalf of Palace Way Partners, LLC., for a zoning change from “FD” Future Development to “LI” Light Industrial, or such other less intense zoning district classification as the City Council may approve, for approximately 14.90 acres, more or less, out of the Thomas G. McGehee Survey, Abstract No. 11, Hays County, located at 4087 Hwy 21.*

The San Marcos Planning and Zoning Commission will consider the above request at an upcoming public hearing and will either approve or deny the request. This recommendation will be forwarded to the San Marcos City Council. Before making a decision, the Commission and Council will hold public hearings to obtain citizen comments. Because you are listed as the owner of property located within 400 feet of the subject property, we would like to notify you of the following public hearings and seek your opinion of the request:

- A public hearing will be conducted by the Planning and Zoning Commission via virtual meeting on **Tuesday, April 28, 2020** at **6:00 p.m.** You may join and participate in the public hearing using the following link: <http://sanmarcostx.gov/541/PZ-Video-Archives>
- A public hearing will be held at the City Council Meeting on **Tuesday, May 19, 2020** at **6:00 p.m.** in the Council Chambers in City Hall, 630 East Hopkins. If current orders related to COVID-19 are extended, virtual meeting information will be provided at the following website: <https://sanmarcostx.gov/421/City-Council-Videos-Archives>

All interested citizens are invited to attend and participate in the public hearing. If you cannot participate in the virtual public hearing of the Planning and Zoning Commission or the City Council meeting, but wish to comment, you may write to the below address. Your written comments will be given to the Planning & Zoning Commission and City Council if they are received before 5 PM on the day of the meeting.

Development Services-Planning  
630 East Hopkins  
San Marcos, TX 78666  
[planninginfo@sanmarcostx.gov](mailto:planninginfo@sanmarcostx.gov)

For more information regarding this request, contact the case manager, **Andrea Villalobos**, at **512.805.2623**. When calling, please refer to case number **ZC-20-07**.

As of the date of this notice, there are no other means of participating in the public hearing. However, please check for updates on the City's website at: [www.sanmarcostx.gov](http://www.sanmarcostx.gov) to see if other means of participating in the public hearing become available.

*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 512-393-8074 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov)*

PLANNING AND DEVELOPMENT SERVICES  
Enclosure: Map (See Reverse)

CITY HALL • 630 EAST HOPKINS • SAN MARCOS, TEXAS 78666 • 512.393.8230 • FACSIMILE 855.759.2843  
SANMARCOSTX.GOV

# ZONING CHANGE, OVERLAY OR ESTABLISHMENT OF A HISTORIC DISTRICT/LANDMARK APPLICATION



Updated: October, 2018

Case # ZC-\_\_\_\_-\_\_\_\_

## CONTACT INFORMATION

Applicant's Name	JIM GLASGOW	Property Owner	PALACE WAY PARTNERS LLC
Applicant's Mailing Address	6531 FOX RUN SAN ANTONIO, TEXAS 78233	Owner's Mailing Address	6531 fox run San Antonio, Texas 78233
Applicant's Phone #	210-413-7230	Owner's Phone #	6531 fox runSan Antonio, Texas 78233
Applicant's Email	JEGLASGOW@YAHOO.COM	Owner's Email	6531 fox runSan Antonio, Texas 78233

## PROPERTY INFORMATION

Subject Property Address(es): 4087 sSTATE HWY 21 SAN MARCOS, TEXAS 78666

Legal Description: Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision A0011 THOMAS G MCGEHEE SYRVEY PT 41

Total Acreage: 14.90 Tax ID #: R 11304

Preferred Scenario Designation: LIGHT INDSTRIL Existing Zoning: N/A

Existing Land Use(s): AG

## DESCRIPTION OF REQUEST

Proposed Zoning District(s): LI

Proposed Land Uses / Reason for Change: TO ACCURE SEWER SERVICE FOR LIGHT INDUSTRIAL DEVELOPMENT

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee\* \$1,030 plus \$100 per acre Technology Fee \$12 MAXIMUM COST \$3,012  
 \*Existing Neighborhood Regulating Plan Included.

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

**APPLY ONLINE - [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

**PROPERTY OWNER AUTHORIZATION**

I, \_\_\_\_\_ (owner) acknowledge that I am the rightful owner of the property located at \_\_\_\_\_ (address).

I hereby authorize \_\_\_\_\_ (agent name) to file this application for \_\_\_\_\_ (application type), and, if necessary, to work with the Responsible Official / Department on my behalf throughout the process.

Signature of Property Owner:  \_\_\_\_\_  
Printed Name: **JIM E GLASGOW** \_\_\_\_\_

Date: **3-7-2020** \_\_\_\_\_

Signature of Agent: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

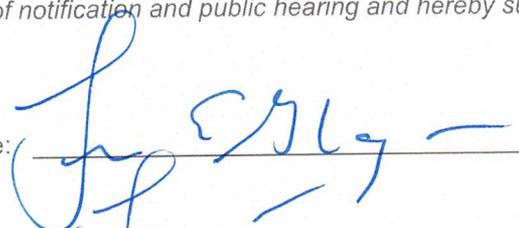
Date: \_\_\_\_\_

**AGREEMENT TO THE PLACEMENT OF NOTIFICATION SIGNS  
AND ACKNOWLEDGEMENT OF NOTIFICATION REQUIREMENTS**

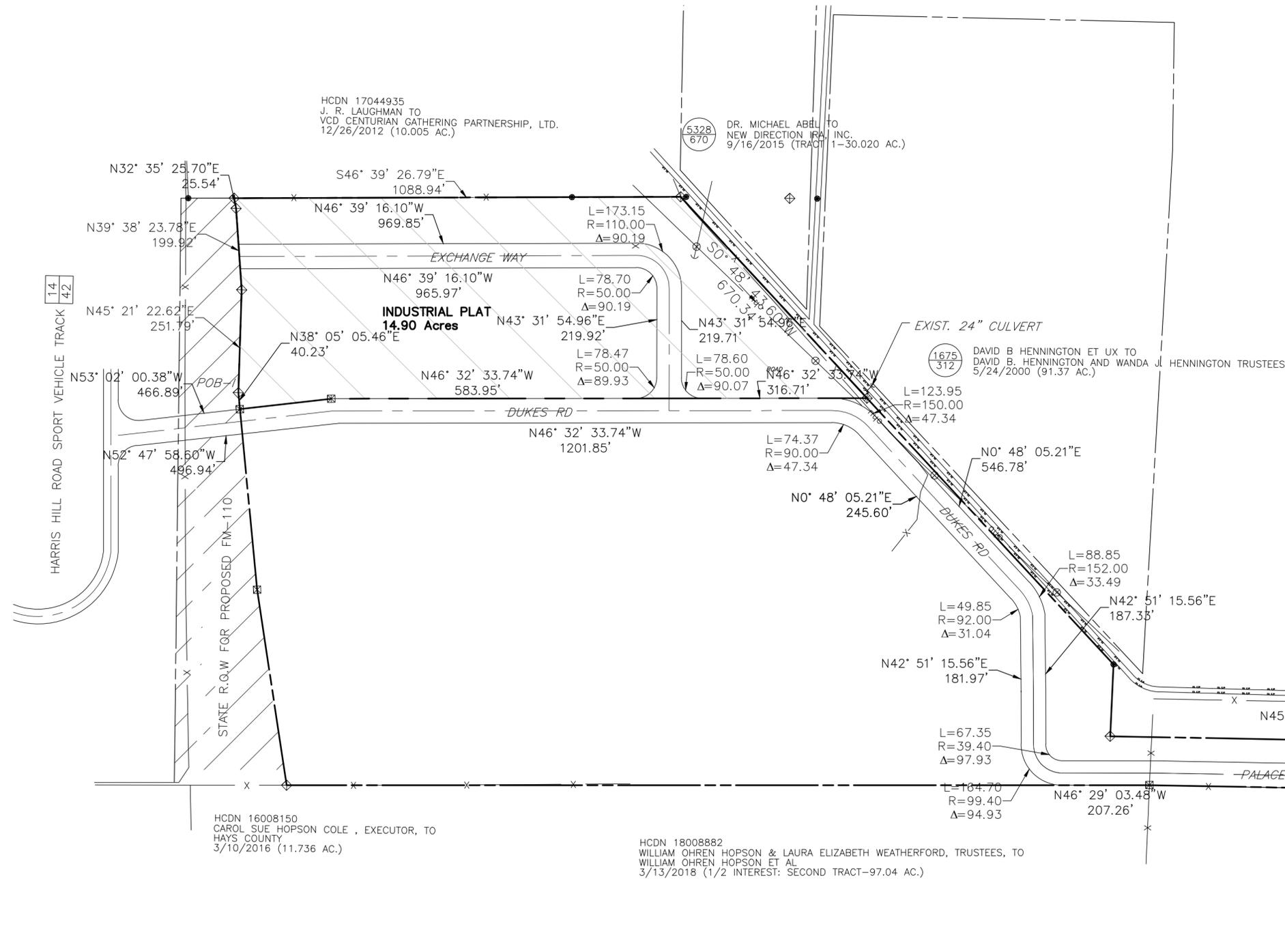
The City of San Marcos Development Code requires public notification in the form of notification signs on the subject property, published notice, and / or personal notice based on the type of application presented to the Planning Commission and / or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. ***It shall be the responsibility of the applicant to periodically check sign locations to verify that the signs remain in place had have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.***
- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be \$88 plus an \$12 technology fee.***
- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be \$88 plus a \$12 technology fee.***

*I have read the above statements and agree to the required public notification, as required, based on the attached application. The City's Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.*

Signature:   
Print Name: 

Date: 3-7-20



**SURVEYORS NOTES**

- FENCES MEANDER.
- ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48209C0415F, DATED 9/28/2005, THIS TRACT LIES WITHIN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
- THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THIS ENGINEER DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENT; THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.
- THIS SURVEY PLAT WAS PREPARED IN CONJUNCTION WITH A LAND DESCRIPTION DATED JULY 15, 2019 PREPARED BY BYRN AND ASSOCIATES, INC. OF SAN MARCOS, TEXAS.
- THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.

- LEGEND**
- HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
  - HAYS COUNTY PLAT RECORDS
  - HAYS COUNTY DOCUMENT NUMBER
  - 1/2" IRON ROD FOUND OR DIAMETER NOTED
  - 3/4" IRON PIPE FOUND OR DIAMETER NOTED
  - 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
  - 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY"
  - 1/2" IRON ROD FOUND WITH PLASTIC CAP
  - WIRE FENCE
  - UTILITY LINE, POLE AND GUY
  - WATER METER
  - WATER VALVE
  - UTILITY PEDESTAL
  - CLEANOUT
  - 6" CEDAR FENCE POST
  - UNDERGROUND UTILITY WARNING SIGN
  - WATER SPIGOT
  - PROPOSED 1/2" IRON ROD WITH PLASTIC CAP STAMPED "TRINITY COMPANIES"
  - INDUSTRIAL PLAT

**CERTIFICATION**

I CERTIFY THAT THESE PLAT SHEETS ARE COMPLETE, ACCURATE, AND ADEQUATE FOR THE INTENDED PURPOSES, INCLUDING CONSTRUCTION BUT ARE NOT AUTHORIZED FOR CONSTRUCTION PRIOR TO CITY APPROVAL. THE RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER WHO PREPARED THEM. IN REVIEWING THESE PLANS, THE CITY OF SAN MARCOS MUST RELY UPON THE ADEQUACY OF THE WORK OF THE DESIGN ENGINEER.

THIS PLAT IS ACCOMPANIED BY A SEVEN (7) PAGE REPLAT DOCUMENT DESCRIBING EACH METES AND BOUNDS THOROUGHLY.

Dr. David Joyner, PE TX PE 79569

*David Joyner*



HCDN 17044935  
J. R. LAUGHMAN TO  
VCD CENTURIAN GATHERING PARTNERSHIP, LTD.  
12/26/2012 (10.005 AC.)

5328  
670 DR. MICHAEL ABELL TO  
NEW DIRECTION RA, INC.  
9/16/2015 (TRACT 1-30.020 AC.)

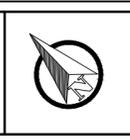
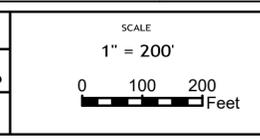
1675  
312 DAVID B HENNINGTON ET UX TO  
DAVID B. HENNINGTON AND WANDA J. HENNINGTON TRUSTEES  
5/24/2000 (91.37 AC.)

HCDN 16008150  
CAROL SUE HOPSON COLE, EXECUTOR, TO  
HAYS COUNTY  
3/10/2016 (11.736 AC.)

HCDN 18008882  
WILLIAM OHREN HOPSON & LAURA ELIZABETH WEATHERFORD, TRUSTEES, TO  
WILLIAM OHREN HOPSON ET AL  
3/13/2018 (1/2 INTEREST: SECOND TRACT-97.04 AC.)

117  
493 MRS. MILLIE GARY ET VIR TO  
THE STATE OF TEXAS  
12/15/1938 (3.82 AC.)

PROJECT NO. <b>12148</b>	REVISIONS	DRAWN BY D. Aldana
TX Firm # 12656		DESIGNED BY Trinity Group
DATE Mar 2020		CHECKED BY D. Joyner



SHEET NO.  
**C-01**

VERSION A  
Unless otherwise noted this is scaled to fit a 18"x24" sheet.

SHEET NO.  
**PROPOSED PLAT  
FOR INDUSTRIAL  
DEVELOPMENT**

**TRINITY GROUP**  
A REAL-ESTATE SERVICE COMPANY

*"We Help Build Your Future"*

838 MEYER RD. NEW BRAUNFELS, TX 78638  
PH. (830) 303-3283. FAX (972) 842-7001  
www.trinitycompanies.biz trinity@trinitycompanies.biz

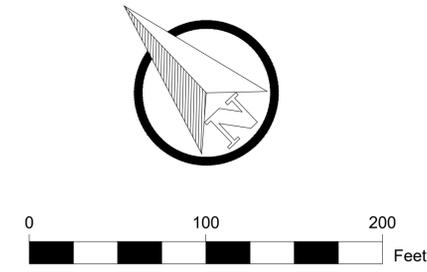
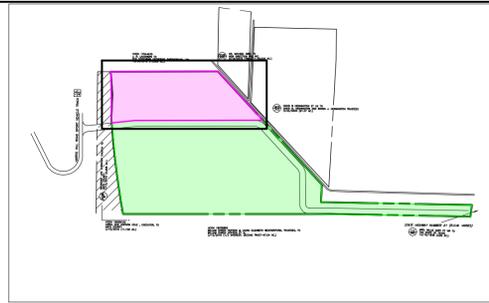
**PALACE WAY DEVELOPMENT**

Location:  
**4087 ST. HIGHWAY 21**  
San Marcos, Texas





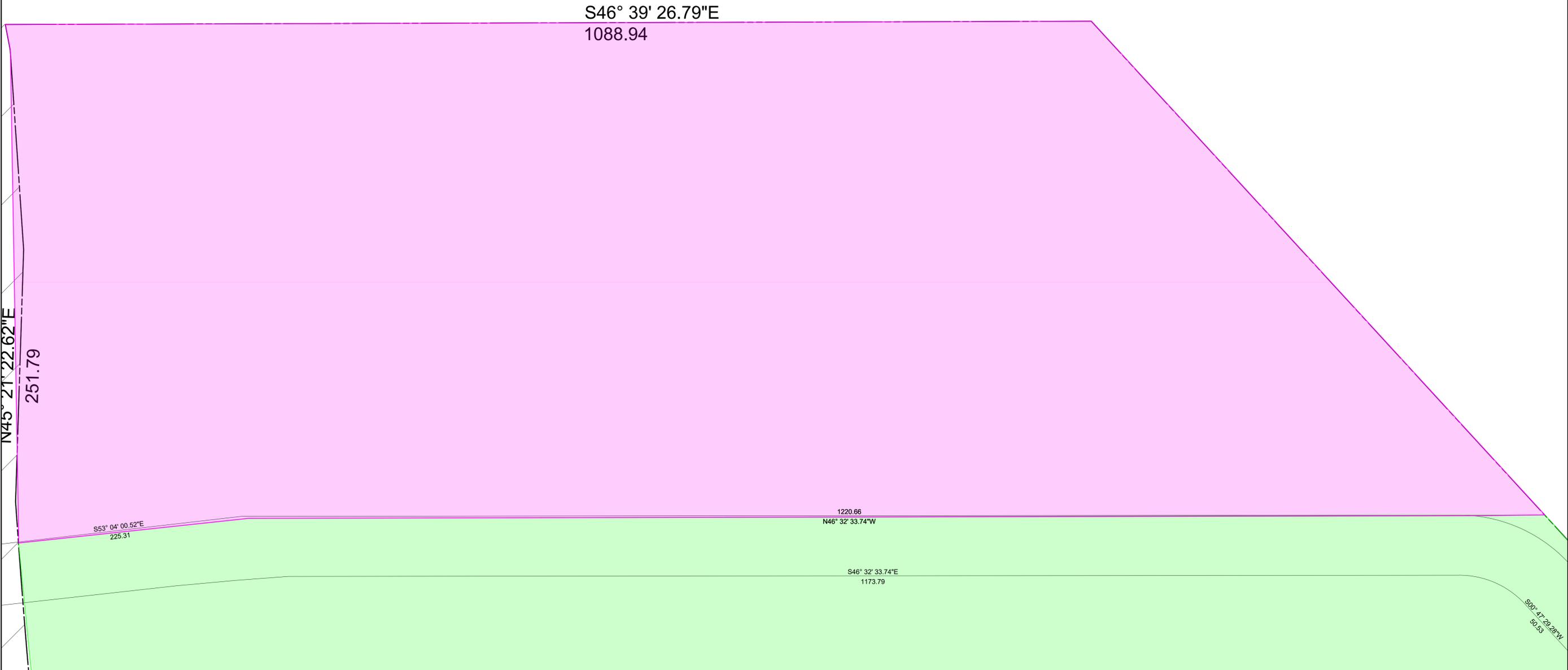
PROPOSED ZONING	
DESCRIPTION	AREA
TOTAL LOT	59.59ac
INDUSTRIAL PORTION	14.90ac



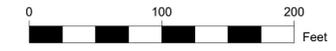
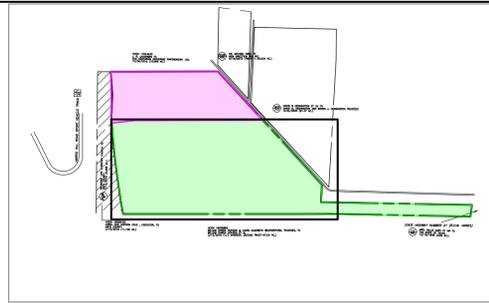
**PALACE WAY DEVELOPMENT**  
 Location:  
**4087 ST. HIGHWAY 21**  
 San Marcos, Texas

**TRINITY GROUP**  
 A REAL-ESTATE SERVICE COMPANY  
 888 MEYER RD. NEW BRAUNFELS, TX 78038  
 PH. (830) 303-2883 FAX (877) 842-7001  
 www.trinitycompany.com trinity@trinitycompany.com  
 "We Help Build Your Future"

PROJECT NO. <b>12418</b>
REVISIONS
TX Firm # 12656
DATE Feb 2020
SCALE 1/4" = 1'
DRAWN BY D. Aldana
DESIGNED BY Trinity Group
CHECKED BY D. Joyner
<b>PROPOSED INDUSTRIAL ZONING</b>
<small>Unless otherwise noted this is scaled to fit a 24" x 36" sheet</small>
SHEET NO. <b>C-02</b>
VERSION A

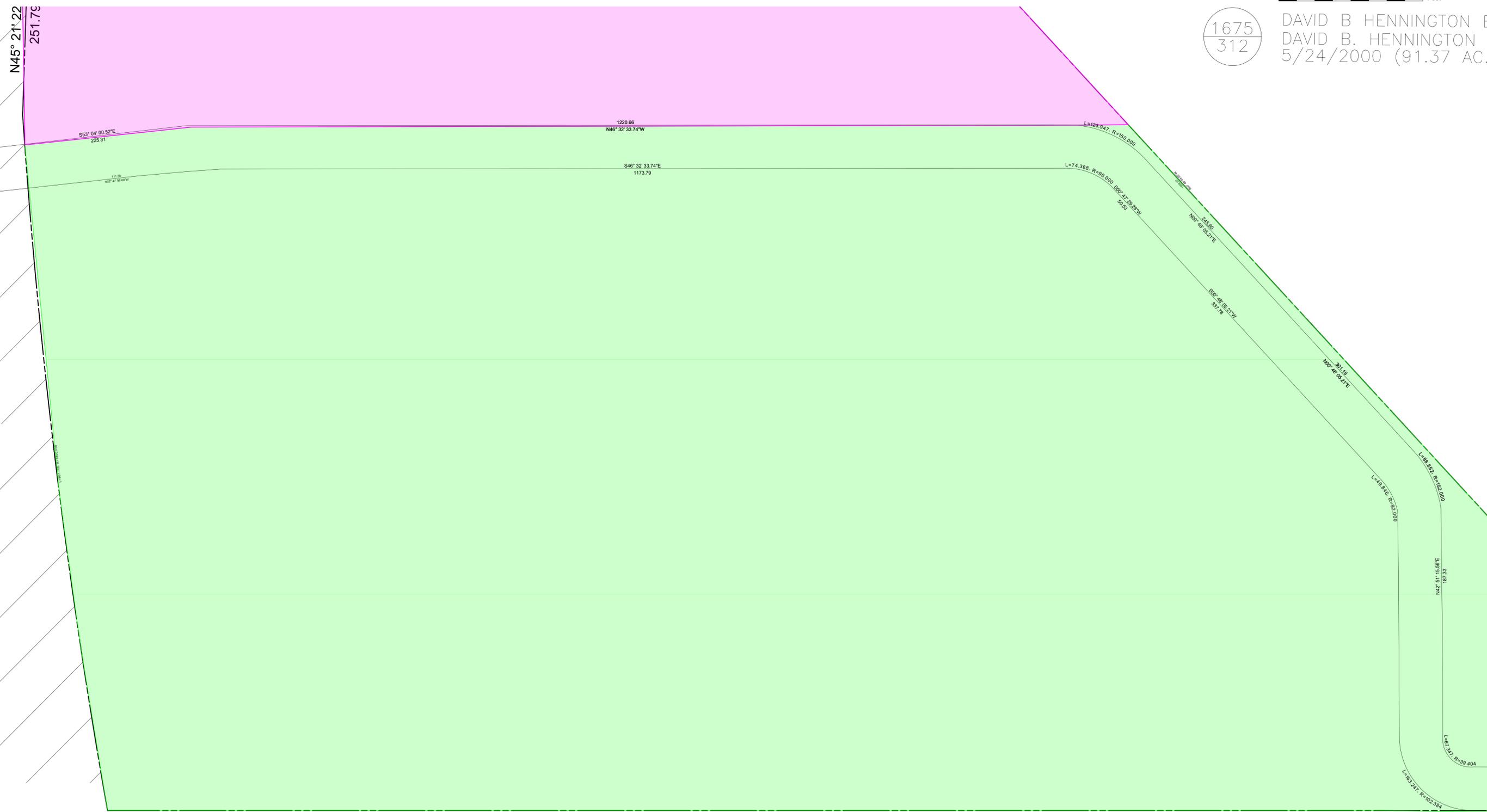


PROPOSED ZONING	
DESCRIPTION	AREA
TOTAL LOT	59.59ac
RESIDENTIAL PORTION	44.69ac



1675  
312

DAVID B HENNINGTON E  
DAVID B. HENNINGTON  
5/24/2000 (91.37 AC.)



**PALACE WAY DEVELOPMENT**  
Location:  
4087 ST. HIGHWAY 21  
San Marcos, Texas

**TRINITY GROUP**  
A REAL-ESTATE SERVICE COMPANY  
888 MEYER RD. NEW BRAUNFELS, TX 78038  
PH. (830) 303-2883 FAX (877) 842-7001  
www.trinitycompany.com trinity@trinitycompany.com  
"We Help Build Your Future"

PROJECT NO. <b>12418</b>
REVISIONS
TX Firm # 12656
DATE Feb 2020
SCALE 3/16" = 1'
DRAWN BY D. Aldana
DESIGNED BY Trinity Group
CHECKED BY D. Joyner
PROPOSED ZONING RESIDENTIAL
SHEET NO. <b>C-03</b>
VERSION A



## INDUSTRIAL ZONING

### STATE OF TEXAS - CITY OF SAN MARCOS

WHEREAS, Palaceway Partners LLC owns a 59.89ac tract of land situated in the Thomas G. McGehee survey, A-11, Hays County, Texas. Conveyed in volume 723 page 39, Plat record 7042-19-2-c; Hays County, TX. Same being a tract of land described to Trinity Group as conveyed in Instrument number 9927062, official public records, Hays County, Texas. And being more particularly described by metes and bounds as follows: Grid north of the Texas state plane coordinate system, NAD 83, South central zone.

The proposed development divides the existing property into two plats for different zoning purposes. This industrial portion being 14.90 acres.

Beginning at 1/2" Iron rod with plastic cap found at north center of the property line said POB-I

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, of the East side of the property and limiting with Right of way of Cow Trial. Drive a distance of 670.34 feet towards 1/2" Iron rod with plastic cap being the southeast corner of the industrial zone.

THENCE, North 46 degrees, 39 minutes and 26.79 seconds West, of the northeast corner of the property. Drive a distance of 1,088.94 feet towards 1/2" Iron rod with plastic cap located on the East side of the property and limiting with Right of way of Cow Trial

THENCE, South 32 degrees, 35 minutes and 25.70 seconds West, of 1/2" Iron rod with plastic cap located on the northeast side of the property. Drive a distance of 25.54 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 39 degrees, 38 minutes and 23.78 seconds West, of 1/2" Iron rod with plastic cap located on the northeast side of the property. Drive a distance of 199.92 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 45 degrees, 21 minutes and 22.62 seconds West, Drive a distance of 251.79 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 38 degrees, 05 minutes and 05.46 seconds West, Drive a distance of 40.23 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 53 degrees, 02 minutes and 00.38 seconds East, Drive a distance of 224.38 feet towards 1/2" Iron rod with plastic cap.

THENCE, South 46 degrees, 32 minutes and 33.95 seconds East, Drive a distance of 1,220.67 feet towards 1/2" Iron rod with plastic cap, same being the Point of Beginning POB-I.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, TRINITY GROUP, does hereby presents this Proposed Plat for zoning designation for the above described property as PALACE WAY DEVELOPMENT, an addition to the City of San Marcos, Texas. Said utility easements being hereby reserved for the mutual use and accommodation of all public utilities using or desiring to use same.



Dr. David L. Joyner, P.E  
TX Firm 12656



*April 28, 2020*

## AMENDED DEED RESTRICTIONS

### EXHIBIT B

Comes now Pastor Paul Buntyn the President of Abundant Life Christian Church, the Grantee under that certain Warranty Deed dated November 12, 1999 from C & G Development, Inc. to Abundant Life Christian Church which was recorded in the Deed Records of Hays County, Texas, Instrument Number 09927062 on or about November 15, 1999, which contained certain deed restrictions attached thereto as Exhibit B. According to the Warranty Deed, the Deed Restrictions can be amended by the Grantee or its successor in interest every twenty (20) years. Therefore, Pastor Paul Buntyn, President of Abundant Life Christian Church desires to replace and amend those Deed Restrictions and record these amended deed restrictions in Hays County, Texas.

Grantee Abundant Life Christian Church, or its successors, legal representatives, heirs successors and assigns, that any purchaser, corporate or individual, of this land shall have the authority to amend said restrictions at any time.

Therefore, the declarant hereby declares that the deed restrictions shall be revised as follows:

1. All tracts shall be used for residential and/or commercial development in accordance with the regulations then existing in Hays County, Texas.
2. There shall be no jails, prisons or penal institutions of any kind being erected on said land.
3. There shall be no farms that raise cattle, hogs and/or chickens or any other type of livestock or farm animal for mass production. The premises shall not be stocked with any livestock in such numbers that hereby create a nuisance.
4. There shall be no junk yards/dump sites of any sort being erected on said land. Motor vehicles without current license and registration, junk or wrecking yards, and automobiles, trucks or other vehicles used for parts are strictly prohibited.
5. There shall be no slaughterhouse of any sort being erected on the said land.
6. There shall be no shooting range or anything of the sort being erected on said land. The use or discharge of firearms, including (but not limited to) air powered guns, and the use or discharge of fireworks is expressly prohibited within the property.
7. Composting bins must be located and maintained in such a way that no odors are detectable from neighboring properties, and the bins must be maintained so they are not unsightly or unkept.



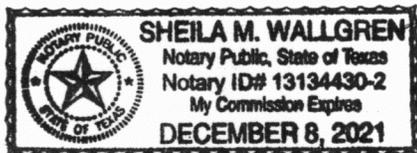
**ABUNDANT LIFE CHRISTIAN CHURCH**

Paul Buntyn  
Pastor Paul Buntyn

STATE OF TEXAS )

COUNTY OF HAYS)

This instrument was acknowledged before me on June 7<sup>th</sup>, 2019 by  
Pastor Paul Buntyn.



Sheila M. Wallgren  
Notary Public, State of Texas  
My commission expires: 12-8-2021

PREPARED IN THE OFFICE OF:

DAVID K. SERGI AND ASSOCIATES, P.C.  
329 S. Guadalupe St.  
San Marcos, TX 78666  
Tel: 512-392-5010  
Fax: 512-392-5042

AFTER RECORDING RETURN TO:

DAVID K. SERGI AND ASSOCIATES, P.C.  
329 S. Guadalupe St.  
San Marcos, TX 78666  
Tel: 512-392-5010  
Fax: 512-392-5042

THE STATE OF TEXAS

COUNTY OF HAYS

I hereby certify that this instrument was FILED on the  
date and the time stamped hereon by me and was duly  
RECORDED in the Records of Hays County, Texas.

**19020883      RESTRICTIONS**  
06/20/2019 02:35:27 PM Total Fees: \$30.00

 Elaine H. Cardenas

Elaine H. Cardenas, MBA, PhD, County Clerk  
Hays County, Texas

**From:** [Villalobos, Andrea](#)  
**To:** [Villalobos, Andrea](#)  
**Subject:** FW: [EXTERNAL] Comments to be read aloud - Planning and Zoning Meeting  
**Date:** Tuesday, April 28, 2020 8:57:49 AM

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**From:** Paul Hennington  
**Sent:** Tuesday, April 28, 2020 8:42 AM  
**To:** Planning Info <[PlanningInfo@sanmarcostx.gov](mailto:PlanningInfo@sanmarcostx.gov)>  
**Subject:** [EXTERNAL] Comments to be read aloud - Planning and Zoning Meeting

To whom it may concern,

In reference to the Planning and Zoning Meeting tonight (April 28, 2020 at 6pm)

I would like the following read aloud to address both of the following agenda items:

- Agenda Items 9 (ZC-20-07)
- Agenda Item 10 (ZC-20-08)

My name is David Hennington. I live at 4 Cow Trail, San Marcos TX which is adjacent to the subject properties considered in this hearing.

I would like it to be known that these properties were originally all part of a 202 acre tract until a developer subdivided the property.

The developer put it in deed restrictions to limit the use of the land. This was filed with the Hays County Clerk on September 9<sup>th</sup>, 1999. I have attached a copy of the filing.

Some key points are as follows:

- All tracts shall be known and described as residential tracts and shall be used for residential purposes only.
- Double wide manufactured homes are permitted, but single wide manufactured homes are not allowed
- No tract shall be subdivided in a tract smaller than 5 acres
- These restrictions are originally effective for a term of 20 years from date of filing which occurred on September 9<sup>th</sup>, 1999.
- These deed restrictions shall be automatically extended for successive periods of 10 years.
- These deed restrictions may only be amended during the last year of such a 10 year period by an instrument signed by not less than 75% of the Tract owners.

I would like it known that I am contesting the proposed land use and zoning change. I believe that the deed restrictions are active and defensible against the proposed changes.

Two additional points to consider:

- Drainage: These properties drain runoff into a small creek that eventually runs through a culvert under Highway 21. It is already not unusual for heavy rains to cause flooding of the parcels near Cow Trail and 21. If they add more impervious ground cover (roads and parking), It could be catastrophic to those home owners unless a substantial civil engineering effort is conducted.
- Wildlife: The subject property is home to a wide variety of Birds, Reptiles, and Mammal species. Additionally, wild bees and other insects provide pollination for the surrounding agricultural properties. Commercial or dense residential development would have an ecological impact.

Thank you for the opportunity share these statements

Paul Hennington  
4 Cow Trail  
San Marcos, TX  
(512) 632-7475

**CAUTION:** This email is from an EXTERNAL source. Links or attachments may be dangerous. Click the Phish Alert button above if you think this email is malicious .

This Deed is subject to the following covenants, conditions and restrictions:

1. All tracts shall be known and described as residential tracts and shall be used for residential purposes only. The premises shall not be stocked with any livestock in such numbers as to require heavy supplemental feeding thereby creating a nuisance. No fowls or animals shall be kept on the premises in such numbers or in such a manner as may be or may become a nuisance. No noxious, obnoxious or offensive activities of any kind shall be carried on or permitted on any Tract, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

2. No residence shall be erected, placed or permitted to remain on any Tract other than a detached single-family dwelling. A detached single-family dwelling shall consist of only one home, manufactured house or residence not to exceed two (2) stories in height.

A. Permanent Homes.

(1.) Each permanent site-built home and buildings shall be of new construction. Each home shall contain a minimum of 1,100 square feet of living area, exclusive of garages, carports, and porches.

(2.) The exterior of each permanent site-built home shall be complete within six (6) months of beginning construction.

B. Manufactured Homes.

(1.) All manufactured housing shall be double wide homes, no single wide manufactured homes will be allowed.

(2.) All manufactured homes must be skirted within thirty (30) days after placement on property with masonry or plaster.

(3.) Notwithstanding any other restrictions or limitations contained in this Section to the contrary, all manufactured homes shall be anchored to the land in the manner prescribed by the Texas Department of Licensing and Regulation.

(4.) No manufactured home of less than 1,100 square feet shall be allowed.

(5.) All manufactured homes shall be of new construction.

(6.) Roof surfaces shall be clear of weights, anchors, and/or other objects that may be placed thereon. Tires and other unsightly objects that may be placed on roofs are explicitly prohibited.

3. No detached single-family dwelling shall be located nearer than fifty (50) feet to a street line, nor nearer than fifty (50) feet to an interior property line, whether an original line or a subdividing line. For purposes of this restriction, eaves, steps and open porches shall not be considered as a part of a dwelling; however, this shall not be construed to permit any portion of a dwelling to encroach upon another Tract. If two or more tracts are combined as a single homesite then there shall be no setback or interior common lot lines.

4. No basement, tent, or other structure of a temporary nature, shack, barn, garage, or other outbuilding of whatever kind or nature, whether attached or detached, shall at any time be used on any Tract as a residence either temporarily or permanently.

5. No abandoned automobiles, trucks, or any other unsightly property or junk shall ever be kept, stored or placed on a Tract. All automobiles, trucks, vehicles, boats and recreation motor homes shall bear current license and motor vehicle inspection stickers.

6. No pets shall run loose. Pets shall be contained by fencing capable of containing such pet. Each pet must wear an identity collar identifying its owner as well as certification of current vaccination as required by law.

7. All trash shall be disposed of weekly. No Tract shall be used as a dumping ground for rubbish, trash or lawn clippings, and no garbage or other waste shall be kept except in sanitary containers. The premises and improvements thereon shall be maintained in a neat and orderly manner.

8. All mail boxes shall be of type and design and placed in a location approved by the U.S.

ORIGINAL DOCUMENT IN FILE

Postmaster.

9. No Tract shall be subdivided in a tract smaller than 5.01 acres herein.
10. All anchoring devices, electrical, plumbing and telephone equipment and septic systems shall be installed in accordance with applicable Federal, State of Texas and local laws and ordinances.
11. Arches, awnings, carports, garages, porches, steps, storage building, etc. shall be erected permanently and be of sound construction; compatible in appearance with the dwelling. Fences shall be designed and erected in such a way as to be harmonious with the character of the property. Abandoned signs, rusty roofing metal and/or like materials shall not be used for fencing. No fence shall exceed six (6) feet in height.
12. Grantor, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions and reservations now or hereafter imposed by the Deed Restrictions. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
13. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.
14. The covenants, conditions and restrictions of this Deed shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Grantor or the Owner of any Tract subject to these Deed Restrictions, and their respective legal representatives, heirs, successors and assigns, and, unless amended as provided herein, shall be effective for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than eighty percent (80%) of the Tract Owners; during any succeeding ten (10) year period, the covenants, conditions and restrictions of this Declaration may be amended during the last year of any such ten (10) year period by an instrument signed by not less than seventy-five percent (75%) of the Tract Owners. No amendment shall be effective until recorded in the Official Records of Hays County, Texas, nor until the approval of any governmental regulatory body which is required shall have been obtained.

ORIGINAL DOCUMENT FILED IN

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

EXHIBIT "C" *Lee Carlisle*  
9-9-99 03:41 PM 9921612  
ROSE \$21.00  
LEE CARLISLE, County Clerk  
HAYS COUNTY

7

*WZ* *NA* *L.L.*



## Legislation Text

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**File #:** Ord. 2020-36(b), **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-36, on the second of two readings, amending the Official Zoning Map of the City by rezoning approximately 44.99 acres of land located at 4087 State Highway 21, from "FD" Future Development District to "MH" Manufactured Home District; and including procedural provisions.

**Meeting date:** June 2, 2020

**Department:** Planning and Development Services

**Amount & Source of Funding**

**Funds Required:** n/a

**Account Number:** n/a

**Funds Available:** n/a

**Account Name:** n/a

**Fiscal Note:**

**Prior Council Action:** n/a

**City Council Strategic Initiative:**

N/A

**Comprehensive Plan Element (s):**

- 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 - Safe, Well coordinated transportation system implemented in an environmentally sensitive manner
- Core Services
- Not Applicable

**Master Plan:**

Vision San Marcos - A River Runs Through Us

**Background Information:**

The subject property is currently located outside the City Limits in the Extraterritorial Jurisdiction (ETJ). The property is currently vacant and is adjacent to existing single family and rural/agricultural property as well as adjacent to the Harris Hill Race Track and the San Marcos Regional Airport. In addition, FM 110 is proposed to be located to the north of the property. The subject property has already dedicated right-of-way in order to provide for the future construction of FM 110.

The purpose of this zoning change to “Manufactured Home” zoning is to allow the development of a Manufactured Home Park with approximately 250 spaces. According to the applicant, the community will have a club house with exercise gym, party room, and on site management offices. Additionally, the grounds will have a swimming pool, tennis courts, basketball court, community garden area, dog parks, playgrounds, a covered postal box center, and off-street parking. The applicant stated that the development will be a land-lease community with the residents owning their homes and renting the lots, however, up to 30% of the homes may be rental homes. The park will consist of a mix of single-wide and double-wide units ranging in size from 800 square feet to 1,400 square feet. Most homes will be 3-bedroom, 2-bath homes with some 2-bedroom, 2-bath homes.

The applicant is also requesting a rezoning to Light Industrial, “LI” for approximately 14 acres abutting the subject property to the east. This request is being considered as part of a separate zoning request (ZC-20-07). Both zoning requests are being processed concurrently with an annexation request for the property.

The City of San Marcos will provide wastewater services at the site and the Maxwell Water Supply Corporation will provide water service. The developer will be responsible for extending water and wastewater facilities through the site. Pedernales Electric Service will provide electric service.

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

**Planning and Zoning Commission Meeting: April 28, 2020**

**Speakers in favor or opposed:**

1. (1) Jim Glasgow (in favor)
2. (1) Paul Hennington (in opposition)

**Recommendation from the Planning and Zoning Commission meeting held April 28, 2020:**

A motion was made by Commissioner McCarty, seconded by Commissioner Dillon, to approve ZC-20-08. The motion carried 7-0.

- **For:** (7) Chairperson Gleason, Commissioner Rand, Commissioner McCarty, Commissioner

Haverland, Commissioner Dillon, Commissioner Moore, Commissioner Agnew.

- **Against:** 0
- **Absent:** (2) Vice Chairperson Kelsey, Commissioner Spell.

**Alternatives:**

n/a

**Recommendation:**

The Development Code states that a request for Manufactured Home zoning in an Area of Stability - Low Intensity is “Not Preferred” and requires additional scrutiny as outlined in the staff report. The proposed zoning change to Manufactured Home is generally compatible with surrounding residential and rural residential uses, however, the proposed zoning will allow for a denser layout of units. The subject property’s location abutting the proposed FM 110 San Marcos eastern loop may create compatibility concerns with regards to residential uses along a major thoroughfare. FM 110 is identified as an “Employment Corridor” on the Preferred Scenario Map and is envisioned to have commercial or employment related uses. FM 110 will be initially funded by a Transportation Reinvestment Zone (TRZ) to capture a portion of the increased value of development occurring along the alignment.

Due to the varying factors regarding current and future land configurations around the subject property, staff is providing a **neutral** recommendation and leaves a decision of approval, denial, or a recommendation of a lesser zoning district up to the City Council.

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY REZONING APPROXIMATELY 44.99 ACRES OF LAND LOCATED AT 4087 STATE HIGHWAY 21 FROM “FD” FUTURE DEVELOPMENT DISTRICT TO “MH” MANUFACTURED HOME DISTRICT; AND INCLUDING PROCEDURAL PROVISIONS.**

**RECITALS:**

1. On April 28, 2020, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “FD” Future Development District to “MH” Manufactured Home District for approximately 44.99 acres of land located at 4087 State Highway 21.
2. The Planning and Zoning Commission voted to recommend that the request be approved by the City Council.
3. The City Council held a public hearing on May 19, 2020 regarding the request.
4. All requirements pertaining to Zoning Map amendments have been met.
5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

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

**SECTION 1.** The Official Zoning Map of the City is amended to rezone the tract of land described in Exhibit A, attached hereto and made a part hereof, from “FD” Future Development District to “MH” Manufactured Home District.

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

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

**SECTION 4.** This ordinance will take effect after its passage, approval and adoption on second reading.

**PASSED AND APPROVED** on first reading on May 19, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney

## EXHIBIT A



### RESIDENTIAL ZONING

#### STATE OF TEXAS - CITY OF SAN MARCOS

WHEREAS, Palace way Partners owns a 59.89ac tract of land situated in the Thomas G. McGehee survey, A-11, Hays County, Texas. Conveyed in volume 723 page 39, Plat records, Hays County, TX. Same being a tract of land described to Palaceway Partners as conveyed in Instrument number 9927062, official public records, Hays County, Texas. And being more particularly described by metes and bounds as follows: Grid north of the Texas state plane coordinate system, NAD 83, South central zone.

The proposed plat divides the property in two plats, the residential plat being 44.99 acres.

Beginning at 1/2" Iron rod with plastic cap found at southeast corner said POB-R same being southeast of Mrs. Millie Gary Et Vir to the State of Texas recorded in the public records Volume 117, Page 493. Hays County, Texas. And lying on the north Right of Way of the State Highway Number 21.

THENCE, North 50°, 26 minutes, 21.87 seconds East along the western right of way of State Highway 21. Drive a distance of 118.16 feet.

THENCE, North 45 degrees, 25 minutes and 53.13 seconds West, parallel with the adjacent gravel road said Cow Trail, drive a distance of 1,530.10 feet towards 1/2" " Iron rod with plastic cap.

THENCE, North 46 degrees, 12 minutes and 08.40 seconds East, towards the adjacent gravel road said Cow Trail, drive a distance of 175.99 feet towards 1/2" " Iron rod. Same lying on the left right of way of Cow Trial.

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, with the west right of way of said Cow Trial. Drive a distance of 886.52 feet. Same being the northwest corner of the residential parcel.

THENCE, North 46 degrees, 32 minutes and 33.95 seconds West, same being the west side of the Industrial Plat and the right edge of road of Dukes Rd, drive a distance of 1,306.58 feet to 1/2" Iron rod with plastic cap stamped "Byrn Associates". Same being the west side of the Industrial plat.

THENCE, North 53 degrees, 02 minutes and 00.38 seconds West, same being the west side of the Industrial Plat and the right edge of road of Dukes Rd, drive a distance of 224.38 feet to 1/2" Iron rod with plastic cap stamped "Trinity Companies". Same being the northwest corner of the Industrial plat.

THENCE, South 38 degrees, 05 minutes and 05.46 seconds West, of the northwest corner of the Industrial plat and the right edge of road of Dukes Rd, drive a distance of 483.82 feet to 1/2" Iron rod with plastic cap stamped "Byrn survey". And lying on the east right of way of the Harris Hill Road Sport Vehicle Track.

THENCE, South 34 degrees, 57 minutes and 58.46 seconds West, drive a distance of 438.82 feet to 1/2" Iron rod with plastic cap.

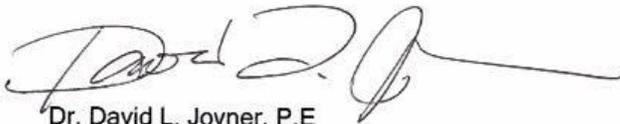
THENCE, South 46 degrees, 29 minutes and 03.48 seconds East, being the northwest corner of the proposed plat. drive a distance of 2104.26 feet to 1/2" Iron rod with plastic cap stamped "Trinity Companies.

THENCE, South 45 degrees, 26 minutes and 48.34 seconds East, being part of the left edge of road of Dukes road. Drive a distance of 1,420.16' towards POB-R, same being the west Right of Way of State Highway Number 21.

---

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, TRINITY GROUP, does hereby present this Proposed Plat designating the herein above described property as PALACE WAY DEVELOPMENT, an addition to the City of San Marcos, Texas. Said utility easements being hereby reserved for the mutual use and accommodation of all public utilities using or desiring to use same.



Dr. David L. Joyner, P.E  
TX Firm 12656



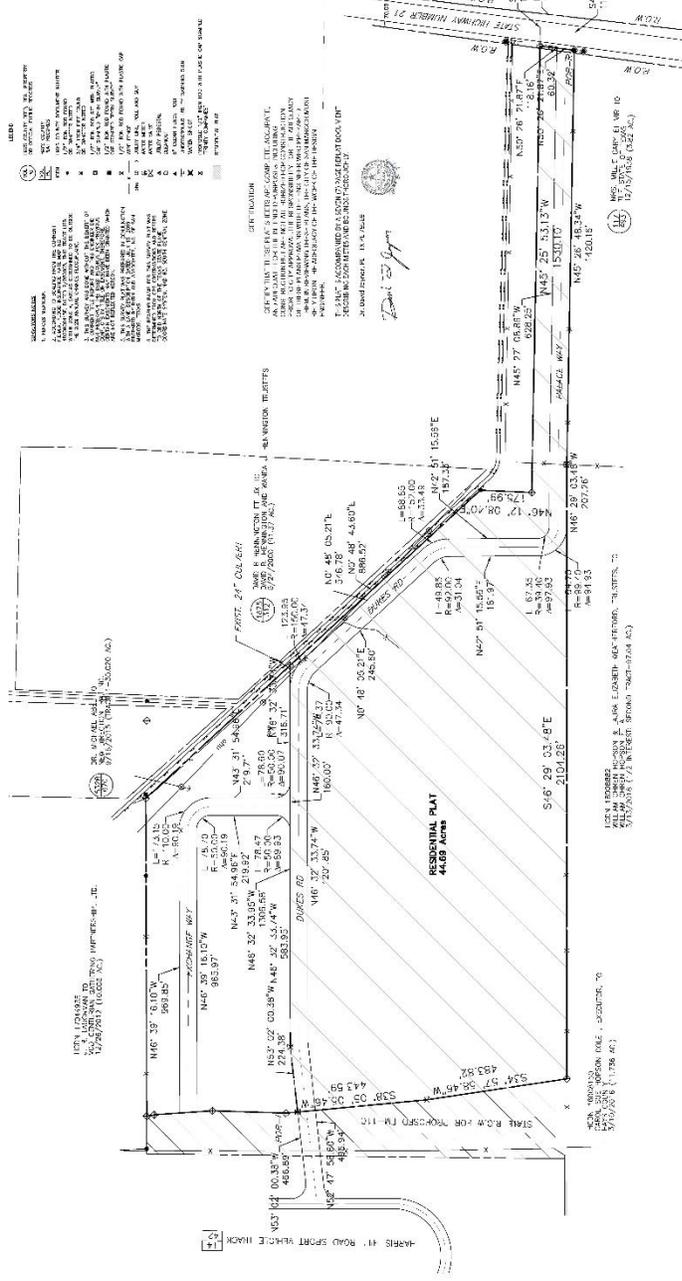
April 20, 2020

TRINITY GROUP

A Real Estate Development Service Company

PAGE 2 OF 2

838 Meyer Rd., NB, TX 78638-1503 • Ph. 830.303.3283  
In Austin 512.807.7310 • Eagle Ford 830.303.3283  
Houston 713.574.1949 • San Antonio 210.209.9976  
[www.trinitycompanies.biz](http://www.trinitycompanies.biz)



- LEGEND**
- 1. LOT LINES
  - 2. LOT CORNERS
  - 3. LOT AREA
  - 4. LOT PERIMETER
  - 5. LOT AREA
  - 6. LOT PERIMETER
  - 7. LOT AREA
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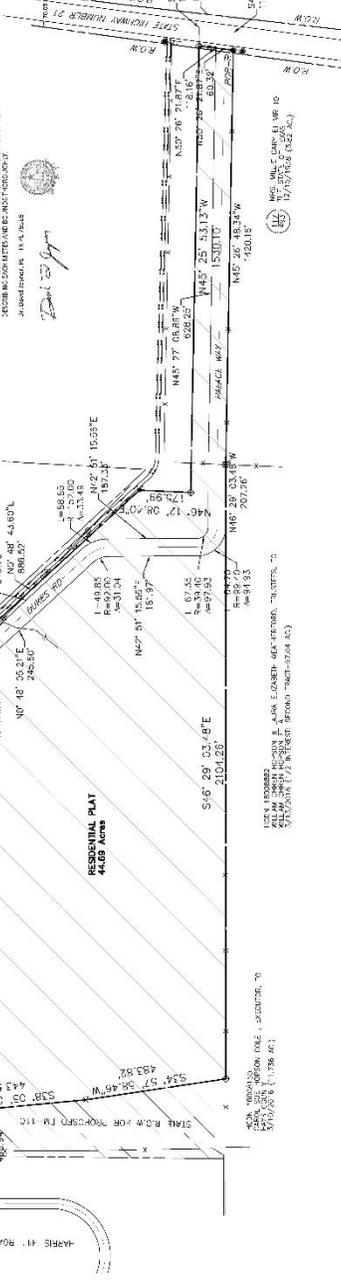
**NOTES**

1. THIS PLAN IS A PART OF A SET OF PLANS FOR THE DEVELOPMENT OF THE PROPERTY DESCRIBED HEREIN.
2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
3. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY EASEMENTS AND RIGHTS-OF-WAY FROM THE APPROPRIATE OWNERS.
4. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY UTILITIES AND SERVICES FROM THE APPROPRIATE PROVIDERS.
5. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE AND BONDS FROM THE APPROPRIATE PROVIDERS.
6. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDING AND FILING FROM THE APPROPRIATE OFFICES.
7. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDING AND FILING FROM THE APPROPRIATE OFFICES.
8. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDING AND FILING FROM THE APPROPRIATE OFFICES.
9. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDING AND FILING FROM THE APPROPRIATE OFFICES.
10. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY RECORDING AND FILING FROM THE APPROPRIATE OFFICES.

**DEVELOPER'S CERTIFICATION**

I, the undersigned, being a duly qualified and licensed Surveyor, do hereby certify that the foregoing is a true and correct copy of the original survey and plan as shown to me by the developer, and that the same conform to the requirements of the laws of the State of Florida, and that the same have been recorded in the public records of the State of Florida.

\_\_\_\_\_  
 Surveyor



**PROPOSED PLAT FOR RESIDENTIAL DEVELOPMENT**

SHEET NO. C-02

DATE: 11/15/2023

SCALE: 1" = 200'

PROJECT: PALACE WAY DEVELOPMENT

LOCATION: 4087 ST. HIGHWAY 21

DEVELOPER: TRINITY GROUP

DESIGNER: TRINITY GROUP

CHECKED: D. JAMES

APPROVED: D. JAMES

**TRINITY GROUP**

2000 PALACE WAY, SUITE 100  
 PALM BEACH, FL 33480

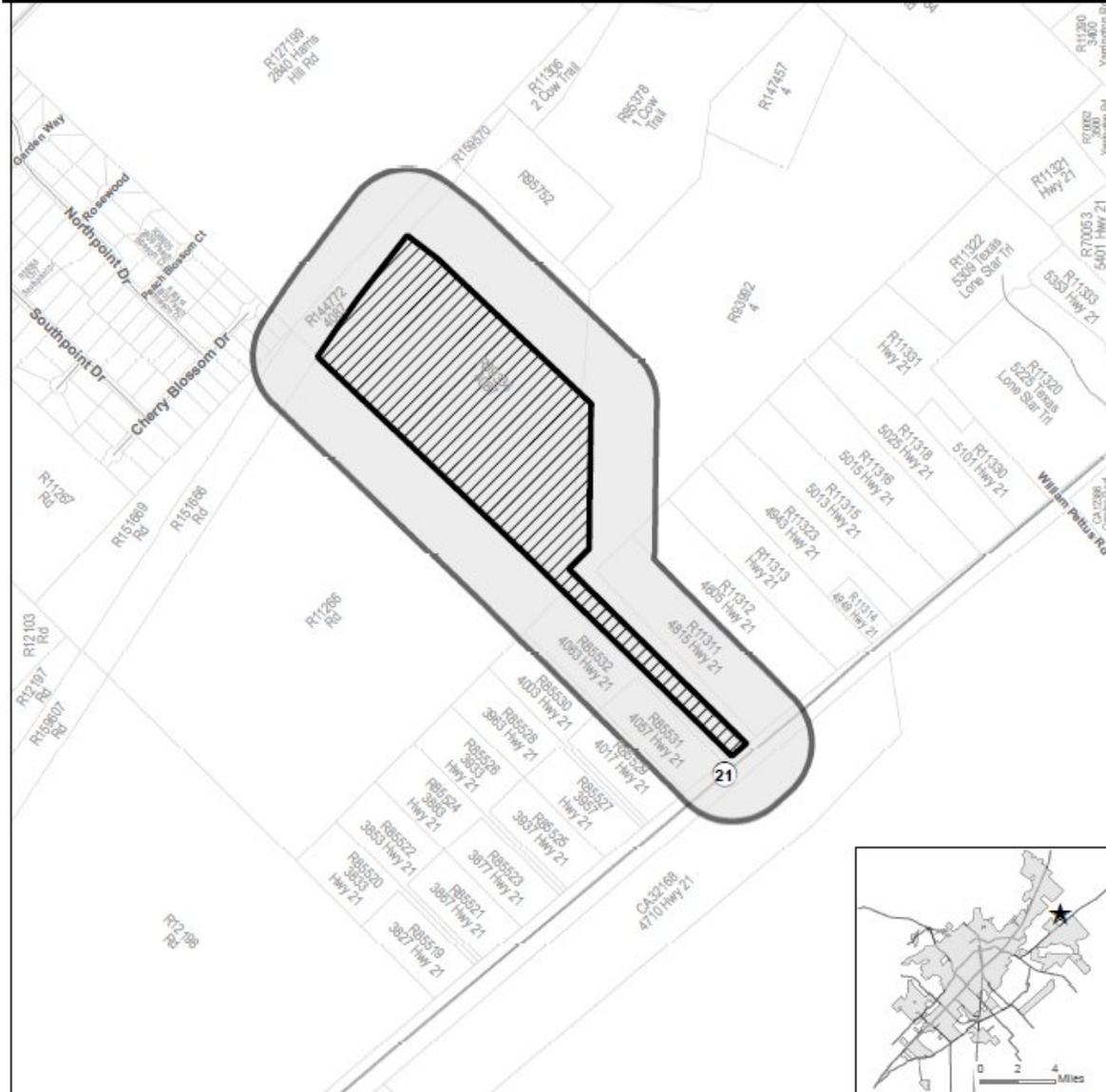
PHONE: (561) 840-1111  
 FAX: (561) 840-1112  
 WWW.TRINITYGROUP.COM

## ZC-20-08 (Palace Way MH)

Receive a Staff Presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-XX, amending the Official Zoning Map of the City by rezoning approximately 44.99 acres, more or less, out of the Thomas G. McGehee Survey, Abstract No. 11, Hays County, located at 4087 Hwy 21, from “FD” Future Development District to “MH” Manufactured Home District; and including procedural provisions; and consider approval of Ordinance 2020-XX on the first of two readings.

## Location:

- Approximately 44.99 acres
- **Current Configuration:**  
Vacant / Agricultural land
- Surrounding uses include:
  - Single-family / rural (ETJ)
  - Agricultural
  - Harris Hill Race Track / proposed FM 110
  - San Marcos Regional Airport
- Located outside the City Limits (Extraterritorial Jurisdiction)

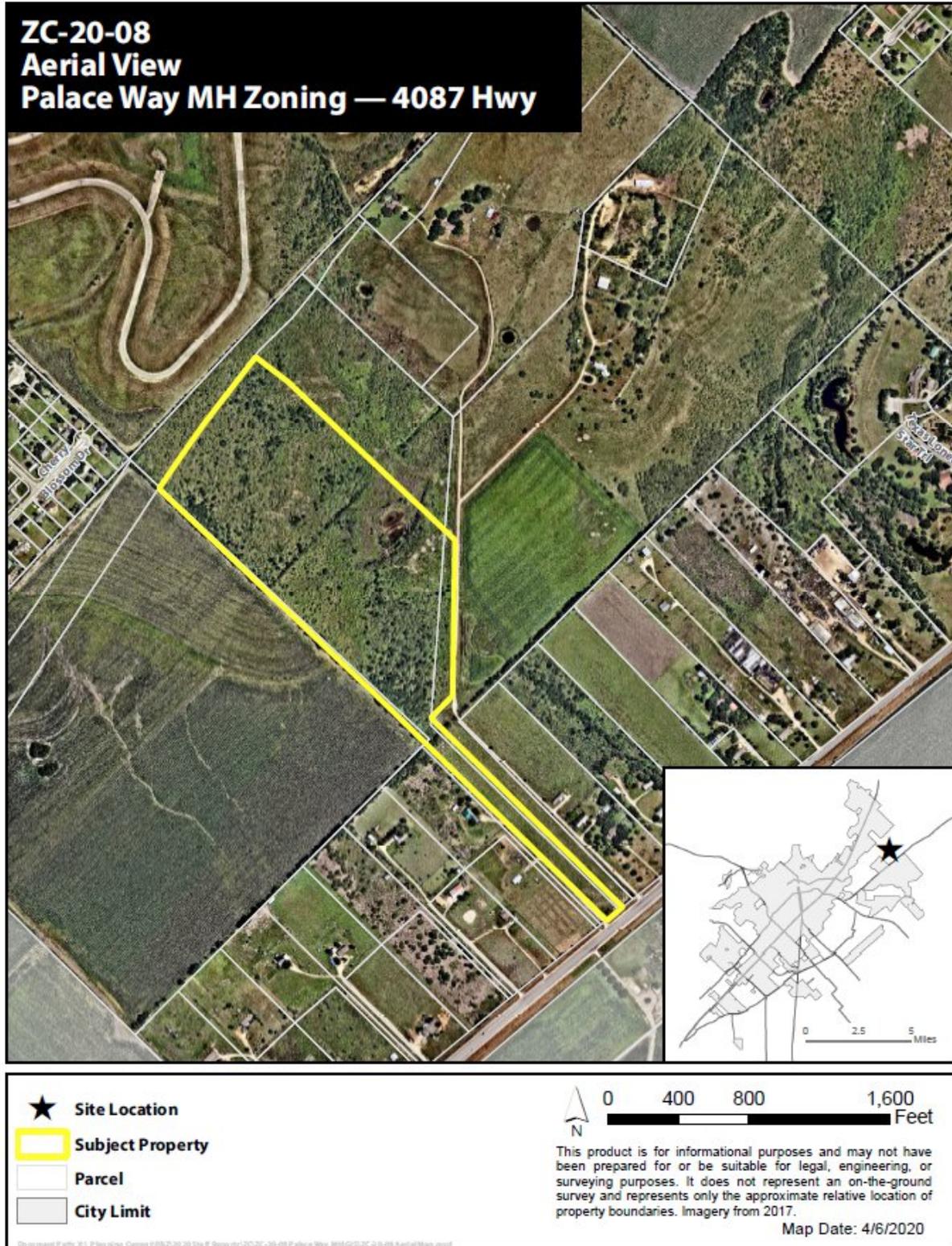


	Site Location		0	500	1,000	2,000	Feet
	Subject Property						
	400' Buffer	This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.					
	Parcel						
	City Limit						

Map Date: 4/7/2020

## Context & History

- **Existing Zoning:** Outside City Limits (ETJ)
- **Proposed Zoning:** Manufactured Home (MH)
- Proposed MH zoning allows manufactured home or manufactured home/mobile home communities as well as travel trailers/RVs short term stays, agricultural or public uses
- Applicant is currently proposing a 250 unit manufactured home community with associated amenities.
- Annexation request is being processed concurrently for property located outside City Limits



### ZC-20-08 Zoning Map Palace Way MH Zoning — 4087 Hwy 21



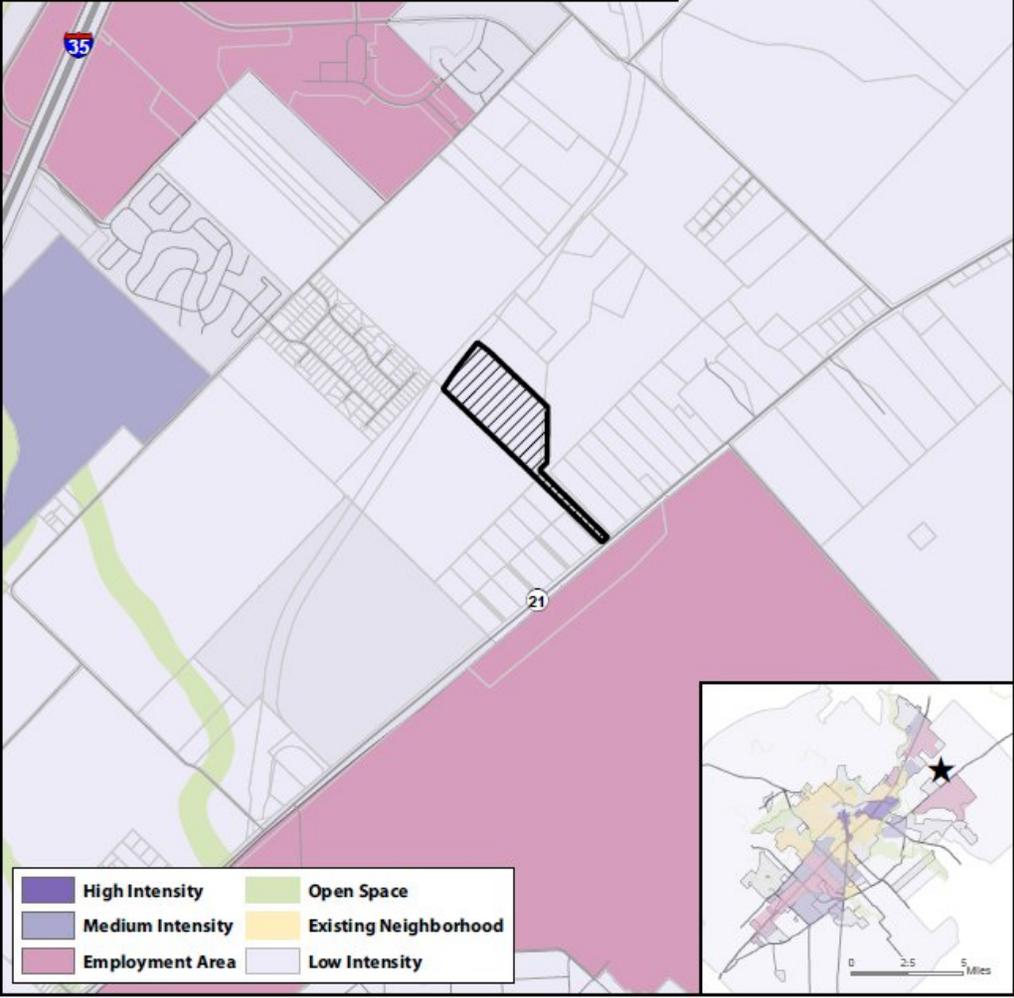
- ★ Site Location
- ▨ Subject Property
- ▭ Parcels
- ▭ City Limit



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 4/6/2020

### ZC-20-08 Preferred Scenario Palace Way MH Zoning — 4087 Hwy 21

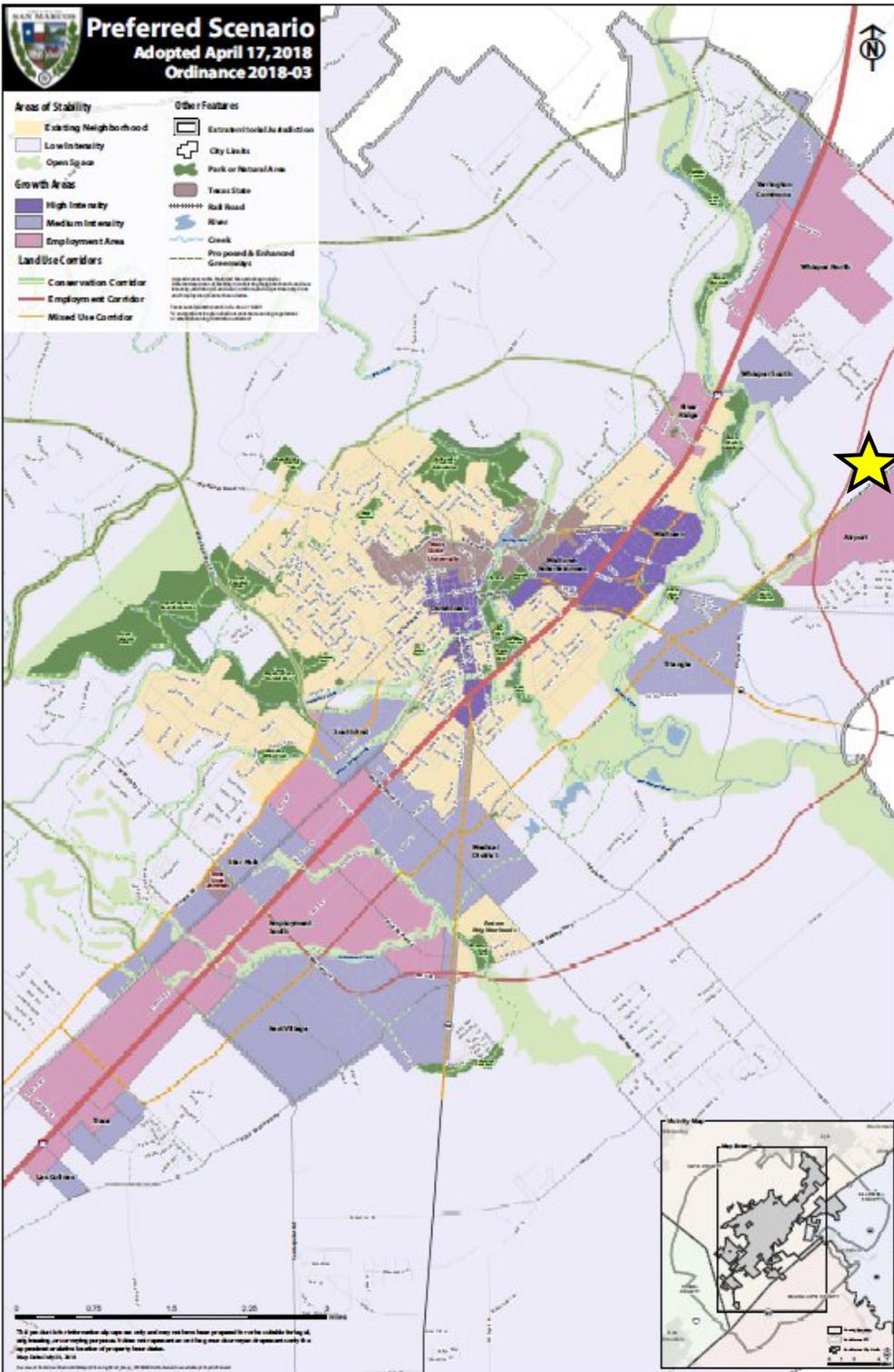


- ★ Site Location
- ▨ Subject Property
- ▭ Parcels
- ▭ City Limit



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 4/6/2020



# Comprehensive Plan Analysis

**Step 1:** Where is the property located on the Comprehensive Plan?

**Located in an Area of Stability – Low Intensity**

“Being located in an area of stability does not mean that these areas should or will not change. It means that any changes, whether new developments, zoning requests, or public improvements, should be carefully planned and implemented so that the character of the area remains.”  
(Comprehensive Plan, pg. 77)

# Comprehensive Plan Analysis

**Step 2:** Is the request consistent with the Comprehensive Plan / District Translation Table?

**Applicant is requesting a “Special District” (Manufactured Home zoning) within a Area of Stability – Low Intensity.**

**TABLE 4.1 COMPREHENSIVE PLAN / DISTRICT TRANSLATION**

DISTRICT CLASSIFICATION	COMPREHENSIVE PLAN DESIGNATIONS					
	OPEN SPACE/ AGRICULTURAL	LOW INTENSITY	EXISTING NEIGHBORHOOD	MEDIUM OR HIGH INTENSITY ZONE	EMPLOYMENT CENTER	CORRIDOR
Conventional Residential	NP	NP	C	--	--	--
Neighborhood Density Districts	NP	NP	See Section 4.1.2.4 - 4.1.2.5	NP	NP	C
Character Districts	NP	C	--	C	NP	C
Special Districts	--	NP	NP	NP	C	C

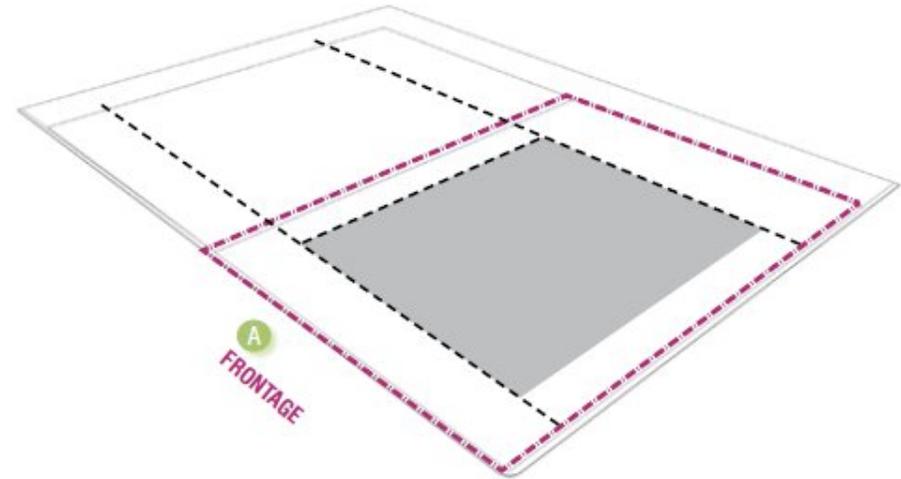
Legend      -- = Not Allowed (PSA Required)      NP=Not Preferred      C = Consider

## MH Zoning Analysis:

- MH zoning is intended for manufactured homes or manufactured home communities with associated standards
- **Allowable Building Types:** *N/A (this district is intended for manufactured homes / mobile homes)*
- **Allowable Uses:** *Community Garden, Urban Farm, accessory structures, manufactured home, mobile home community, travel trailers / RVs Short Term stays, various public and institutional uses*
- **Chapter 7, Article 6:** *standards for manufactured home parks such as access and circulation, parking, street lighting, fire safety, utilities, and recreational areas.*
- Surrounding area is comprised of generally rural single family and agricultural land as well as a major thoroughfare
- The city does not have zoning authority to regulate the use of surrounding property located outside the city limits.
- Proposed Industrial Zoning adjacent to the development (ZC-20-07)

MH

### SECTION 4.4.5.5 MANUFACTURED HOME



KEY

- Property Line (ROW)
- Setbacks
- Building Footprint
- A** Metrics on This and Facing Page

#### GENERAL DESCRIPTION

The Manufactured Home (MH) District is intended to implement appropriate standards for manufactured housing developments.

#### DENSITY

Units Per Gross Acre	9.0 max.
Impervious cover	75% max.

#### TRANSPORTATION

Block Perimeter	5,000 ft. max.	Section 3.6.2.1
Streetscape Type	Conventional	Section 3.8.1.7

#### LOT STANDARDS

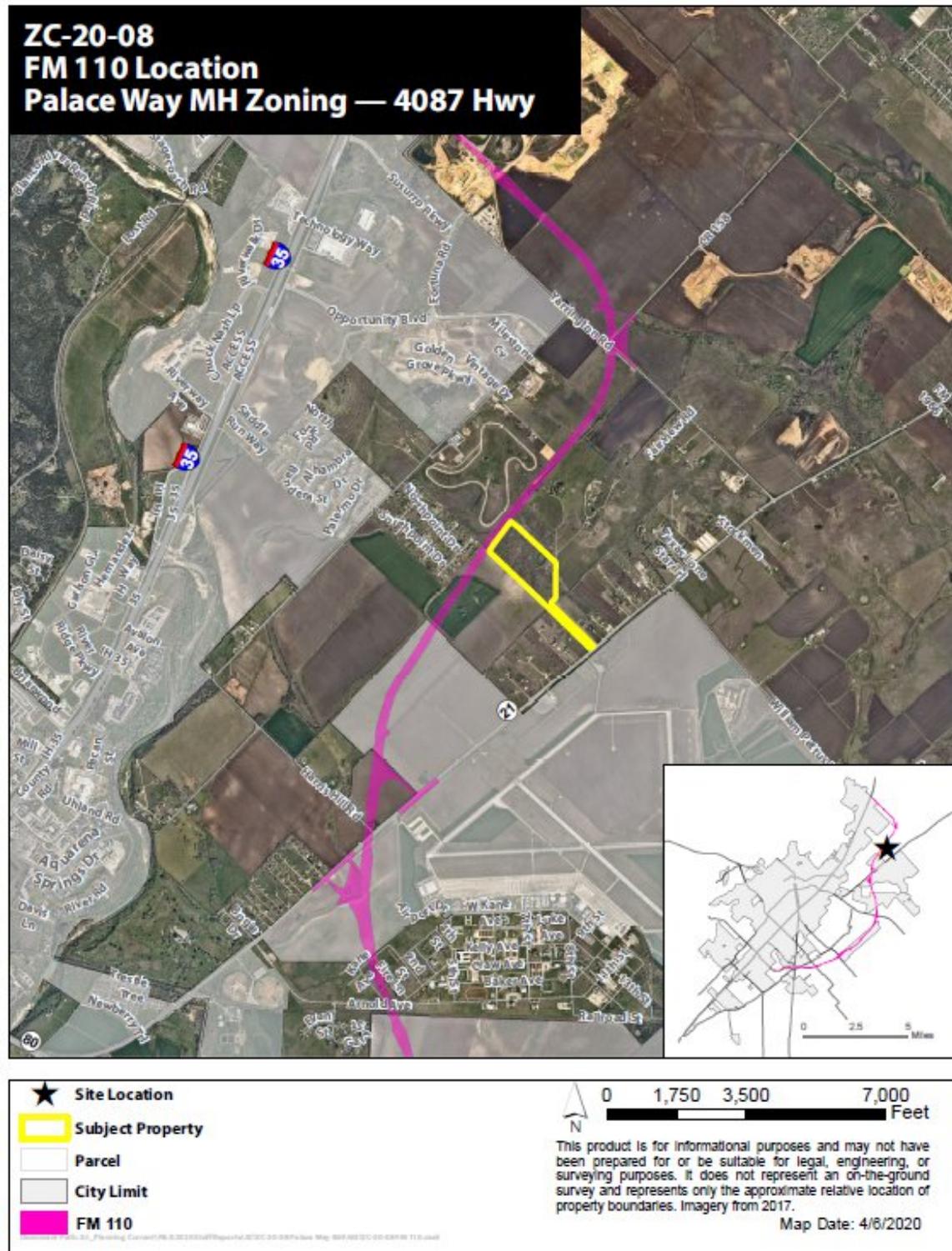
Area of Manufactured Home Lot or Space	
Interior Lot or Space	3,200 sf min.
Corner Lot or Space	4,400 sf min.
Width of Manufactured Home Lot or Space <b>A</b>	
Interior Lot or Space	40 ft. min.
Corner Lot or Space	55 ft. min.
Depth of Manufactured Home Lot or Space	80 ft. min.

## Proposed FM 110

- Hays County / San Marcos / TxDOT
- East loop includes two travel lanes with potential of four lanes
- **Funding:** Transportation Reinvestment Zones (TRZs) which captures a portion of the increased value of development along the alignment

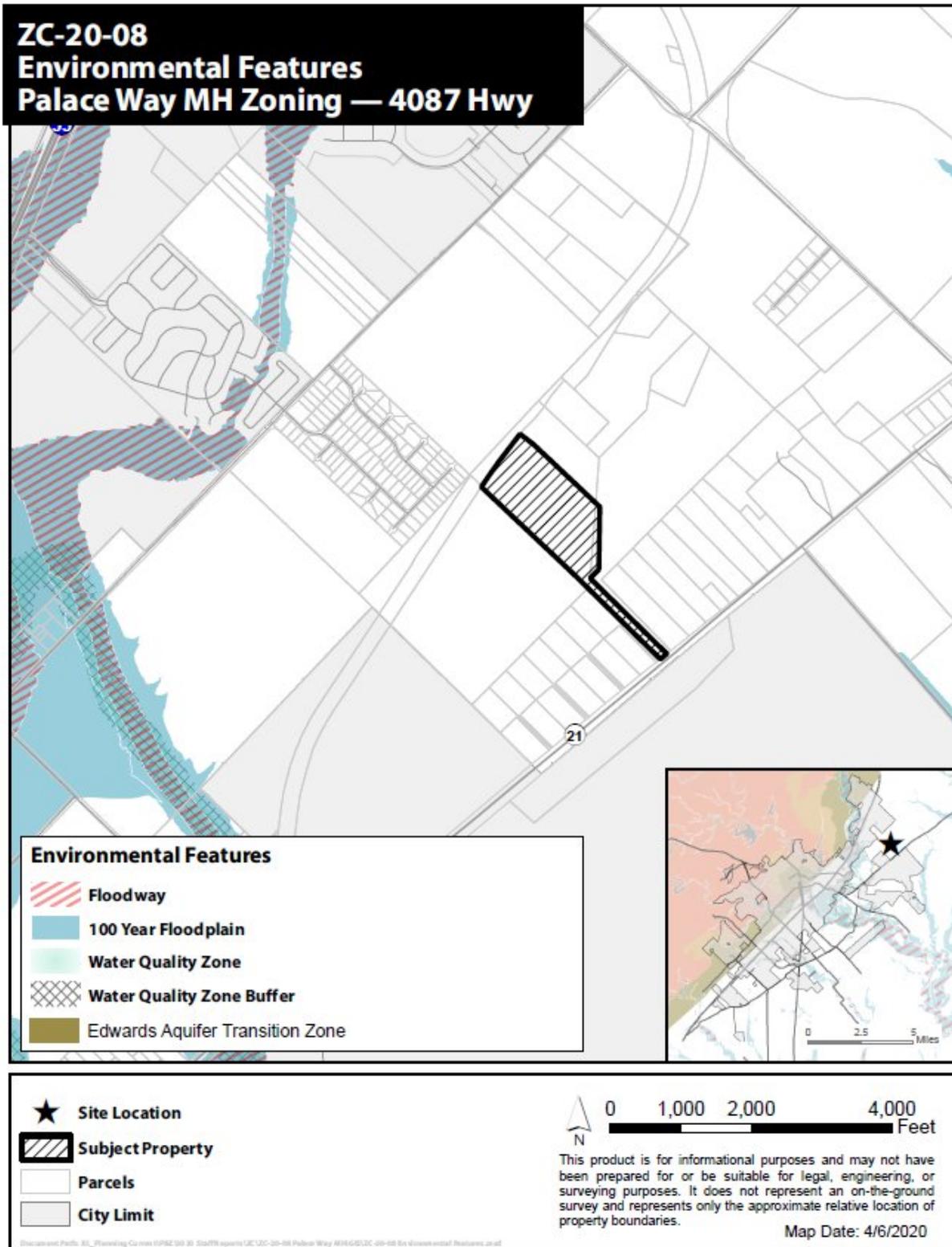
## Preferred Scenario: Employment Corridor

- **Employment Corridors:** “intended to serve major employment related land uses. Some mixture in uses including limited residential and supportive pedestrian and bicycle facilities should be incorporated.”
- FM 110 abuts the subject property and may attract a diversity of uses seeking access and development along the roadway.



## Environmental Analysis

- Located in a low to moderately constrained area on the Land Use Suitability map
- Not located in floodplain
- Watershed Protection Plan Phase 2
  - Detention
  - Drainage
  - Environmental Reports



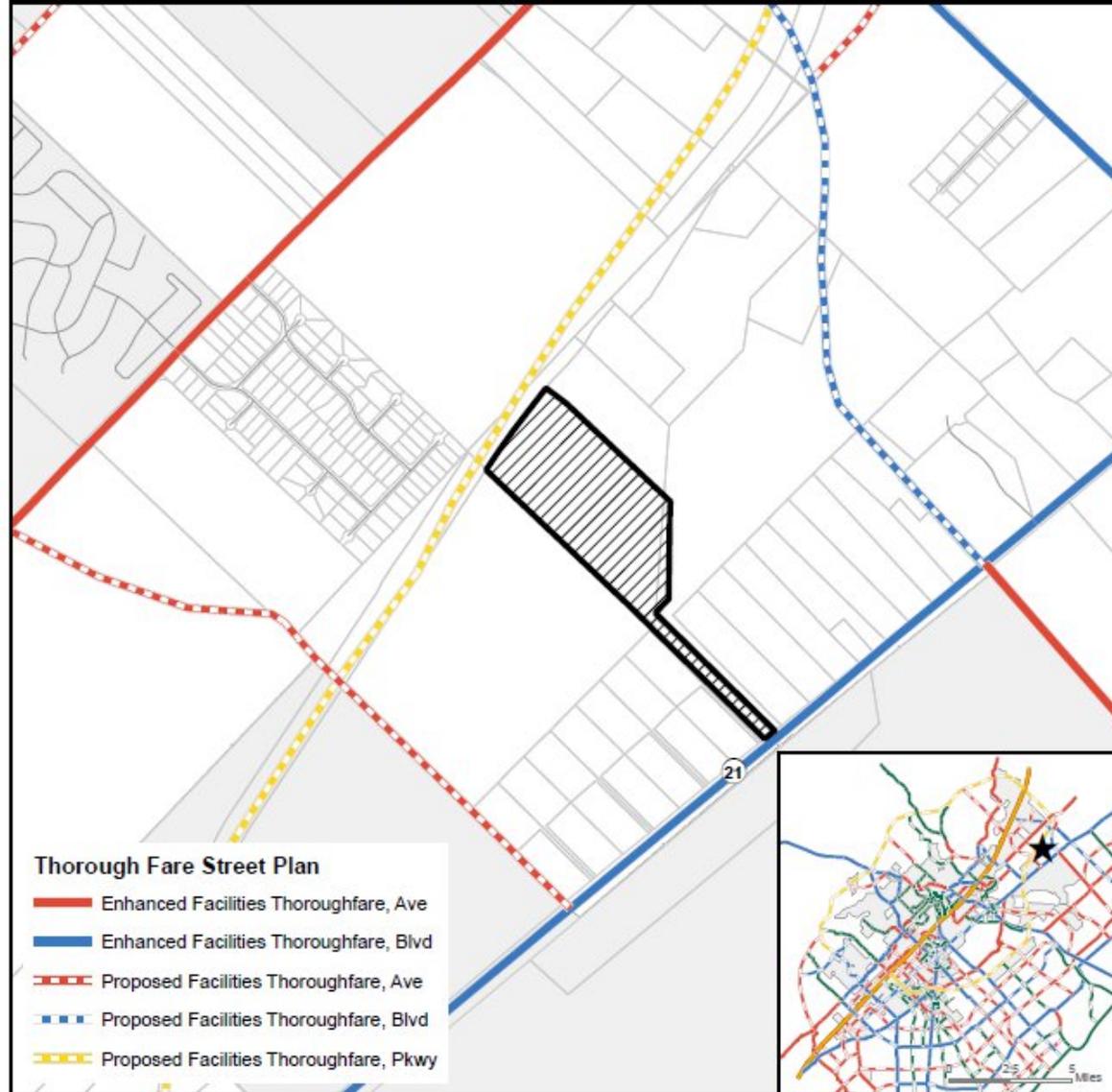
## Additional Requirements

- **Street Requirements**
  - Transportation Master Plan
  - Block perimeter requirements (5,000 feet)
  - Bike facility requirements
  - Sidewalk connections
  - Traffic Impact Analysis (TIA)
  
- **Subdivision Requirements**
  - Subdivision plat in accordance with lot and block standards
  
- **Utility Requirements**
  - Extension of water and wastewater facilities in accordance with City standards
  
- **Parkland Dedication / Development**

ZC-20-08

Transportation Master Plan

Palace Way MH Zoning — 4087 Hwy 21



**Thorough Fare Street Plan**

- Enhanced Facilities Thoroughfare, Ave
- Enhanced Facilities Thoroughfare, Blvd
- - - Proposed Facilities Thoroughfare, Ave
- - - Proposed Facilities Thoroughfare, Blvd
- - - Proposed Facilities Thoroughfare, Pkwy

- ★ Site Location
- ▨ Subject Property
- Parcels
- City Limit



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 4/6/2020



CENTRAL

**PUBLIC NOTICE**

40+ ACRE FARM HOUSE  
AMAZING VIEWS / ROLLING HAY FIELDS  
3 PONDS / GREAT TREES  
512-656-5544 / 512-657-1731

Public Hearing Notice Case: ZC-20-07  
Meeting Date: 4/28/20  
5/19/20  
FD LI

Public Hearing Notice Case: ZC-20-08  
Meeting Date: 4/28/20  
5/19/20  
FDMH

## Additional Analysis

- **Compatibility:** While Manufactured Home is generally compatible with surrounding single-family land uses, it will be a much more dense residential product. In addition, the property's location along the future FM 110 may situate the property around future high density commercial or industrial uses.
- **Preferred Scenario:** "Manufactured Home" is designated as "NP" Not Preferred within an "Area of Stability – Low Intensity" designation on the Preferred Scenario Map.
  - Alternatively, "Manufactured Home" is to be "C" Considered in an Employment Area on the Preferred Scenario Map. While the subject property is not located in an "Employment Area", it is located between two existing areas, Whisper development and the Municipal Airport.
- **FM 110:** The property is located along the proposed FM 110, which is designated as an "Employment Corridor" on the Preferred Scenario Map.
  - FM 110 is identified as a major transportation network and will be initially funded by a Transportation Reinvestment Zone (TRZ) to capture a portion of the increased value of development occurring along the alignment.



## Staff Recommendation:

At the April 28, 2020 Meeting the Planning and Zoning Commission recommended approval of the zoning change with a 7-0 vote.

The Development Code states that a request for Manufactured Home zoning in an Area of Stability – Low Intensity is “Not Preferred” and requires additional scrutiny outlined in detailed in the staff report.

Due to the varying factors regarding current and future land configurations around the subject property, staff is providing a **neutral recommendation** and leaves a decision of approval or denial of the request up to the City Council.

# Zoning District Comparison Chart

Topic	<b>Existing Zoning: Future Development (FD)</b>	<b>Proposed Zoning: Manufactured Home (MH)</b>
Zoning Description	The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.	The Manufactured Home (MH) District is intended to implement appropriate standards for manufactured housing developments.
Uses	Primarily agricultural, residential, and public/institutional (See <i>Land Use Matrix</i> )	Community Garden, Urban Farm, accessory structures, manufactured home, mobile home community, travel trailers / RVs Short Term stays, various public and institutional uses (See <i>Land Use Matrix</i> )
Parking Location	No location standards	No location standards
Parking Standards	Depends on use	Depends on use. For example, two parking spaces are required for each manufactured home site in accordance with the requirements for residential single family dwellings under Section 7.1.2.1 of the Development Code.
Max Residential Units per acre	0.4 units per acre (max)	9 units per acre (max)
Occupancy Restrictions	N/A	N/A
Landscaping	Tree and shrub requirements based on use	Tree and shrub requirements based on Multi-Family landscape requirements (20% landscape area)
Building Height (max)	2 stories ( 40 feet)	2 stories
Setbacks	50' minimum front; 20' min side; minimum rear setback is 20% of total lot depth	Measured from manufactured homes spaces. 10' minimum front; 5' minimum side; 20' minimum rear
Impervious Cover (max)	30%	75%
Lot Sizes	Allows a variety of lot sizes depending on Building Type.	3,200 sf minimum lot area; 4,400 sf minimum lot area for corner lot; 40' minimum lot width; 55' minimum lot width for corner lot 80' minimum lot depth
Streetscapes	Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area between sidewalk and street required.	Conventional Street: 6' sidewalk, street trees every 40' on center average, 7' planting area between sidewalk and street required.
Blocks	No Block Perimeter Required	5,000 ft. Block Perimeter max



# Palace Way Park

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A MANUFACTURED HOME COMMUNITY

# Quick Facts

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- 230-240 Homes
- 5-Star Design
- Land-Lease Community
- On Site Management
- Quality Homes



# Code Compliant

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- San Marcos Manufactured Housing Code
- Hud & State Codes
- Set-up by state Licensed installers
- Inspected by the City, and our Engineering Firm



# Affordable Housing

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- 20-30% Less per month than renting a comparable size apartment.
- Builds Equity
- Average 14.2 Years



# HUD

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As one solution to the affordable housing issue.

The Department of Housing & Urban development is encouraging cities to add manufactured housing zoning to their planning by making it part of the block grant requirements.



# Video

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Showing the look and feel that the Palace Way park is being designed too



**Zoning Request****4087 Hwy 21****ZC-20-08****Summary**

<b>Request:</b>	Zoning change from “FD” Future Development to “MH” Manufactured Home		
<b>Applicant:</b>	Jim Glasgow 6531 Fox Run San Antonio, TX 78233	<b>Property Owner:</b>	Palace Way Partners, LLC 6531 Fox Run San Antonio, TX 78233

**Notification**

<b>Application:</b>	March 24, 2020	<b>Neighborhood Meeting:</b>	N/A
<b>Published:</b>	April 12, 2020	<b># of Participants</b>	N/A
<b>Posted:</b>	April 10, 2020	<b>Personal:</b>	April 10, 2020
<b>Response:</b>	1 letter of opposition (included in packet)		

**Property Description**

<b>Legal Description:</b>	+/- 44.99 acre tract out of the Thomas G. McGehee Survey, Abstract No. 11, Hays County		
<b>Location:</b>	4087 Hwy 21		
<b>Acreage:</b>	44.99	<b>PDD/DA/Other:</b>	Pending Annexation
<b>Existing Zoning:</b>	“FD” Future Development	<b>Proposed Zoning:</b>	“MH” Manufactured Home
<b>Existing Use:</b>	Vacant / Rural	<b>Proposed Use:</b>	Manufactured Home Park
<b>Preferred Scenario:</b>	Area of Stability – Low Intensity	<b>Proposed Designation:</b>	Area of Stability – Low Intensity
<b>CONA Neighborhood:</b>	N/A	<b>Sector:</b>	N/A
<b>Utility Capacity:</b>	Developer is responsible for extending utilities.	<b>Floodplain:</b>	No
<b>Historic District</b>	N/A		

**Surrounding Area**

	<b>Zoning</b>	<b>Existing Land Use</b>	<b>Preferred Scenario</b>
<b>North of Property:</b>	ETJ	FM 110; Harris Hill Race Track	Area of Stability – Low Intensity
<b>South of Property:</b>	“P” Public / Institutional	San Marcos Regional Airport	Growth Area – Employment Area
<b>East of Property:</b>	ETJ	Single Family / Rural / Agriculture	Area of Stability – Low Intensity
<b>West of Property:</b>	ETJ	Rural / Agriculture	Area of Stability – Low Intensity

<b>Zoning Request</b>	<b>4087 Hwy 21</b>
<b>ZC-20-08</b>	



**Staff Recommendation**

Approval as Submitted	<input checked="" type="checkbox"/> <b>Approval with Conditions / Alternate</b>	Denial
<p>The Development Code states that a request for Manufactured Home zoning in an Area of Stability – Low Intensity is “Not Preferred” and requires additional scrutiny as outlined in the staff report. The proposed zoning change to Manufactured Home is generally compatible with surrounding residential and rural residential uses, however, the proposed zoning will all for a denser layout of units. The subject property’s location abutting the proposed FM 110 San Marcos eastern loop may create compatibility concerns with regards to residential uses along a major thoroughfare. FM 110 is identified as an “Employment Corridor” on the Preferred Scenario Map and is envisioned to have commercial or employment related uses. FM 110 will be initially funded by a Transportation Reinvestment Zone (TRZ) to capture a portion of the increased value of development occurring along the alignment.</p> <p>Due to the varying factors regarding current and future land configurations around the subject property, staff is providing a neutral recommendation and leaves a decision of approval, denial, or a recommendation of a lesser zoning district up to the City Council.</p>		
<b>Staff:</b> Andrea Villalobos, AICP, CNU-A	<b>Title:</b> Senior Planner	<b>Date:</b> April 29, 2020

**Commission Recommendation**

Approval as Submitted	<input checked="" type="checkbox"/> <b>Approval with Conditions / Alternate</b>	Denial
<p><b><u>Planning and Zoning Commission Meeting: April 28, 2020</u></b></p> <p><b>Speakers in favor or opposed:</b></p> <ol style="list-style-type: none"> <li>(1) Jim Glasgow (in favor)</li> <li>(1) Paul Hennington (in opposition)</li> </ol> <p><b>Recommendation from the Planning and Zoning Commission meeting held April 28, 2020:</b>  A motion was made by Commissioner McCarty, seconded by Commissioner Dillon, to approve ZC-20-08. The motion carried 7-0.</p> <ul style="list-style-type: none"> <li><b>For:</b> (7) Chairperson Gleason, Commissioner Rand, Commissioner McCarty, Commissioner Haverland, Commissioner Dillon, Commissioner Moore, and Commissioner Agnew.</li> <li><b>Against:</b> 0</li> <li><b>Absent:</b> (2) Vice Chairperson Kelsey and Commissioner Spell</li> </ul>		

## Zoning Request

4087 Hwy 21

ZC-20-08



### History

The subject property is currently located outside the City Limits in the Extraterritorial Jurisdiction (ETJ). The property is currently vacant and is adjacent to existing single family and rural/agricultural property as well as adjacent to the Harris Hill Race Track and the San Marcos Regional Airport. In addition, FM 110 is proposed to be located to the north of the property. The subject property has already dedicated right-of-way in order to provide for the future construction of FM 110.

The purpose of this zoning change to “Manufactured Home” zoning is to allow the development of a Manufactured Home Park with approximately 250 spaces. According to the applicant, the community will have a club house with exercise gym, party room, and on site management offices. Additionally, the grounds will have a swimming pool, tennis courts, basketball court, community garden area, dog parks, playgrounds, a covered postal box center, and off-street parking. The applicant stated that the development will be a land-lease community with the residents owning their homes and renting the lots, however, up to 30% of the homes may be rental homes. The park will consist of a mix of single-wide and double-wide units ranging in size from 800 square feet to 1,400 square feet. Most homes will be 3-bedroom, 2-bath homes with some 2-bedroom, 2-bath homes.

The applicant is also requesting a rezoning to Light Industrial, “LI” for approximately 14 acres abutting the subject property to the east. This request is being considered as part of a separate zoning request (ZC-20-07). Both zoning requests are being processed concurrently with an annexation request for the property.

The City of San Marcos will provide wastewater services at the site and the Maxwell Water Supply Corporation will provide water service. The developer will be responsible for extending water and wastewater facilities through the site. Pedernales Electric Service will provide electric service.

### Additional Analysis

Upon annexation, the property will be zoned “FD”, the default classification for newly annexed land. The annexation request will be considered prior to the zoning change by City Council.

Analysis of the proposed zoning request includes deliberation of existing surrounding land uses, proposed transportation networks, and the goals and policies of the Comprehensive Plan. A few major points for consideration in the analysis are as follows:

- The proposed zoning change to “Manufactured Home” is generally compatible with surrounding residential uses, however, the proposed zoning will allow for a more dense product that was currently exists surrounding the property. With that said, the majority of the surrounding property is located outside the City Limits and the City does not have zoning authority to regulate the use of the property.
- The subject property’s request for “Manufactured Home” is designated as “NP” Not Preferred within an “Area of Stability – Low Intensity” designation on the Preferred Scenario Map as part of the Comprehensive Plan. Alternatively, the Comprehensive Plan states that “Manufactured Home” zoning is to be “C” Considered in an Employment Area on the Preferred Scenario Map. While the

# Zoning Request

# 4087 Hwy 21

## ZC-20-08



subject property is not located in an “Employment Area”, it is located between two existing areas, Whisper development and the Municipal Airport.

- The subject property is located along the proposed FM 110 (see attached FM 110 map), which is designated as an “Employment Corridor” on the Preferred Scenario Map. While the general character of the surrounding area is rural residential, the future FM 110 adjacent to the property will most likely attract a diverse array of uses.
- Hays County provides the following overview of the FM 110 project:

*This project continues the loop east of San Marcos and involves initially constructing two travel lanes (one in each direction) with 10-foot shoulders where no road currently exists for the approximately 11.3-mile corridor and includes an interchange at SH 21 and a railroad overpass at the Union Pacific Railroad tracks. As traffic increases over time, two additional travel lanes and additional interchanges would be constructed. Initial construction costs will be funded through Transportation Reinvestment Zones (TRZs) created by Hays County and the City of San Marcos to capture a portion of the increased value of development occurring along the alignment. Caldwell County will also contribute to the project cost. The County is funding and conducting project development simultaneously for the initial stage of all three sections. TxDOT will let and manage construction of the project. Water line relocations will be in construction contracts.*

Additional details regarding this analysis is outlined in the staff report and the Comprehensive Plan Analysis checklist.

### Comments from Other Departments

<b>Police</b>	No issues with the proposed development.
<b>Fire</b>	No issues with the proposed development.
<b>Public Services</b>	No Comment
<b>Engineering</b>	No Comment

Zoning Request

4087 Hwy 21

ZC-20-08



Evaluation			Compatibility of Uses & Density Criteria (Sec.4.1.2.5)
Consistent	Inconsistent	Neutral	
	<u>X</u>		<p><b>Helps prevent the impacts of high density uses on low density areas</b>  <i>The subject property is located within an “Area of Stability – Low Intensity” designation on the Preferred Scenario Map as part of the Comprehensive Plan (see Preferred Scenario Map). “Special Districts”, which include the Manufactured Home zoning district, are “NP” Not Preferred within this designation on the Preferred Scenario Map. Where a zoning map amendment is Not Preferred, further scrutiny is required to determine consistency with the Comprehensive Plan based on the criteria in Section 2.5.1.4 and the district intent under Division 4, Chapter 4, Article 1.</i></p> <p><i>Per the Comprehensive Plan, “Special Districts” such as Manufactured Home zoning are to be “Considered” in Employment Areas on the Preferred Scenario Map. The subject property is located near existing Employment Areas (Whisper subdivision to the north and the Airport to the south), however, the immediately surrounding property is primarily rural residential low density uses. See attached Preferred Scenario Map for a depiction of surrounding Employment Areas.</i></p>
		<u>N/A</u>	<p><b>Limits changes in neighborhood density categories unless directed by a small area plan or neighborhood character study</b>  <i>Studies were not complete at the time of the request.</i></p>
<u>X</u>			<p><b>Encourages more opportunities for home ownership</b>  <i>The proposed Manufactured Home zoning district would allow for additional opportunities for homeownership as the property can be developed as either a Manufactured Home where a single family unit is located on a single legal lot, or as a Manufactured or Mobile Home Community, in which a site includes multiple units. In both cases, residents may have the ability to own their home.</i></p>
<u>X</u>			<p><b>Ensures a diversity of housing to serve citizens with varying needs and interests</b>  <i>While the subject property will not offer a variety of residential Building Types and will be comprised of HUD-code manufactured homes, the proposed zoning does provide for additional housing units to the City’s housing stock. In addition, Phase 2 of the Development Code amendments, proposed to add the new use of “Tiny Homes” to the Land Use Matrix as an allowable use in a Manufactured Home zoning district.</i></p>

Zoning Request

4087 Hwy 21

ZC-20-08



Evaluation			Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	Neutral	
		<u>X</u>	<p><b>Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan and preferred scenario map</b></p> <p><i>Vision San Marcos Comprehensive Plan states that “Areas of Stability – Low Intensity” will generally maintain their existing character. The Comprehensive Plan states that “being located in an area of stability does not mean that these areas should or will not change. It means that any changes, whether new developments, zoning requests, or public improvements, should be carefully planned and implemented so that the character of the area remains.” The current character of the area is agricultural and rural residential and the proposed zoning to Manufactured Home would allow for additional residential uses at a higher density than the surrounding area. The nearest MH zoning district is the Saddlebrook neighborhood which is a manufactured home community located along IH-35 and Harris Hill Road.</i></p> <p><i>The subject property is located adjacent to the proposed FM 110. The roadway may attract a diversity of uses seeking access and development along the roadway. The Preferred Scenario Map identifies FM 110 as an Employment Corridor. Employment Corridors are primarily intended to “serve major employment related land uses. Some mixture in uses including limited residential and supportive pedestrian and bicycle facilities should be incorporated.” While the subject property is located adjacent to this corridor, the Comprehensive Plan states that “Special Districts”, such as Manufactured Home zoning are designated as “NP” Not Preferred on the Comprehensive Plan / District Translation Table within an “Area of Stability – Low Intensity” designation. Other potential zoning districts that are identified on the Comprehensive Plan as “C” Considered are Character Districts, such as CD-3, CD-4, or CD-5, etc., however, these districts do not allow the use of HUD-code manufactured homes or communities and therefore do not meet the needs of the applicant’s proposed project.</i></p> <p><i>Lastly, the Comprehensive Plan states that “Land Use Suitability, preservation of agricultural lands, and floodplain management are the key factors to be considered when analyzing future development requests in Low Intensity Areas.” The subject property is not located in</i></p>

Zoning Request

4087 Hwy 21

ZC-20-08



			<i>an environmentally sensitive area and is within a low to moderately constrained area on the Land Use Suitability Map.</i>
	<b>Evaluation</b>		<b>Criteria for Approval (Sec.2.5.1.4)</b>
<b>Consistent</b>	<b>Inconsistent</b>	<b>Neutral</b>	
		<u>N/A</u>	<p><b>Whether the proposed zoning map amendment is consistent with any adopted small area plan or neighborhood character study for the area</b>  <i>Studies were not complete at time of request.</i></p>
		<u>X</u>	<p><b>Whether the proposed zoning map amendment is consistent with any applicable development agreement in effect</b>  <i>A development agreement is not required because the property is requesting annexation into the city limits.</i></p>
	<u>X</u>		<p><b>Whether the uses permitted by the proposed change in zoning district classification and the standards applicable to such uses shall be appropriate in the immediate area of the land to be reclassified</b>  <i>Manufactured Home zoning primarily intended for manufactured home or manufactured home/mobile home communities as well as travel trailers/RVs short term stays. There are some allowances for agricultural uses such as a community garden and urban farm, accessory structure, and public and institutional uses (see attached land use matrix comparison table). The Manufactured Home District is “intended to implement appropriate standards for manufactured housing developments”. The immediately surrounding area is comprised of primarily single-family, rural, and agricultural properties along with an outdoor entertainment use at the Harris Hill Race Track, and the public/civic use of the Airport. However, the majority of surrounding property is located outside the city limits and the city does not have zoning authority to regulate the use of these properties.</i></p>
	<u>X</u>		<p><b>Whether the proposed zoning will reinforce the existing or planned character of the area</b>  <i>Approval of this zoning change would allow the property to develop in a manner that is “NP” Not Preferred according to the District Translation Table which states that “Special Districts”, such as a Manufactured Home zoning district, is Not Preferred within an “Area of Stability – Low Intensity” designation on the Preferred Scenario Map. The Zoning Translation Table states that zoning changes to Character Districts should be “C” Considered within an Area of Stability – Low Intensity designation. However, the planned FM 110 will alter the existing character of the surrounding area as it will be a major eastern transportation loop.</i></p>

Zoning Request

4087 Hwy 21

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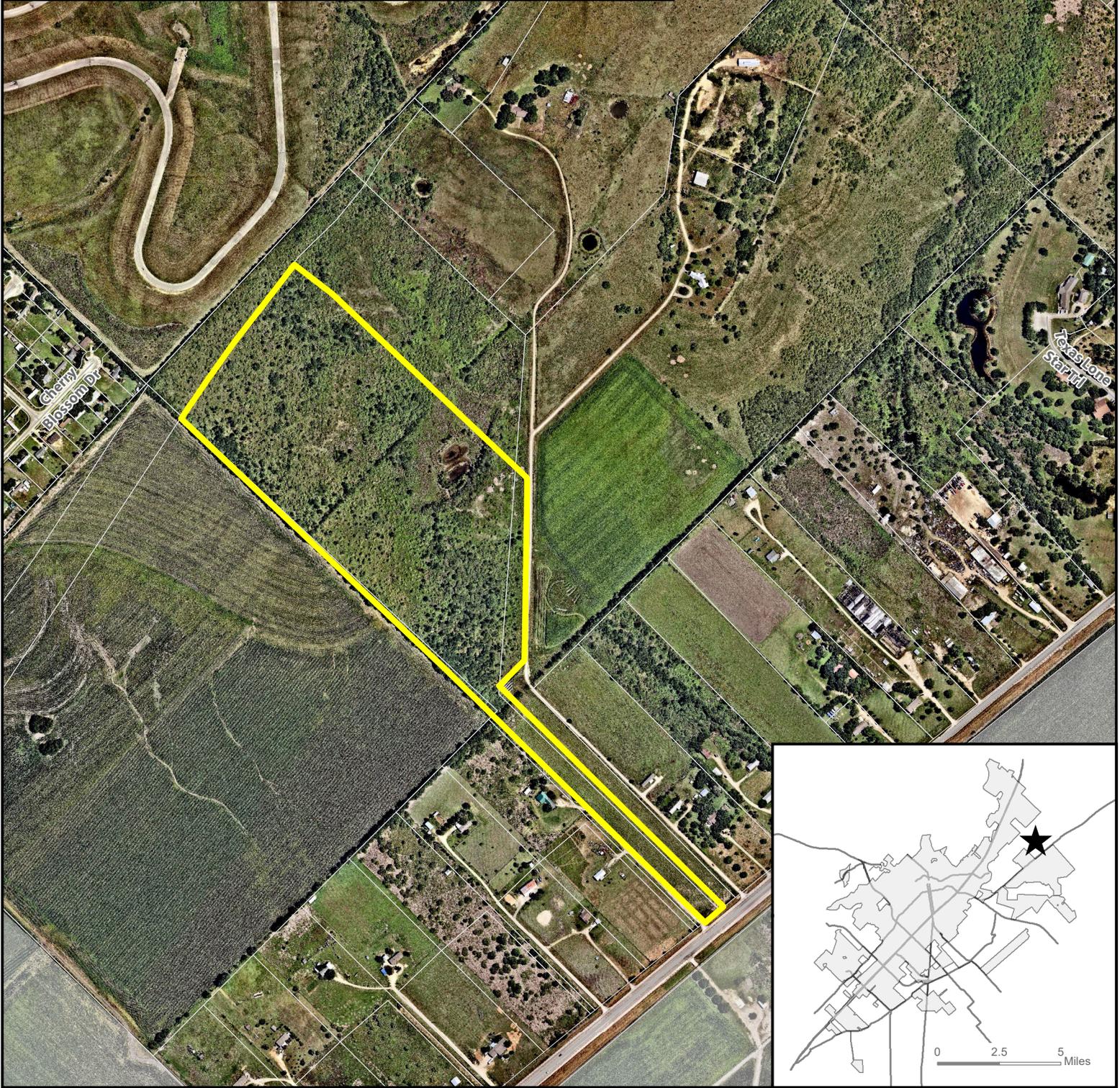
Evaluation		Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	
<u>X</u>		<p><b>Whether the site is appropriate for the development allowed in the proposed district</b>  <i>The property is vacant and shown to be in a low to moderately constrained area on the Land Use Suitability Map. The site will have access to the future FM 110 and will be required to construct roadways and utility infrastructure within the development consistent with the Manufactured Home zoning district. In addition, the property will be subject to Chapter 7, Article 6 of the Development code which outlines standards for manufactured home parks such as access and circulation, parking, street lighting, fire safety, utilities, and recreational areas.</i></p>
		<p><b>Whether there are substantial reasons why the property cannot be used according to the existing zoning</b>  <i>The property is currently not zoned as it is located outside of the City Limits.</i></p>
<u>X</u>		<p><b>Whether there is a need for the proposed use at the proposed location</b>  <i>The proposed rezoning would allow primarily residential uses with allowances for agricultural and public uses which is generally compatible with surrounding existing uses.</i></p>
<u>X</u>		<p><b>Whether the City and other service providers will be able to provide sufficient public facilities and services including schools, roads, recreation facilities, wastewater treatment, water supply and stormwater facilities, public safety, and emergency services, while maintaining sufficient levels of service to existing development</b>  <i>The property is not located within the City's water service area and is serviced by Maxwell Water Supply. The property is not located in the City's wastewater service area but it is abutting it on Hwy 21. The City is currently updating the wastewater service area and following the update the subject property will be located within this service area.</i></p>
<u>X</u>		<p><b>Whether the proposed rezoning will have a significant adverse impact on property in the vicinity of the subject property</b>  <i>The surrounding property is primarily agricultural and rural residential and generally complements the proposed Manufactured Home zoning.</i></p>
		<p><b>For requests to a Neighborhood Density District, whether the proposed amendment complies with the compatibility of uses and density in Section 4.1.2.5</b>  <i>This request is not for a Neighborhood Density District.</i></p>

<b>Zoning Request</b>	<b>4087 Hwy 21</b>
<b>ZC-20-08</b>	

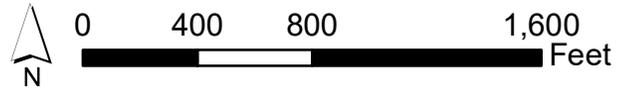


Evaluation			Criteria for Approval (Sec.2.5.1.4)
Consistent	Inconsistent	Neutral	
<u>X</u>			<p><b>The impact the proposed amendment has with regard to the natural environment, including the quality and quantity of water and other natural resources, flooding, and wildlife management</b></p> <p><i>The property is located within a low to moderately constrained area according to the Land Use Suitability Map. In addition, there is no floodplain on the property.</i></p>
		<u>X</u>	<p><b>Any other factors which shall substantially affect the public health, safety, morals, or general welfare</b></p> <p><i>The applicant is also requesting a rezoning to Light Industrial, "LI" for approximately 14 acres abutting the subject property. This request is being considered as part of a separate zoning request (ZC-20-07). Both zoning requests are being processed concurrently with an annexation request for the property. While the request to LI zoning is not considered as part of the current zoning analysis it does serve as additional background information.</i></p>

# ZC-20-08 Aerial View Palace Way MH Zoning — 4087 Hwy



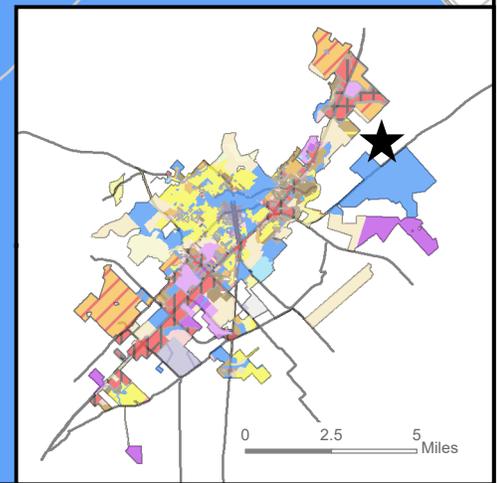
- ★ Site Location
- ▭ Subject Property
- ▭ Parcel
- ▭ City Limit



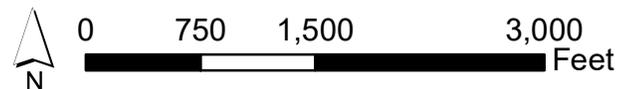
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 4/6/2020

# ZC-20-08 Zoning Map Palace Way MH Zoning — 4087 Hwy 21



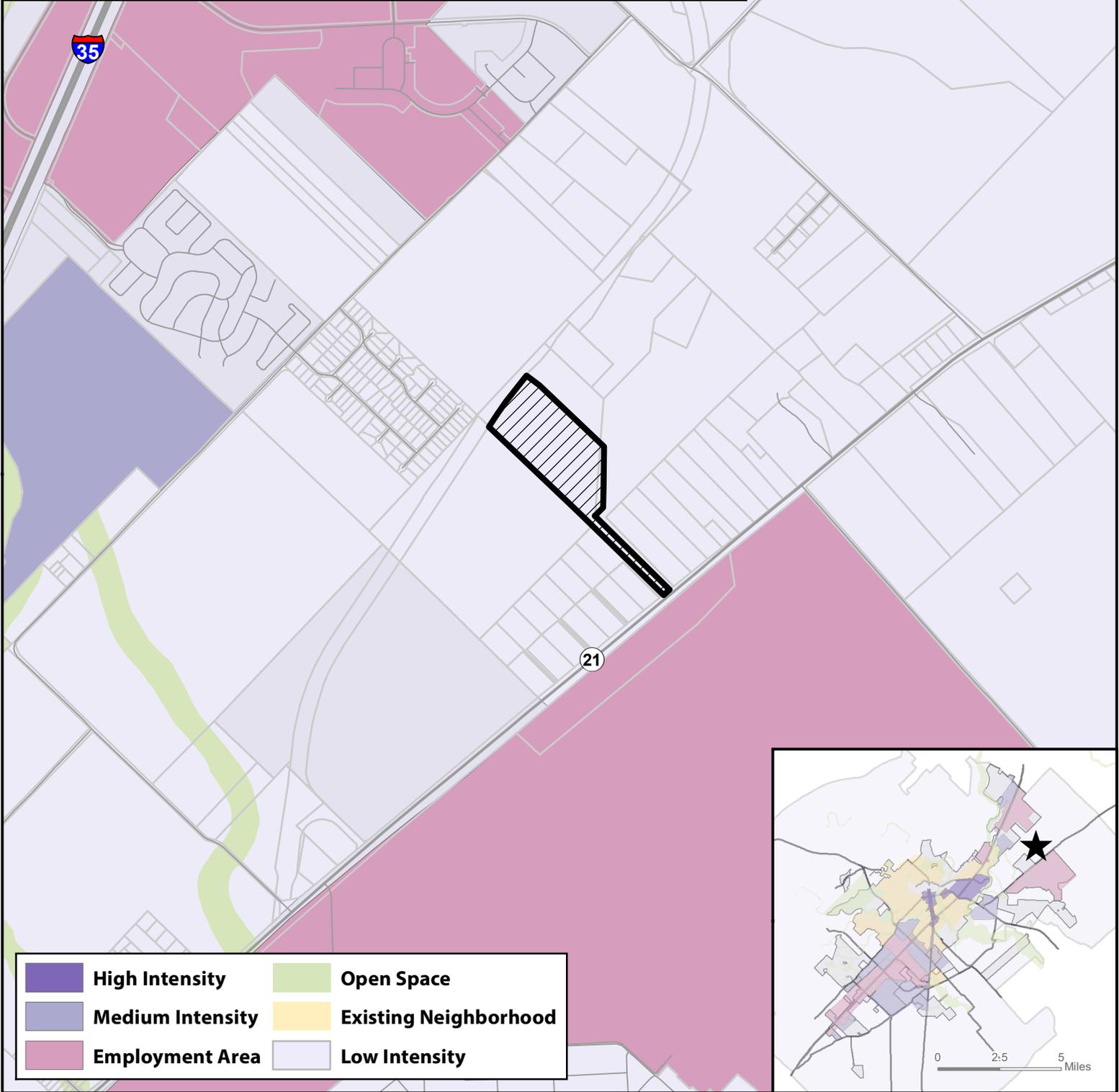
- Site Location**
- Subject Property**
- Parcels**
- City Limit**



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Map Date: 4/6/2020

# ZC-20-08 Preferred Scenario Palace Way MH Zoning — 4087 Hwy 21



	<b>High Intensity</b>		<b>Open Space</b>
	<b>Medium Intensity</b>		<b>Existing Neighborhood</b>
	<b>Employment Area</b>		<b>Low Intensity</b>



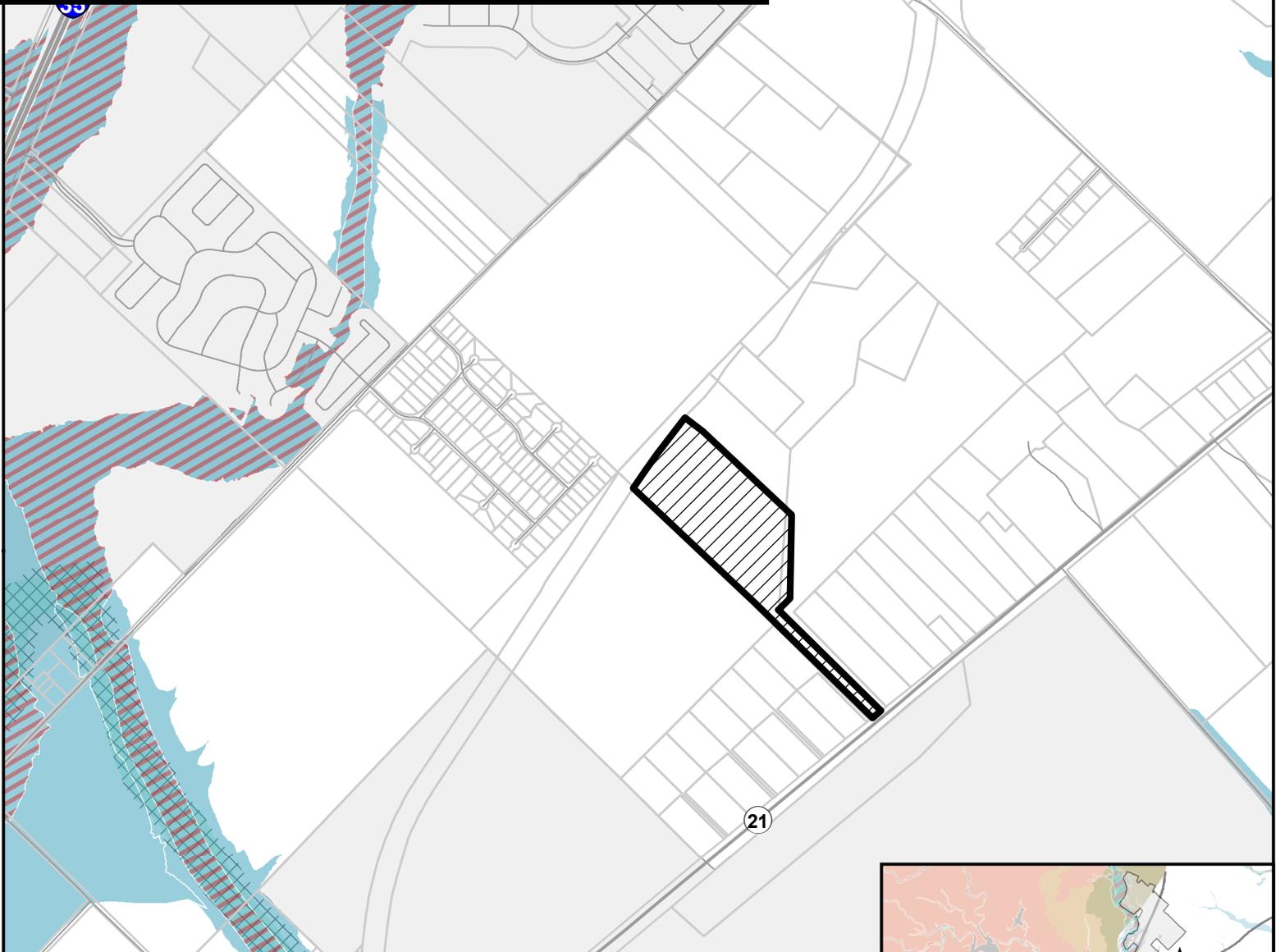
-  **Site Location**
-  **Subject Property**
-  **Parcels**
-  **City Limit**



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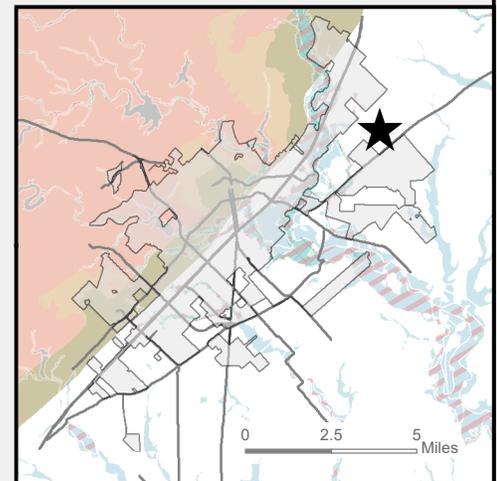
Map Date: 4/6/2020

# ZC-20-08 Environmental Features Palace Way MH Zoning — 4087 Hwy

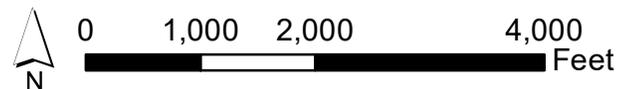


**Environmental Features**

-  Floodway
-  100 Year Floodplain
-  Water Quality Zone
-  Water Quality Zone Buffer
-  Edwards Aquifer Transition Zone



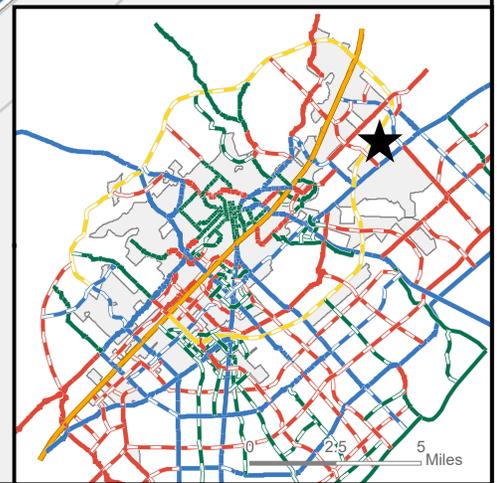
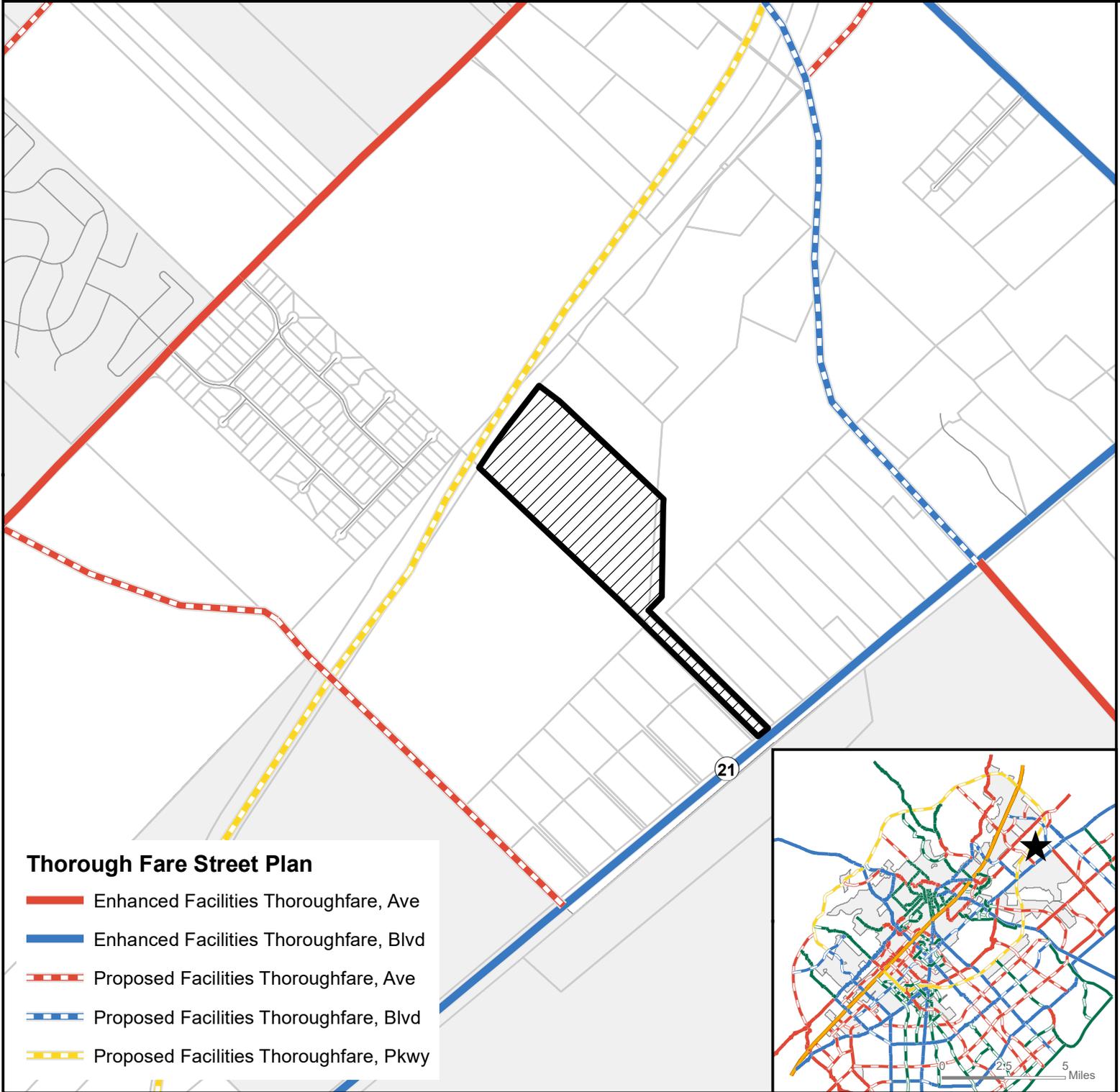
-  Site Location
-  Subject Property
-  Parcels
-  City Limit



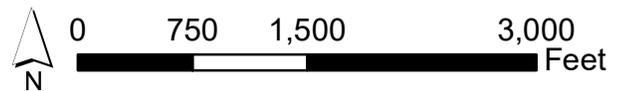
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Map Date: 4/6/2020

# ZC-20-08 Transportation Master Plan Palace Way MH Zoning — 4087 Hwy 21



- ★ Site Location
- ▨ Subject Property
- Parcels
- City Limit

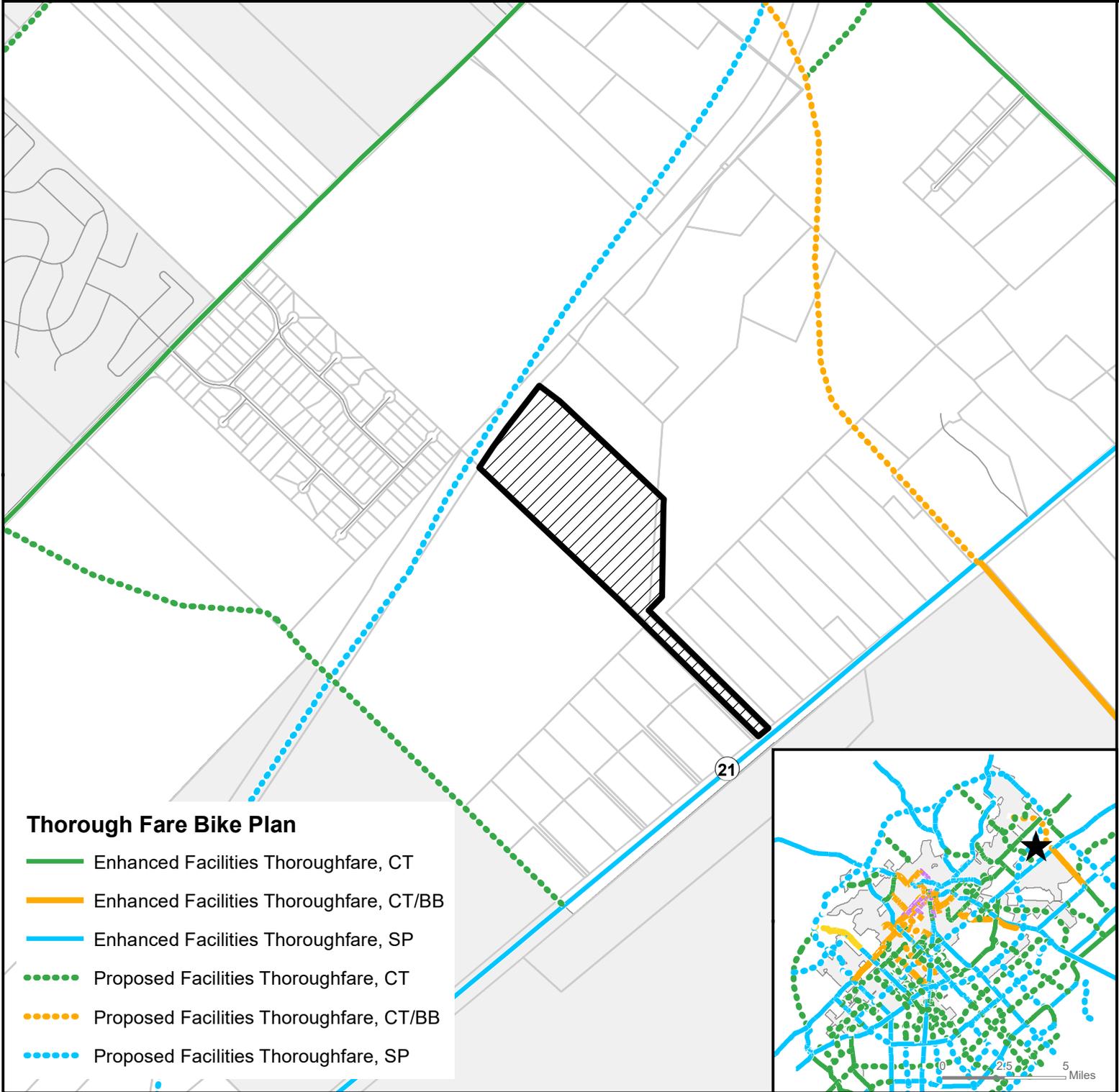


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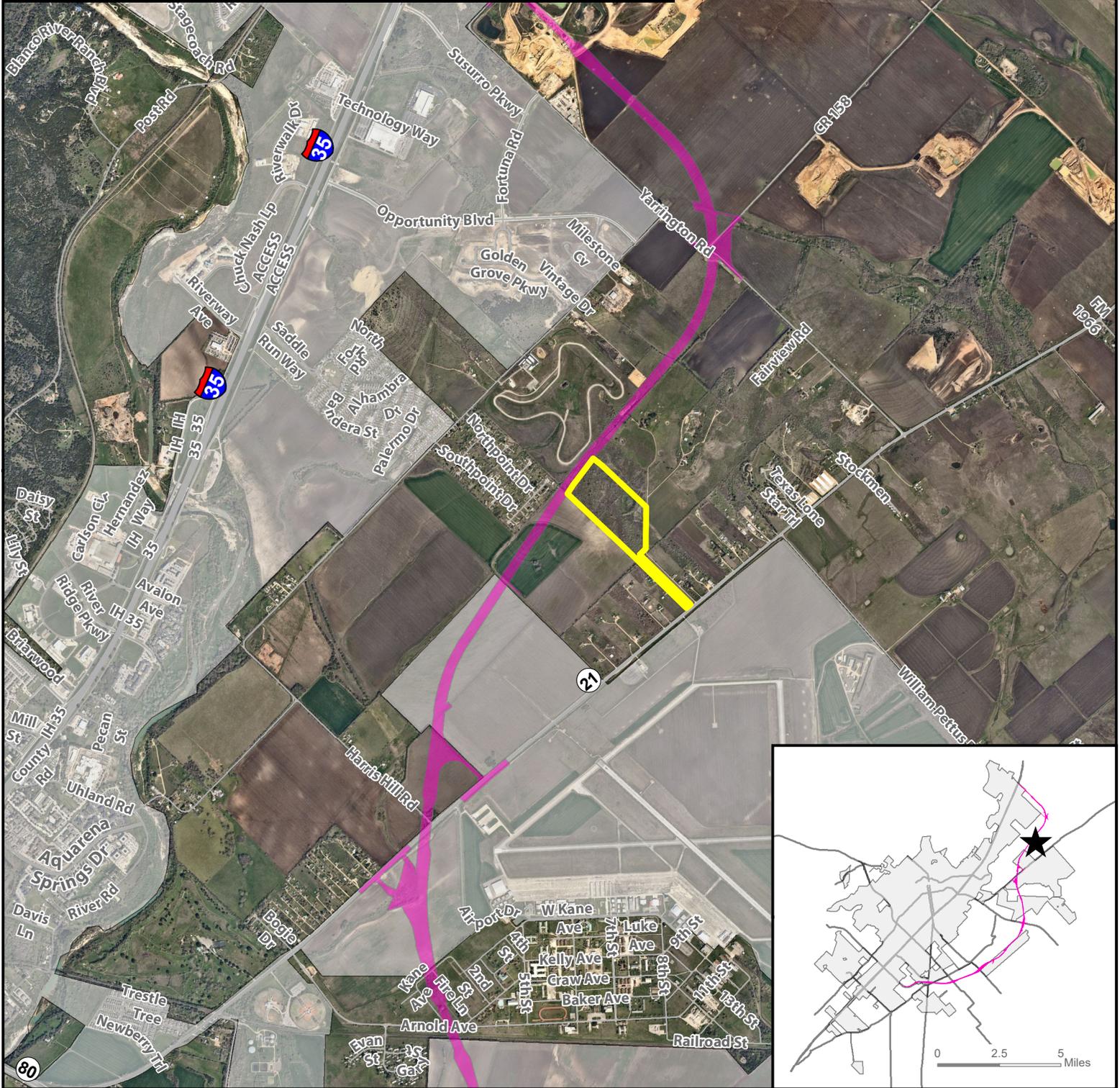
Map Date: 4/6/2020

# ZC-20-08

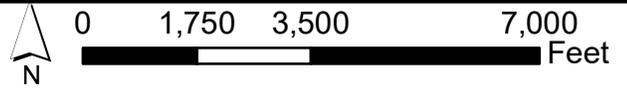
## Transportation Master Plan - Bicycle Infrastructure Palace Way MH Zoning — 4087 Hwy 21



# ZC-20-08 FM 110 Location Palace Way MH Zoning — 4087 Hwy



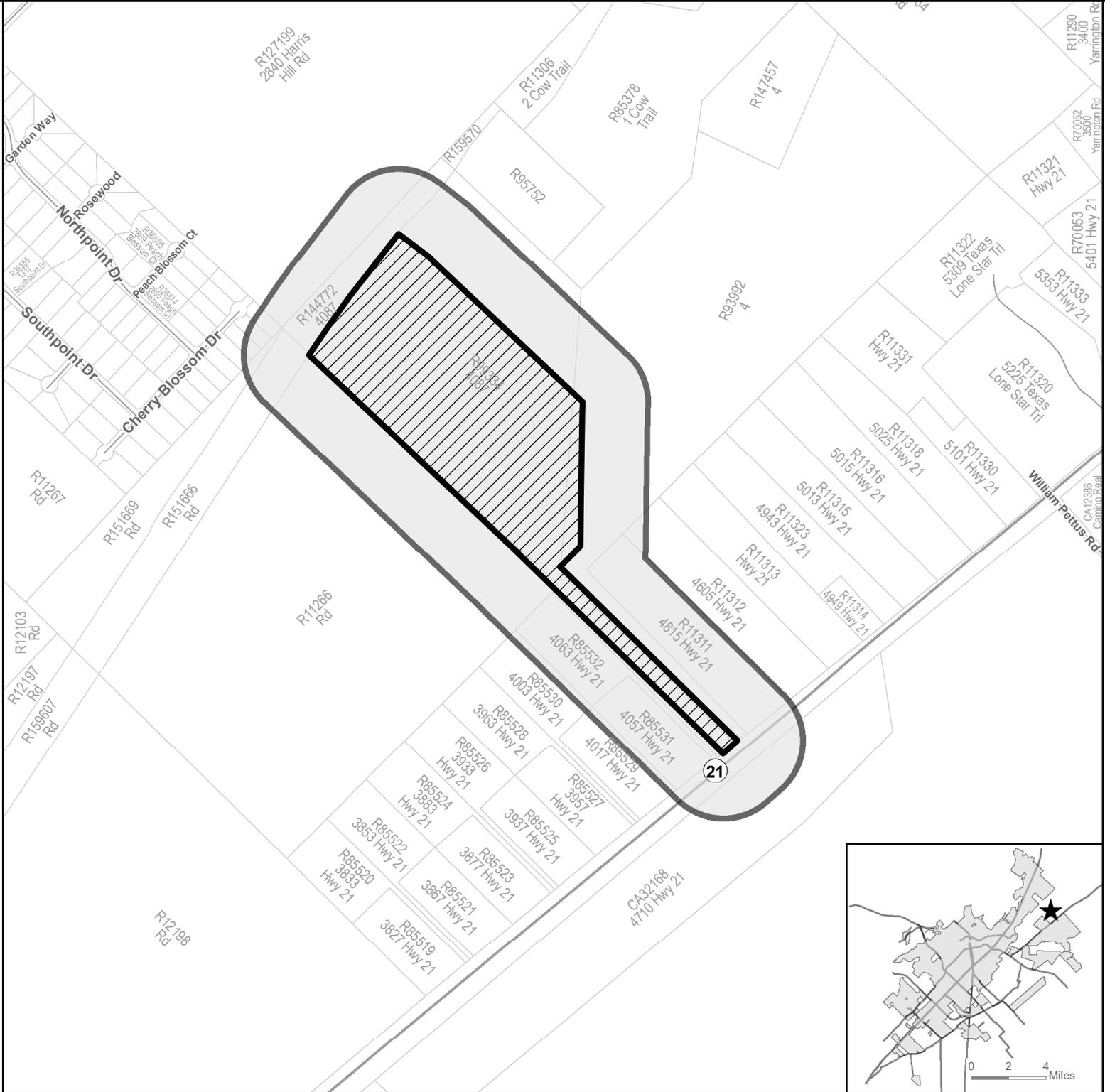
-  **Site Location**
-  **Subject Property**
-  **Parcel**
-  **City Limit**
-  **FM 110**



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. Imagery from 2017.

Map Date: 4/6/2020

# ZC-20-08 400' Notification Buffer Palace Way MH Zoning — 4087 Hwy 21



- ★ Site Location
-  Subject Property
-  400' Buffer
-  Parcel
-  City Limit



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Map Date: 4/7/2020

**Notification List (ZC-20-08)**

Property ID	Site Address	Site Street Name	Owner Name	Owner Address	Owner Address 2	Owner City	Owner State	Owner Zip
11304		4087 SH 21	PALACE WAY PARTNERS LLC	6531 FOX RUN		SAN ANTONIO	TX	78233-4706
11311	4809-15	SH 21	LOHN CAROLYN ANN & LOHN LARRY L (ESTATE)	4809 AIRPORT HWY 21		MAXWELL	TX	78656
11312	4605	AIRPORT HWY 21	FORRESTER FAMILY PROPERTIES LLC	PO BOX 1648		SAN MARCOS	TX	78667
36623	2816	CHERRY BLOSSOM CT	DELGADO JOHN & ROSE	2816 CHERRY BLOSSOM CT		SAN MARCOS	TX	78666
36625	2808	CHERRY BLOSSOM	LANGFORD MICHAEL	2204 LESTER DR NE	APT 294	ALBUQUERQUE	NM	87112-2650
36627	2804	CHERRY BLOSSOM CT	GARCIA, ROLANDO, JR	2804 CHERRY BLOSSOM CT		SAN MARCOS	TX	78666-9308
85379	1	COW	NEW DIRECTION IRA INC	% ROMANO EDWARD F IRA	P O BOX 607	WIMBERLEY	TX	78676
85529	4017-B	SH 21	ZUNIGA MIGUEL & ELVA	61 CALLE DE TOBIAS		UHLAND	TX	78640-9303
85530	4003	SH 21	ZUNIGA MIGUEL E & ELVA	4003 HWY 21		SAN MARCOS	TX	78666
85531	4057	SH 21	RODRIGUEZ RICHARD ALAN & JESSICA ERIN &	RODRIGUEZ ROEL A	4057 STATE HWY 21	SAN MARCOS	TX	78666
85532	4063	SH 21	RIOJAS ROLANDO E & SARA A	4063 AIRPORT HWY 21		SAN MARCOS	TX	78666
93992	4	COW TRAIL	HENNINGTON D B & W J LIVING TRUST	% HENNINGTON DAVID B & WANDA J TRUSTEES	PO BOX 693	SAN MARCOS	TX	78667-0693
127199	2840	HARRIS HILL	GOSSAMER TRUST II	REX B RIVERS TRUSTEE	19901 MOON DANCE LN	SPICEWOOD	TX	78669-6804
11266			WEATHERFORD LAURA ELIZABET & HOPSON WILLIAM	& HOPSON ROSS & HOPSON KENNETH MOORE &	421 W SAN ANTONIO ST.	SAN MARCOS	TX	78666

**ZC-20-08 (Palace Way MH) Zoning Change Review (By Comp Plan Element)**

**LAND USE – Preferred Scenario Map / Land Use Intensity Matrix**

	YES	NO (map amendment required)
Does the request meet the intent of the Preferred Scenario Map and the Land Use Intensity Matrix?	<b>X – It is “Not Preferred” but it does not require a Preferred Scenario Map Amendment</b>	

**ECONOMIC DEVELOPMENT – Furthering the goal of the Core 4 through the three strategies**

STRATEGY	SUMMARY	Supports	Contradicts	Neutral
Preparing the 21 <sup>st</sup> Century Workforce	Provides / Encourages educational opportunities			<b>X</b>
Competitive Infrastructure & Entrepreneurial Regulation	Provides / Encourages land, utilities and infrastructure for business			
The Community of Choice	Provides / Encourages safe & stable neighborhoods, quality schools, fair wage jobs, community amenities, distinctive identity			<b>X</b>

**ENVIRONMENT & RESOURCE PROTECTION – Land Use Suitability & Development Constraints**

	1 (least)	2	3 (moderate)	4	5 (most)
Level of Overall Constraint	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	
Constraint by Class					
Cultural	<b>X</b>	<b>X</b>			
Edwards Aquifer	<b>X</b>				
Endangered Species	<b>X</b>				
Floodplains	<b>X</b>				
Geological	<b>X</b>				
Slope	<b>X</b>		<b>X</b>		
Soils	<b>X</b>	<b>X</b>		<b>X</b>	
Vegetation	<b>X</b>				
Watersheds		<b>X</b>			
Water Quality Zone	<b>X</b>				

**ENVIRONMENT & RESOURCE PROTECTION – Water Quality Model Results**

Located in Subwatershed:	<b>Morrison Creek Watershed</b>				
	0-25%	25-50%	50-75%	75-100%	100%+
Modeled Impervious Cover Increase Anticipated for watershed	<b>X</b>				
Notes: <b>The 2013 Comprehensive Plan did not predict any impervious cover changes to the Morrison Creek Watershed from the trend to the preferred scenario.</b>					

**NEIGHBORHOODS** – Where is the property located

CONA Neighborhood(s):	N/A – Outside City Limits
Neighborhood Commission Area(s):	N/A – Outside City Limits
Neighborhood Character Study Area(s):	N/A

**PARKS, PUBLIC SPACES AND FACILITIES** –Availability of parks and infrastructure

			YES	NO
Will Parks and / or Open Space be Provided? <b>Parkland dedication and parkland development is required at the time of plat and is based on the number of units proposed. In addition, per Chapter 7, Article 6 of the Development Code, all manufactured home parks shall have a recreational area amounting to five percent of the total area of the manufactured home park.</b>			X	
Will Trails and / or Green Space Connections be Provided? <b>The Transportation Master Plan requires a greenway along FM 110.</b>			X	
<b>Maintenance / Repair Density</b>	Low (maintenance)	Medium		High (maintenance)
Wastewater Infrastructure	X			
Water Infrastructure	X			
<b>Public Facility Availability</b>			YES	NO
Parks / Open Space within ¼ mile (walking distance)?				X
Wastewater service available? <b>Wastewater lines will be required throughout the development to service the property.</b>			X	
Water service available? <b>Water lines will be also required throughout the development to service the property.</b>			X	

**TRANSPORTATION** – Level of Service (LOS), Access to sidewalks, bicycle lanes and public transportation

		A	B	C	D	E	F
Existing Daily LOS	Hwy 21		X				
Existing Peak LOS	Hwy 21					X	
Preferred Scenario Daily LOS	Hwy 21 FM 110				X		X
Preferred Scenario Peak LOS	Hwy 21 FM 110						X X
<b>Note: The property will be required to meet the Transportation Master Plan and construct required streets per the Block Standards in the Development Code.</b>							
		N/A	Good	Fair	Poor		
Sidewalk Availability (Required to build.)		X					
<b>Sidewalks will be required to be constructed at the time of development.</b>							
			YES	NO			
Adjacent to existing bicycle lane? <b>The development will be responsible for constructing required bike infrastructure within new proposed streets.</b>				X			
Adjacent to existing public transportation route?				X			

Section 5.1.1.2 Land Use Matrix **Future Development (FD)** VS. **Manufactured Home (MH)**

**TABLE 5.1 LAND USE MATRIX**

TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS			DEFINITION USE STANDARDS		
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI		MH	EC
<b>AGRICULTURAL USES</b>																				
Barns or agricultural buildings	P	L	--	--	--	--	--	--	P	P	L	--	--	--	P	--	--	--	--	Section 5.1.2.1
Stables	P	L	--	--	--	--	--	--	--	P	L	--	--	--	P	--	--	--	--	Section 5.1.2.2
Community Garden	P	P	L	L	L	L	L	--	P	P	L	L	L	L	P	P	P	P	P	Section 5.1.2.3
Urban Farm	P	C	C	C	C	L	L	C	P	P	L	L	C	C	P	P	--	P	C	Section 5.1.2.4
Plant Nursery	L	--	--	--	--	--	--	P	--	L	--	--	P	P	P	P	P	--	P	Section 5.1.2.5
<b>ACCESSORY USES AND STRUCTURES</b>																				
Accessory Building/Structure	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.3.1
Accessory Dwelling Unit	L	L	L	L	L	L	P	P	--	P	L	P	P	P	--	--	--	--	--	Section 5.1.3.1
Accessory Use, except as listed below:	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.3.2
Outdoor Storage	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	L	P	--	L	Section 5.1.3.2
Outdoor Display	--	--	--	--	--	--	--	L	--	--	--	--	L	L	P	--	--	--	L	Section 5.1.3.2
Food Truck	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.3.1
Drive-thru or Drive-in	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.3.2
Home Occupation	L	L	L	L	L	L	L	--	--	L	L	L	--	--	--	--	--	--	--	Section 5.1.3.4
Family Home Care	P	P	P	P	P	P	P	--	--	P	P	P	--	--	--	--	--	--	--	Section 5.1.3.5
Short Term Rental	L	L	L	L	L	L	L	P	--	L	L	P	P	P	--	--	--	L	P	Section 5.1.3.6
<b>RESIDENTIAL USES</b>																				
Single Family Detached	P	L	L	L	L	L	L	--	--	P	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Cottage Court	--	--	--	--	--	L	L	--	--	--	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Two Family	--	--	--	--	--	L	L	--	--	--	P	P	--	--	--	--	--	--	--	Section 5.1.4.1
Single Family Attached	--	--	--	--	L	L	L	L	--	--	P	P	P	P	--	--	--	--	--	Section 5.1.4.1
Small Multi-Family (up to 9 units)	--	--	--	--	--	L	L	L	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Courtyard Housing (up to 24 units)	--	--	--	--	--	--	L	L	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Multi-family (10 or more units)	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	Section 5.1.4.1
Purpose Built Student Housing	--	--	--	--	--	--	--	--	--	--	--	--	C	C	--	--	--	--	--	Section 5.1.4.1
Manufactured Home	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	Section 5.1.4.1
Mobile Home Community	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	Section 5.1.4.1

TABLE 5.1 LAND USE MATRIX

TYPES OF LAND USES	CONVENTIONAL RESIDENTIAL				NEIGHBORHOOD DENSITY DISTRICTS				CHARACTER DISTRICTS						SPECIAL DISTRICTS					DEFINITION USE STANDARDS
	FD	SF-R	SF-6	SF-4.5	ND-3	ND-3.5	ND-4	N-MS	CD-1	CD-2	CD-3	CD-4	CD-5	CD-5D	HC	LI	HI	MH	EC	
Community Home	L	L	L	L	L	L	P	P	--	P	P	P	P	P	--	--	--	L	--	Section 5.1.4.12
Fraternity or Sorority Building	--	--	--	--	--	--	C	C	--	--	--	C	P	P	--	--	--	--	--	Section 5.1.4.12
<b>COMMERCIAL USES</b>																				
Professional Office	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	P	--	--	P	Section 5.1.5.1
Medical, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.2
Urgent care, emergency clinic, or hospital	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	--	--	P	Section 5.1.5.2
Nursing/ retirement home	--	--	--	--	--	--	P	P	--	--	--	P	P	P	P	--	--	--	P	Section 5.1.5.2
Personal Services, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.3
Animal care (indoor)	C	--	--	--	--	--	--	P	--	--	--	--	P	P	P	--	--	--	P	Section 5.1.5.3
Animal care (outdoor)	C	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	C	Section 5.1.5.3
Funeral Home	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.3
Adult Oriented Businesses	See Section 18, Article 6 of the City Code																			
All Retail Sales, except as listed below:	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.4
Gasoline Sales	--	--	--	--	--	--	--	L	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.4
Truck stop	--	--	--	--	--	--	--	--	--	--	--	--	--	--	L	--	--	--	L	Section 5.1.5.4
Tattoo, body piercing	--	--	--	--	--	--	C	C	--	--	--	C	P	P	P	--	--	--	P	Section 5.1.5.4
Building material sales	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	P	P	--	P	Section 5.1.5.4
Vehicle Sales/ Rental	--	--	--	--	--	--	--	C	--	--	--	--	C	C	P	--	--	--	P	Section 5.1.5.4
Pawnshop	--	--	--	--	--	--	--	C	--	--	--	C	P	P	P	--	--	--	P	Section 5.1.5.4
Restaurant/ Bar, as listed below:																				
Eating Establishment	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	--	--	--	P	Section 5.1.5.5
Bar	--	--	--	--	--	--	--	C	--	--	--	--	C	C	C	--	--	--	C	Section 5.1.5.5
Mobile Food Court	--	--	--	--	--	--	--	C	--	--	--	--	P	P	--	--	--	--	--	Section 5.1.5.5
Sale of Alcohol for on premise consumption	--	--	--	--	--	--	C	C	--	--	--	C	C	C	C	--	--	--	C	Section 5.1.5.5
Overnight Lodging, as listed below:																				Section 5.1.5.6
Bed and Breakfast (up to 8 rooms)	L	C	C	C	C	L	L	P	--	P	C	P	P	P	--	--	--	--	P	Section 5.1.5.6
Boutique Hotel (9 - 30 rooms)	--	--	--	--	--	--	C	P	--	--	--	P	P	P	--	--	--	--	P	Section 5.1.5.6

TABLE 5.1 LAND USE MATRIX

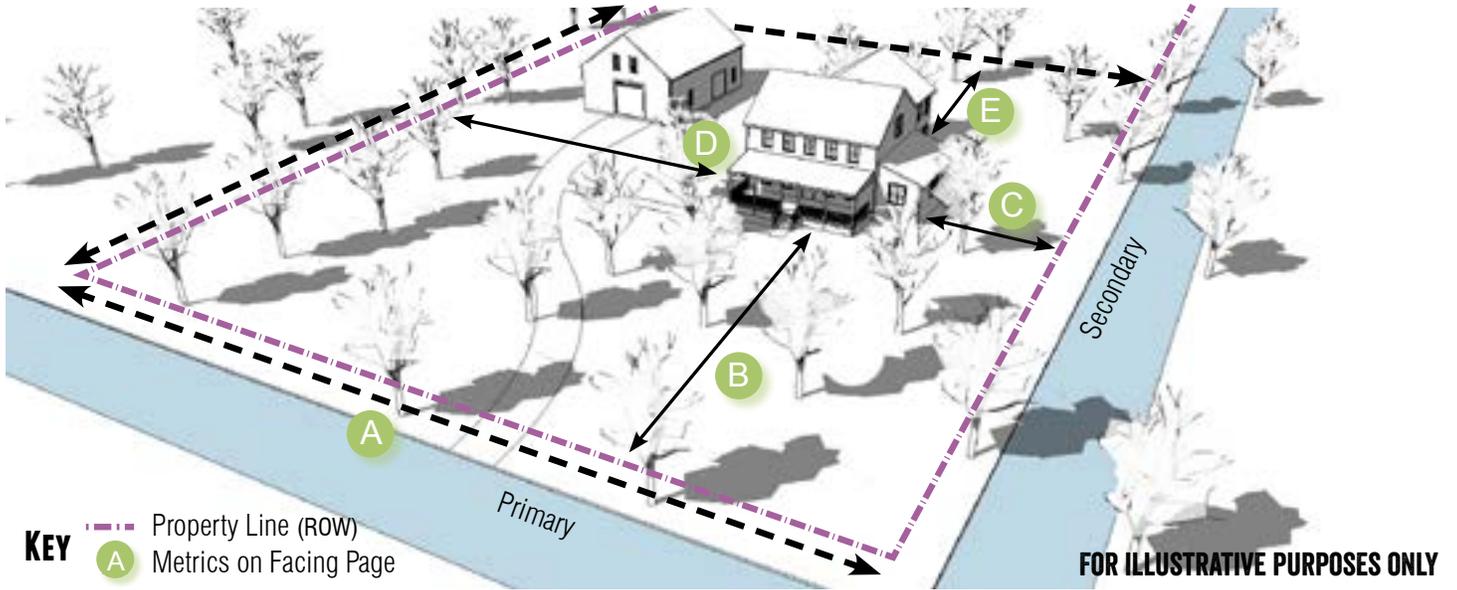
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Hotel/ Motel (more than 30 rooms)	--	--	--	--	--	--	--	P	--	--	--	--	P	P	--	--	--	--	P	Section 5.1.5.6	
Outdoor Recreation, except as listed below:	--	--	--	--	--	--	--	C	--	--	--	--	P	C	P	--	--	--	--	P	Section 5.1.5.7
Golf Course	C	C	C	C	C	C	C	C	C	C	C	C	C	C	--	--	--	C	C	Section 5.1.5.7	
Traveler Trailers/ RVs Short Term stays	P	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	P	--	Section 5.1.5.7	
Shooting Range	C	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	--	C	Section 5.1.5.7	
Indoor Recreation, except as listed below:	--	--	--	--	--	--	--	P	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.5.8	
Gym/ Health club	--	--	--	--	--	--	L	P	--	--	--	L	P	P	P	P	P	--	P	Section 5.1.5.8	
Smoking Lounge	--	--	--	--	--	--	--	C	--	--	--	--	P	C	--	--	--	--	P	Section 5.1.5.8	
Charitable Gaming Facility	--	--	--	--	--	--	--	--	--	--	--	--	C	--	C	--	--	--	C	Section 5.1.5.8	
<b>PUBLIC &amp; INSTITUTIONAL</b>																					
Civic, except as listed below:	P	L	L	L	L	L	P	P	L	L	L	P	P	P	P	P	P	P	P	Section 5.1.6.1	
Day Care Center	C	--	--	--	C	C	L	P	--	C	C	L	P	P	P	--	--	--	P	Section 5.1.6.1	
Parks, Open Space, and Greenways	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.6.2	
Minor Utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	Section 5.1.6.3	
Major Utilities	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	C	C	--	--	Section 5.1.6.3	
Antenna	See Section 5.1.6.3D																				
<b>INDUSTRIAL</b>																					
Light Industrial	--	--	--	--	--	--	--	--	--	--	--	--	C	--	--	P	P	--	C	Section 5.1.7.1	
Light Manufacturing	--	--	--	--	--	--	--	C	--	--	--	--	P	P	P	P	P	--	P	Section 5.1.7.2	
Vehicle Service, as listed below:																					
Car Wash	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	C	Section 5.1.7.3	
Vehicle repair (minor)	--	--	--	--	--	--	--	C	--	--	--	--	P	P	P	P	P	--	C	Section 5.1.7.3	
Vehicle repair (major)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	--	C	Section 5.1.7.3	
Warehouse & Distribution	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	P	P	--	P	Section 5.1.7.4	
Waste-Related service	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	P	P	--	--	Section 5.1.7.5	
Wholesale trade	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	P	Section 5.1.7.6	
Self Storage	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	C	Section 5.1.7.7	
Research and Development	--	--	--	--	--	--	--	--	--	--	--	--	C	C	P	P	P	--	C	Section 5.1.7.8	
Wrecking/Junk Yard	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	--	--	Section 5.1.7.9	

# Zoning District Comparison Chart

Topic	<b>Existing Zoning: Future Development (FD)</b>	<b>Proposed Zoning: Manufactured Home (MH)</b>
<b>Zoning Description</b>	The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.	The Manufactured Home (MH) District is intended to implement appropriate standards for manufactured housing developments.
<b>Uses</b>	Primarily agricultural, residential, and public/institutional (See <i>Land Use Matrix</i> )	Community Garden, Urban Farm, accessory structures, manufactured home, mobile home community, travel trailers / RVs Short Term stays, various public and institutional uses (See <i>Land Use Matrix</i> )
<b>Parking Location</b>	No location standards	No location standards
<b>Parking Standards</b>	Depends on use	Depends on use. For example, two parking spaces are required for each manufactured home site in accordance with the requirements for residential single family dwellings under Section 7.1.2.1 of the Development Code.
<b>Max Residential Units per acre</b>	0.4 units per acre (max)	9 units per acre (max)
<b>Occupancy Restrictions</b>	N/A	N/A
<b>Landscaping</b>	Tree and shrub requirements based on use	Tree and shrub requirements based on Multi-Family landscape requirements (20% landscape area)
<b>Building Height (max)</b>	2 stories ( 40 feet)	2 stories
<b>Setbacks</b>	50' minimum front; 20' min side; minimum rear setback is 20% of total lot depth	Measured from manufactured homes spaces. 10' minimum front; 5' minimum side; 20' minimum rear
<b>Impervious Cover (max)</b>	30%	75%
<b>Lot Sizes</b>	Allows a variety of lot sizes depending on Building Type.	3,200 sf minimum lot area; 4,400 sf minimum lot area for corner lot; 40' minimum lot width; 55' minimum lot width for corner lot 80' minimum lot depth
<b>Streetscapes</b>	Residential Street: 5' sidewalk for lots smaller than 1 acre, street trees every 40' on center average, 7' planting area between sidewalk and street required.	Conventional Street: 6' sidewalk, street trees every 40' on center average, 7' planting area between sidewalk and street required.
<b>Blocks</b>	No Block Perimeter Required	5,000 ft. Block Perimeter max

**FD**

**SECTION 4.4.1.1 FUTURE DEVELOPMENT DISTRICT**



**GENERAL DESCRIPTION**

The Future Development (FD) District is intended to serve as a temporary zoning district for properties that shall develop in the future, but have been newly annexed and/or are not yet ready to be zoned for a particular Use. Characterized by primarily agricultural use with woodlands and wetlands and scattered buildings.

**DENSITY**

Units Per Gross Acre	.4 max.
Impervious Cover	30% max.

**TRANSPORTATION**

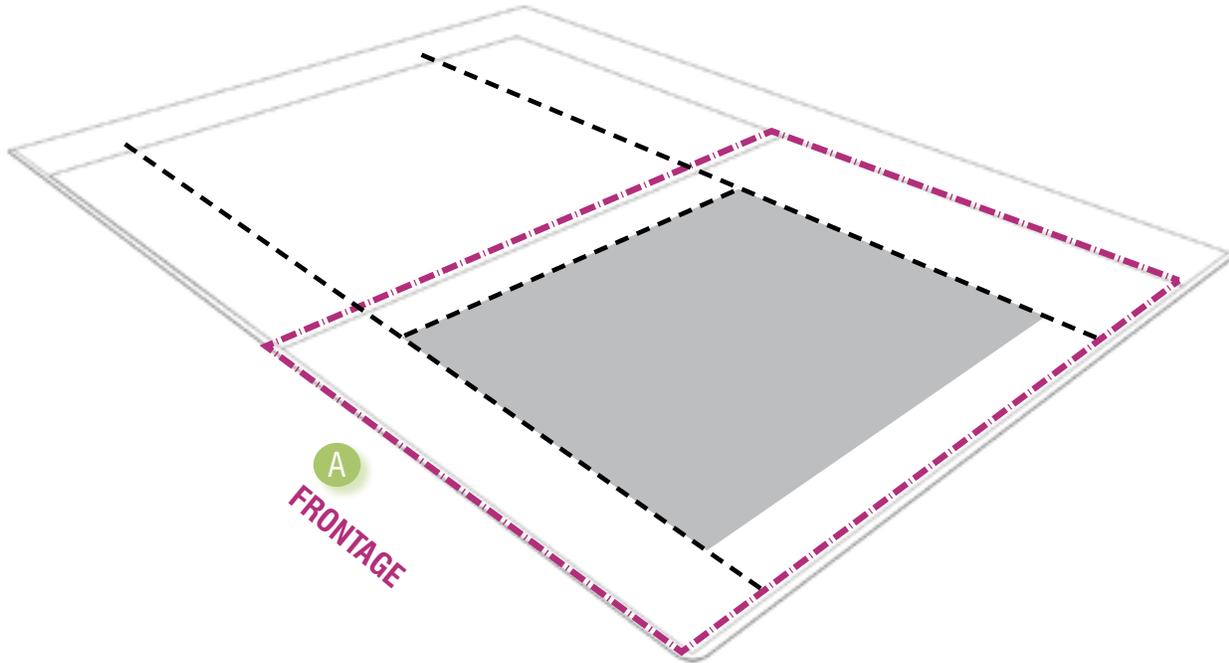
Streetscape Type	Residential	Section 3.8.1.10
Sidewalks are not required for lots greater than 1 acre		

**BUILDING TYPES ALLOWED**

Accessory Dwelling	Section 4.4.6.1
House	Section 4.4.6.2
Civic	Section 4.4.6.15

**MH**

## SECTION 4.4.5.5 MANUFACTURED HOME



**KEY**

- - - Property Line (ROW)
- A Metrics on This and Facing Page
- Setbacks
- Building Footprint

**GENERAL DESCRIPTION**

The Manufactured Home (MH) District is intended to implement appropriate standards for manufactured housing developments.

**DENSITY**

Units Per Gross Acre	9.0 max.
Impervious cover	75% max.

**TRANSPORTATION**

Block Perimeter	5,000 ft. max.	Section 3.6.2.1
Streetscape Type	Conventional	Section 3.8.1.7

**LOT STANDARDS**

Area of Manufactured Home Lot or Space	
Interior Lot or Space	3,200 sf min.
Corner Lot or Space	4,400 sf min.
Width of Manufactured Home Lot or Space <span style="float: right;">A</span>	
Interior Lot or Space	40 ft. min.
Corner Lot or Space	55 ft. min.
Depth of Manufactured Home Lot or Space	
	80 ft. min.



**PLANNING AND DEVELOPMENT SERVICES**

**4/17/2020**

**ZC-20-08**

**Notice of Public Hearing  
Zoning Change Request  
“FD” Future Development to “MH” Manufactured Home  
4087 Hwy 21**

*Hold a public hearing and consider a request by Jim Glasgow, on behalf of Palace Way Partners, LLC., for a zoning change from “FD” Future Development to “MH” Manufactured Home, or such other less intense zoning district classification as the City Council may approve, for approximately 44.69 acres, more or less, out of the Thomas G. McGehee Survey, Abstract No. 11, Hays County, located at 4087 Hwy 21.*

The San Marcos Planning and Zoning Commission will consider the above request at an upcoming public hearing and will either approve or deny the request. This recommendation will be forwarded to the San Marcos City Council. Before making a decision, the Commission and Council will hold public hearings to obtain citizen comments. Because you are listed as the owner of property located within 400 feet of the subject property, we would like to notify you of the following public hearings and seek your opinion of the request:

- A public hearing will be conducted by the Planning and Zoning Commission via virtual meeting on **Tuesday, April 28, 2020** at **6:00 p.m.** You may join and participate in the public hearing using the following link: <http://sanmarcostx.gov/541/PZ-Video-Archives>
- A public hearing will be held at the City Council Meeting on **Tuesday, May 19, 2020** at **6:00 p.m.** in the Council Chambers in City Hall, 630 East Hopkins. If current orders related to COVID-19 are extended, virtual meeting information will be provided at the following website: <https://sanmarcostx.gov/421/City-Council-Videos-Archives>

All interested citizens are invited to attend and participate in the public hearing. If you cannot participate in the virtual public hearing of the Planning and Zoning Commission or the City Council meeting, but wish to comment, you may write to the below address. Your written comments will be given to the Planning & Zoning Commission and City Council if they are received before 5 PM on the day of the meeting.

Development Services-Planning  
630 East Hopkins  
San Marcos, TX 78666  
[planninginfo@sanmarcostx.gov](mailto:planninginfo@sanmarcostx.gov)

For more information regarding this request, contact the case manager, **Andrea Villalobos**, at **512.805.2623**. When calling, please refer to case number **ZC-20-08**.

As of the date of this notice, there are no other means of participating in the public hearing. However, please check for updates on the City's website at: [www.sanmarcostx.gov](http://www.sanmarcostx.gov) to see if other means of participating in the public hearing become available.

*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 512-393-8074 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov)*

PLANNING AND DEVELOPMENT SERVICES  
Enclosure: Map (See Reverse)

**CITY HALL • 630 EAST HOPKINS • SAN MARCOS, TEXAS 78666 • 512.393.8230 • FACSIMILE 855.759.2843  
SANMARCOSTX.GOV**

# ZONING CHANGE, OVERLAY OR ESTABLISHMENT OF A HISTORIC DISTRICT/LANDMARK APPLICATION



Updated: October, 2018

Case # ZC-\_\_\_\_-\_\_\_\_

## CONTACT INFORMATION

Applicant's Name	Jim Glasgow	Property Owner	Palace Way Partners LLC
Applicant's Mailing Address	6531 Fox Run San Antonio, Texas 78233	Owner's Mailing Address	6531 fox run San Antonio, Texas 78233
Applicant's Phone #	210-413-7230	Owner's Phone #	6531 fox runSan Antonio, Texas 78233
Applicant's Email	jeglasgow@yahoo.com	Owner's Email	6531 fox runSan Antonio, Texas 78233

## PROPERTY INFORMATION

Subject Property Address(es): 4087 State Hwy 21, San Marcos, Texas 78666

Legal Description: Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision A00011 Thomas g McGehee survey T-PT of 41,

Total Acreage: 44.69 Tax ID #: R 11304

Preferred Scenario Designation: \_\_\_\_\_ Existing Zoning: N/A

Existing Land Use(s): ag

## DESCRIPTION OF REQUEST

Proposed Zoning District(s): MH

Proposed Land Uses / Reason for Change: \_\_\_\_\_  
Manufactured home community Development utilities

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee\* \$1,030 plus \$100 per acre Technology Fee \$12 MAXIMUM COST \$3,012  
 \*Existing Neighborhood Regulating Plan Included.

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

**APPLY ONLINE - [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

**PROPERTY OWNER AUTHORIZATION**

I, \_\_\_\_\_ (owner) acknowledge that I am the rightful owner of the property located at \_\_\_\_\_ (address).

I hereby authorize \_\_\_\_\_ (agent name) to file this application for \_\_\_\_\_ (application type), and, if necessary, to work with the Responsible Official / Department on my behalf throughout the process.

Signature of Property Owner:  \_\_\_\_\_ Date: 3-7-2020  
Printed Name: **JIM E GLASGOW** \_\_\_\_\_

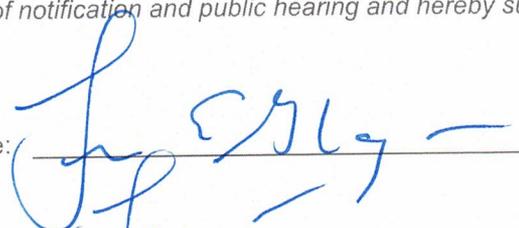
Signature of Agent: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

**AGREEMENT TO THE PLACEMENT OF NOTIFICATION SIGNS  
AND ACKNOWLEDGEMENT OF NOTIFICATION REQUIREMENTS**

The City of San Marcos Development Code requires public notification in the form of notification signs on the subject property, published notice, and / or personal notice based on the type of application presented to the Planning Commission and / or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. ***It shall be the responsibility of the applicant to periodically check sign locations to verify that the signs remain in place had have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.***
- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be \$88 plus an \$12 technology fee.***
- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be \$88 plus a \$12 technology fee.***

*I have read the above statements and agree to the required public notification, as required, based on the attached application. The City's Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.*

Signature:   
Print Name: 

Date: 3-7-20

HCDN 17044935  
 J. R. LAUGHMAN TO  
 VCD CENTURIAN GATHERING PARTNERSHIP, LTD.  
 12/26/2012 (10.005 AC.)

5328  
 670 DR. MICHAEL ABEL TO  
 NEW DIRECTION REALTY, INC.  
 9/16/2015 (TRACT 1-30.020 AC.)

1675  
 312 DAVID B HENNINGTON ET UX TO  
 DAVID B. HENNINGTON AND WANDA J. HENNINGTON TRUSTEES  
 5/24/2000 (91.37 AC.)

HCDN 16008150  
 CAROL SUE HOPSON COLE, EXECUTOR, TO  
 HAYS COUNTY  
 3/10/2016 (11.736 AC.)

HCDN 18008882  
 WILLIAM OHREN HOPSON & LAURA ELIZABETH WEATHERFORD, TRUSTEES, TO  
 WILLIAM OHREN HOPSON ET AL  
 3/13/2018 (1/2 INTEREST: SECOND TRACT-97.04 AC.)

117  
 493 MRS. MILLIE GARY ET VIR TO  
 THE STATE OF TEXAS  
 12/15/1938 (3.82 AC.)

**SURVEYORS NOTES**

- FENCES MEANDER.
- ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48209C0415F, DATED 9/28/2005, THIS TRACT LIES WITHIN ZONE X, (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
- THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND THIS ENGINEER DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENT; THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.
- THIS SURVEY PLAT WAS PREPARED IN CONJUNCTION WITH A LAND DESCRIPTION DATED JULY 15, 2019 PREPARED BY BYRN AND ASSOCIATES, INC. OF SAN MARCOS, TEXAS.
- THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.

**LEGEND**

- VOL PG HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
- VOL PG HAYS COUNTY PLAT RECORDS
- HCDN HAYS COUNTY DOCUMENT NUMBER
- 1/2" IRON ROD FOUND OR DIAMETER NOTED
- 3/4" IRON PIPE FOUND OR DIAMETER NOTED
- 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
- 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY"
- 1/2" IRON ROD FOUND WITH PLASTIC CAP
- X WIRE FENCE
- ohu UTILITY LINE, POLE AND GUY
- WATER METER
- WATER VALVE
- UTILITY PEDESTAL
- CLEANOUT
- 6" CEDAR FENCE POST
- UNDERGROUND UTILITY WARNING SIGN
- WATER SPIGOT
- PROPOSED 1/2" IRON ROD WITH PLASTIC CAP STAMPED "TRINITY COMPANIES"
- RESIDENTIAL PLAT

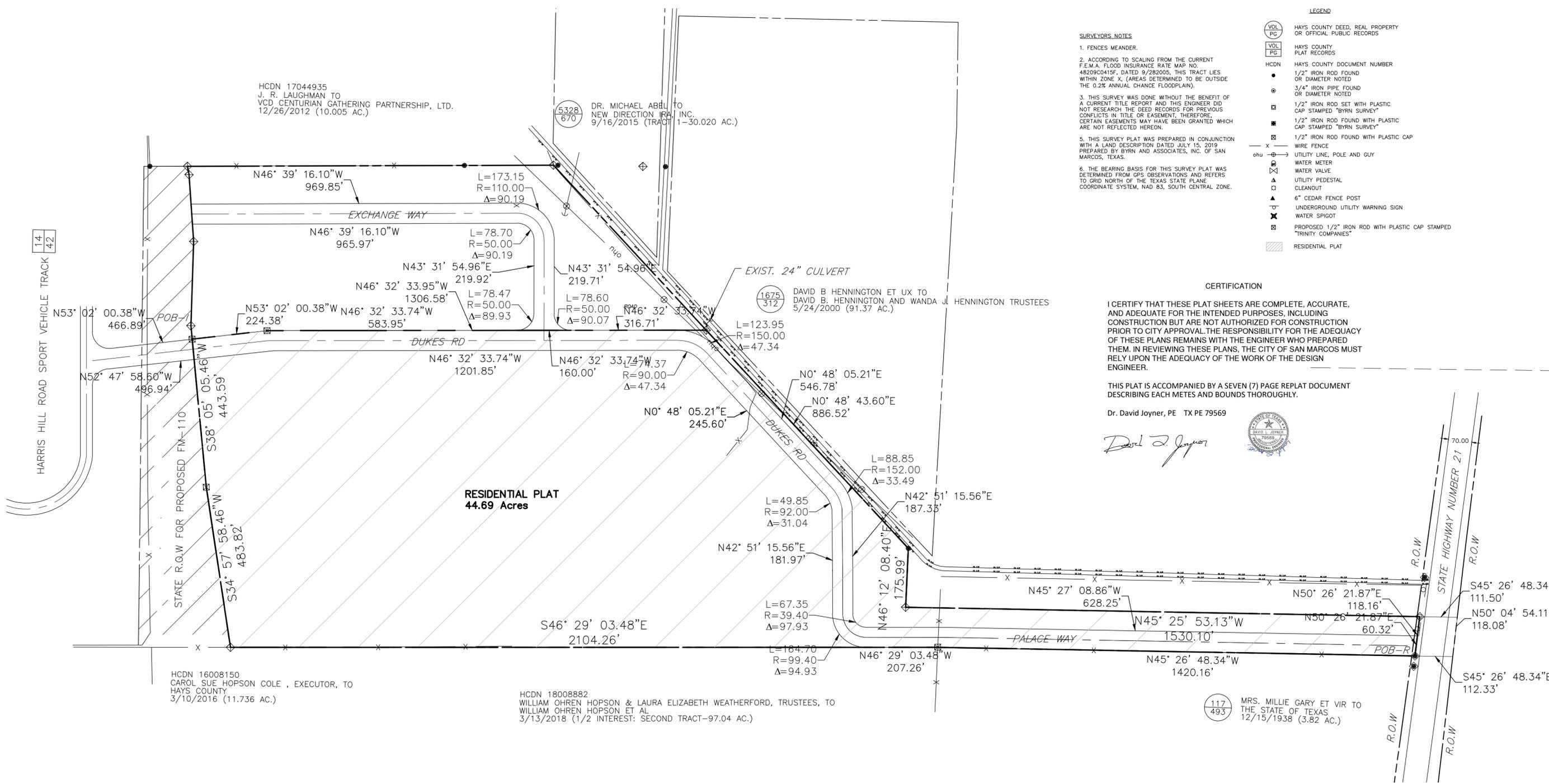
**CERTIFICATION**

I CERTIFY THAT THESE PLAT SHEETS ARE COMPLETE, ACCURATE, AND ADEQUATE FOR THE INTENDED PURPOSES, INCLUDING CONSTRUCTION BUT ARE NOT AUTHORIZED FOR CONSTRUCTION PRIOR TO CITY APPROVAL. THE RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER WHO PREPARED THEM. IN REVIEWING THESE PLANS, THE CITY OF SAN MARCOS MUST RELY UPON THE ADEQUACY OF THE WORK OF THE DESIGN ENGINEER.

THIS PLAT IS ACCOMPANIED BY A SEVEN (7) PAGE REPLAT DOCUMENT DESCRIBING EACH METES AND BOUNDS THOROUGHLY.

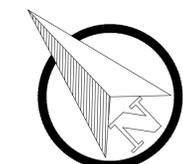
Dr. David Joyner, PE TX PE 79569

*David J. Joyner*



14  
42

PROJECT NO. <b>12148</b> TX Firm # 12656 DATE Mar 2020	REVISIONS DRAWN BY D. Aldana DESIGNED BY Trinity Group CHECKED BY D. Joyner	SCALE 1" = 200' 		SHEET NO. <b>C-02</b> VERSION A <small>Unless otherwise noted this is scaled to fit a 18"x24" sheet.</small>	SHEET NO. <b>PROPOSED PLAT</b> FOR RESIDENTIAL DEVELOPMENT	<p><b>TRINITY GROUP</b> A REAL-ESTATE SERVICE COMPANY</p> <p>838 MEYER RD. NEW BRAUNFELS, TX 78638          PH. (830) 303-3283. FAX (972) 842-7001          www.trinitycompanies.biz trinity@trinitycompanies.biz</p>	<p><b>PALACE WAY DEVELOPMENT</b></p> <p>Location:  <b>4087 ST. HIGHWAY 21</b>          San Marcos, Texas</p>	
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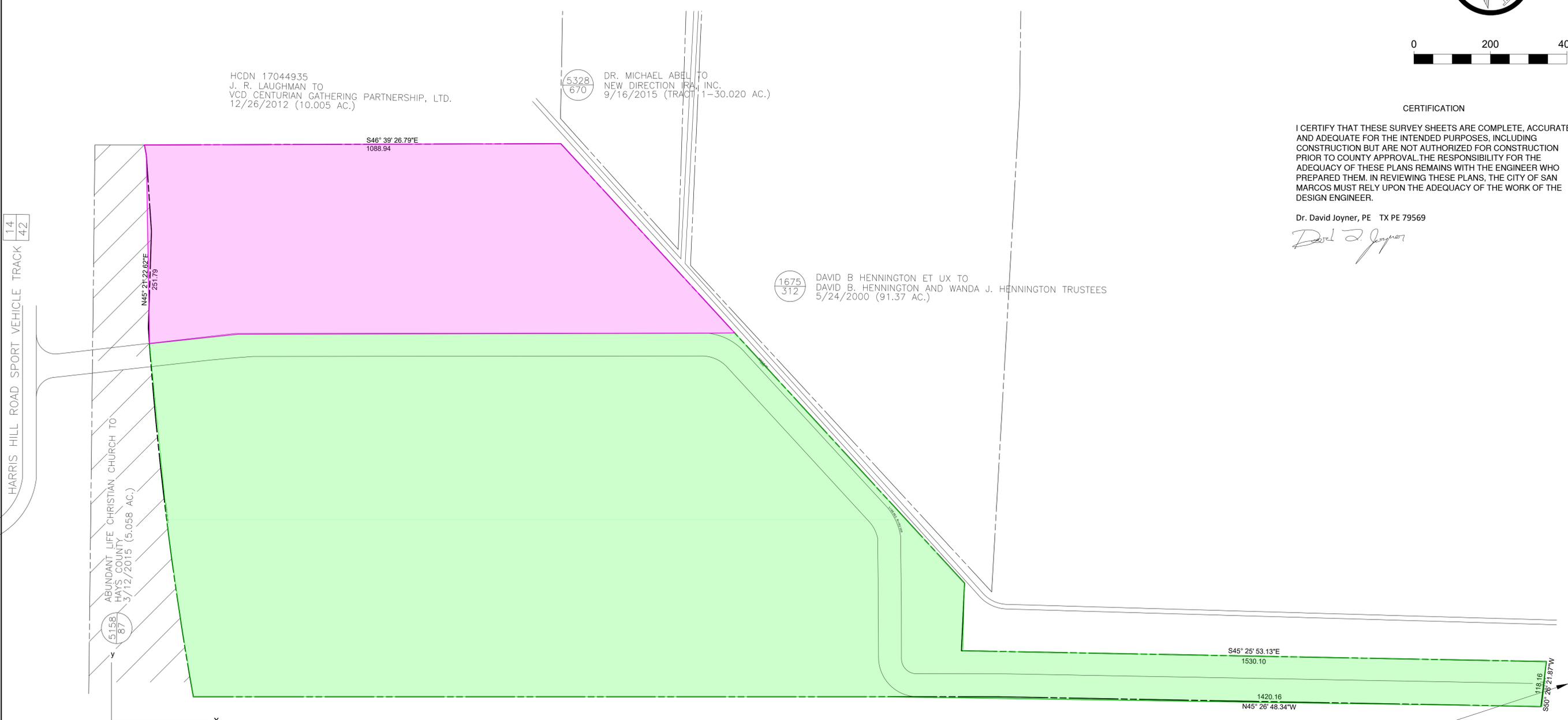
**PALACE WAY DEVELOPMENT**  
 Location:  
**4087 ST. HIGHWAY 21**  
 San Marcos, Texas

**TRINITY GROUP**  
 A REAL-ESTATE SERVICE COMPANY  
 888 MEYER RD. NEW BRAUNFELS, TX 78039  
 PH. (830) 303-2983 FAX (877) 842-7001  
 www.trinitycompany.com  
 "We Help Build Your Future"

PROJECT NO.	12418
REVISIONS	
TX Firm #	12656
DATE	Feb 2020
SCALE	3/32" = 1'
DRAWN BY	D. Aldana
DESIGNED BY	Trinity Group
CHECKED BY	D. Joyner
ZONING PLAN	
SHEET NO.	C-01
VERSION A	

**CERTIFICATION**  
 I CERTIFY THAT THESE SURVEY SHEETS ARE COMPLETE, ACCURATE, AND ADEQUATE FOR THE INTENDED PURPOSES, INCLUDING CONSTRUCTION BUT ARE NOT AUTHORIZED FOR CONSTRUCTION PRIOR TO COUNTY APPROVAL. THE RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER WHO PREPARED THEM. IN REVIEWING THESE PLANS, THE CITY OF SAN MARCOS MUST RELY UPON THE ADEQUACY OF THE WORK OF THE DESIGN ENGINEER.

Dr. David Joyner, PE TX PE 79569  
*David L. Joyner*



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- THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.

**LEGEND**

	HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
	HAYS COUNTY PLAT RECORDS
	HAYS COUNTY DOCUMENT NUMBER
	1/2" IRON ROD FOUND OR DIAMETER NOTED
	3/4" IRON PIPE FOUND OR DIAMETER NOTED
	1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
	1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY"
	1/2" IRON ROD FOUND WITH PLASTIC CAP
	WIRE FENCE
	UTILITY LINE, POLE AND GUY
	WATER METER
	WATER VALVE
	UTILITY PEDESTAL
	CLEANOUT
	6" CEDAR FENCE POST
	UNDERGROUND UTILITY WARNING SIGN
	WATER SPIGOT

**NOTES CORRESPONDING TO SCHEDULE B OF TITLE COMMITMENT G.F. NO. 20190411 DATED MAY 2, 2019**

10(c) WATERLINE EASEMENT RECORDED IN VOLUME 239, PAGE 222 OF THE HAYS COUNTY DEED RECORDS, MAY AFFECT SUBJECT TRACT ALTHOUGH THERE IS NOT ANY LOCATIVE INFORMATION PROVIDED IN DEED.

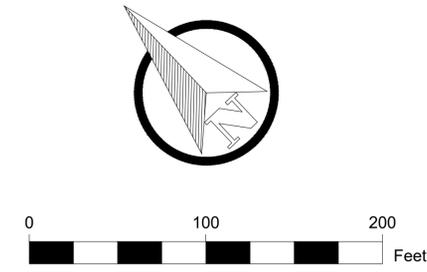
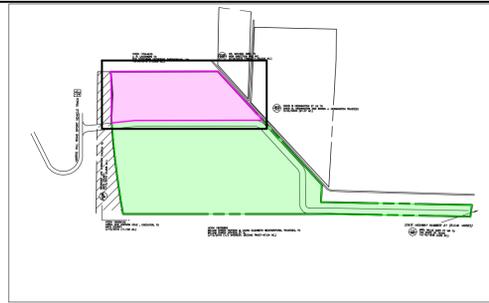
10(d) INGRESS EGRESS EASEMENT RECORDED IN VOLUME 340, PAGE 666 OF THE HAYS COUNTY DEED RECORDS, MAY AFFECT SUBJECT PROPERTY, THE GRAVEL DRIVE ON THE ADJACENT PROPERTY TO THE EAST FITS THE GENERAL DESCRIPTION GIVEN IN THE DEED.

10(e) STREET MAINTENANCE AGREEMENT RECORDED IN VOLUME 1301, PAGE 165 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS. THIS AGREEMENT IS FOR PROPERTIES WHICH WERE GRANTED EASEMENT RIGHTS TO USE COWTRAIL LANE. THE SUBJECT TRACT WAS NOT GRANTED EASEMENT RIGHTS SO THEREFORE IS NOT SUBJECT TO THIS AGREEMENT.

PROPOSED ZONING	
DESCRIPTION	AREA
TOTAL LOT	59.59ac
INDUSTRIAL PORTION	14.90ac
RESIDENTIAL PORTION	44.69ac

**ZONING**  
 HIGHWAY 21 LAND DEVELOPMENT  
 BEING A ZONING OF 59.59 ACRES,  
 MORE OR LESS, IN THE THOMAS G.  
 McGEHEE SURVEY, A-11, HAYS  
 COUNTY, TEXAS

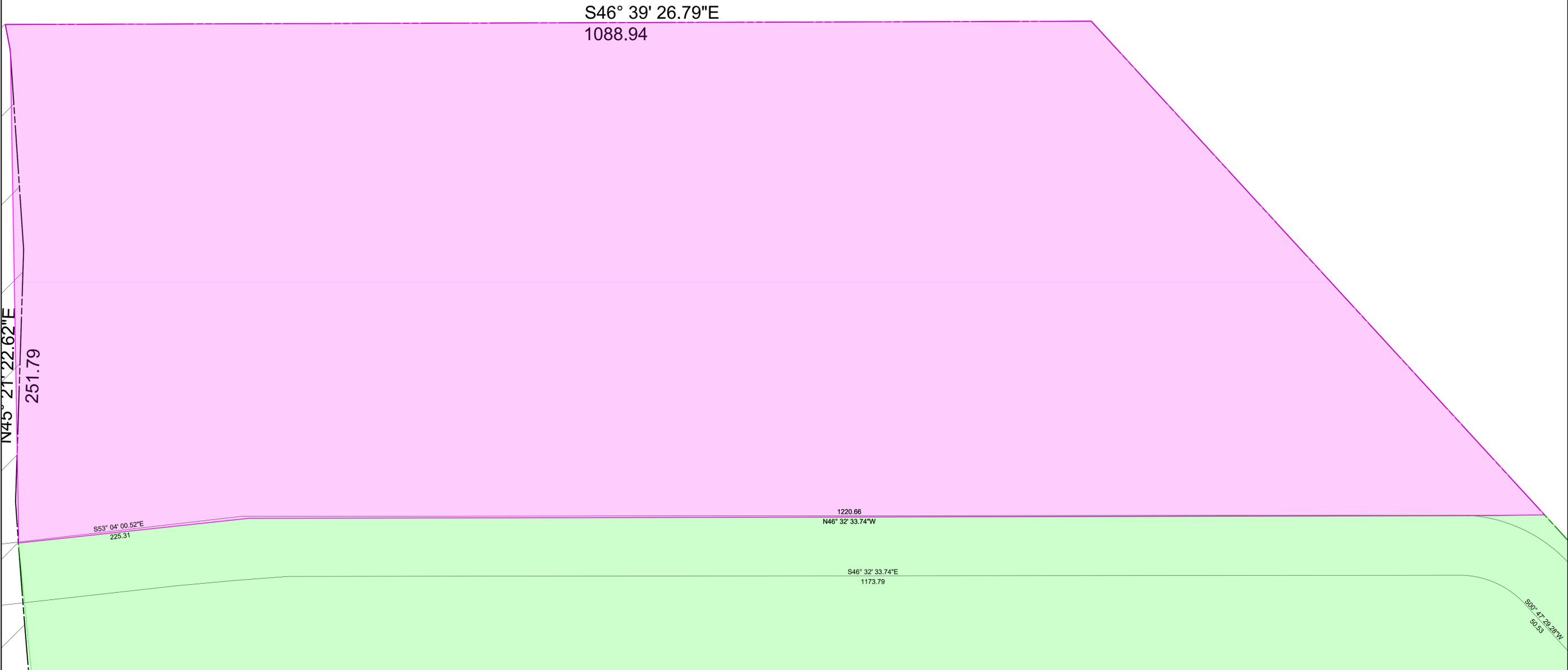
PROPOSED ZONING	
DESCRIPTION	AREA
TOTAL LOT	59.59ac
INDUSTRIAL PORTION	14.90ac



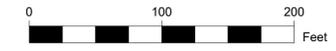
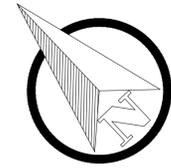
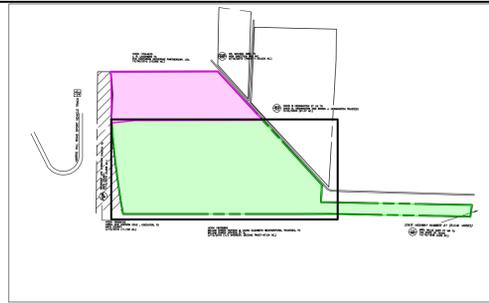
**PALACE WAY DEVELOPMENT**  
 Location:  
**4087 ST. HIGHWAY 21**  
 San Marcos, Texas

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 www.trinitycompany.com trinity@trinitycompany.com  
 "We Help Build Your Future"

PROJECT NO. <b>12418</b>
REVISIONS
TX Firm # 12656
DATE Feb 2020
SCALE 1/4" = 1'
DRAWN BY D. Aldana
DESIGNED BY Trinity Group
CHECKED BY D. Joyner
<b>PROPOSED INDUSTRIAL ZONING</b>
<small>Unless otherwise noted this is scaled to fit a 24" x 36" sheet</small>
SHEET NO. <b>C-02</b>
VERSION A

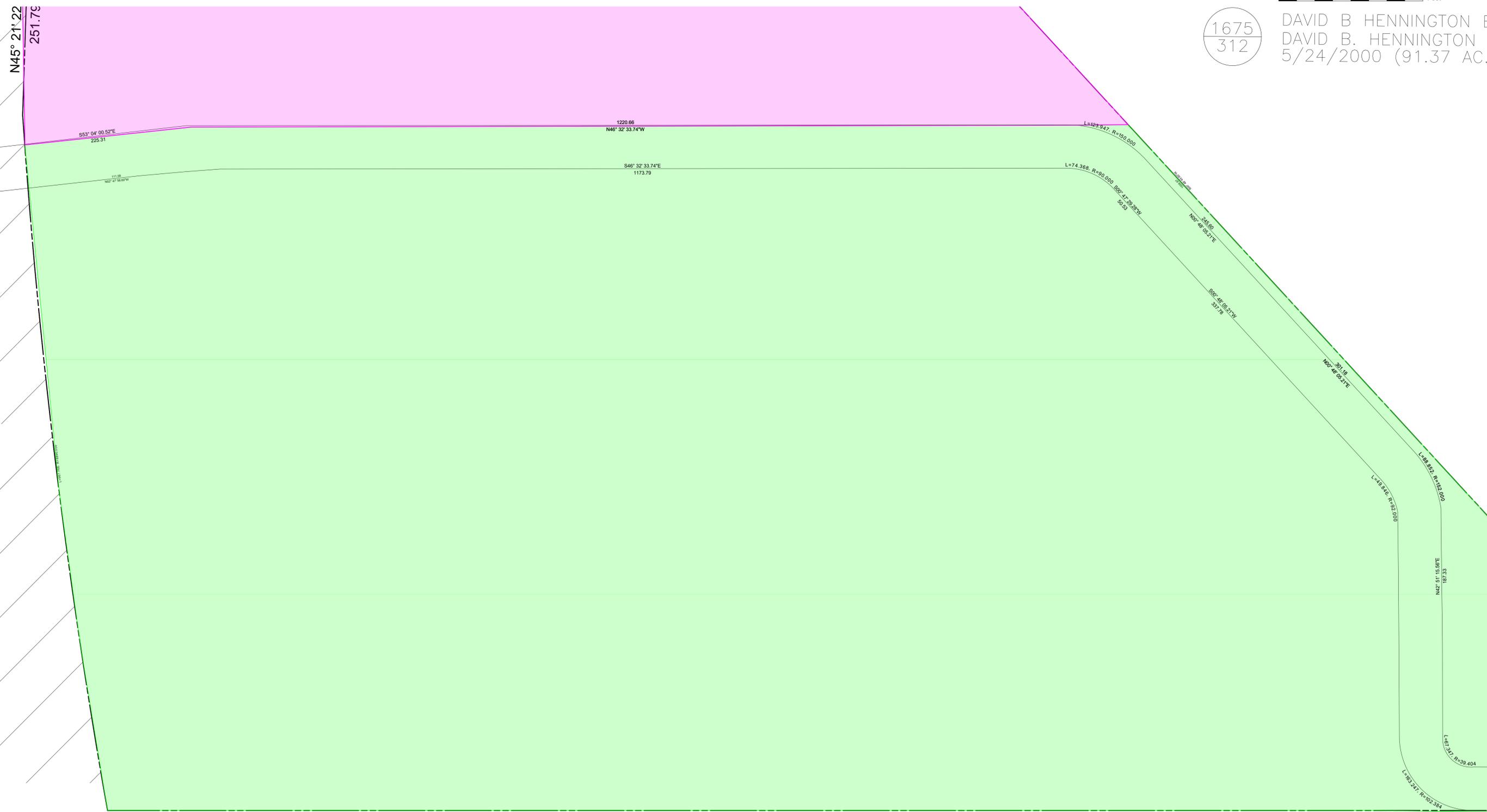


PROPOSED ZONING	
DESCRIPTION	AREA
TOTAL LOT	59.59ac
RESIDENTIAL PORTION	44.69ac



1675  
312

DAVID B HENNINGTON E  
DAVID B. HENNINGTON  
5/24/2000 (91.37 AC.)



**PALACE WAY DEVELOPMENT**  
Location:  
4087 ST. HIGHWAY 21  
San Marcos, Texas

**TRINITY GROUP**  
A REAL-ESTATE SERVICE COMPANY  
888 MEYER RD. NEW BRAUNFELS, TX 78038  
PH. (830) 303-2883 FAX (877) 842-7001  
www.trinitycompany.com trinity@trinitycompany.com  
"We Help Build Your Future"

PROJECT NO. <b>12418</b>
REVISIONS
TX Firm # 12656
DATE Feb 2020
SCALE $\frac{3}{16}'' = 1'$
DRAWN BY D. Aldana
DESIGNED BY Trinity Group
CHECKED BY D. Joyner

**PROPOSED RESIDENTIAL ZONING**  
SHEET NO.  
**C-03**  
VERSION A

## AMENDED DEED RESTRICTIONS

### EXHIBIT B

Comes now Pastor Paul Buntyn the President of Abundant Life Christian Church, the Grantee under that certain Warranty Deed dated November 12, 1999 from C & G Development, Inc. to Abundant Life Christian Church which was recorded in the Deed Records of Hays County, Texas, Instrument Number 09927062 on or about November 15, 1999, which contained certain deed restrictions attached thereto as Exhibit B. According to the Warranty Deed, the Deed Restrictions can be amended by the Grantee or its successor in interest every twenty (20) years. Therefore, Pastor Paul Buntyn, President of Abundant Life Christian Church desires to replace and amend those Deed Restrictions and record these amended deed restrictions in Hays County, Texas.

Grantee Abundant Life Christian Church, or its successors, legal representatives, heirs successors and assigns, that any purchaser, corporate or individual, of this land shall have the authority to amend said restrictions at any time.

Therefore, the declarant hereby declares that the deed restrictions shall be revised as follows:

1. All tracts shall be used for residential and/or commercial development in accordance with the regulations then existing in Hays County, Texas.
2. There shall be no jails, prisons or penal institutions of any kind being erected on said land.
3. There shall be no farms that raise cattle, hogs and/or chickens or any other type of livestock or farm animal for mass production. The premises shall not be stocked with any livestock in such numbers that hereby create a nuisance.
4. There shall be no junk yards/dump sites of any sort being erected on said land. Motor vehicles without current license and registration, junk or wrecking yards, and automobiles, trucks or other vehicles used for parts are strictly prohibited.
5. There shall be no slaughterhouse of any sort being erected on the said land.
6. There shall be no shooting range or anything of the sort being erected on said land. The use or discharge of firearms, including (but not limited to) air powered guns, and the use or discharge of fireworks is expressly prohibited within the property.
7. Composting bins must be located and maintained in such a way that no odors are detectable from neighboring properties, and the bins must be maintained so they are not unsightly or unkept.



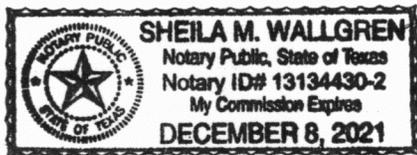
**ABUNDANT LIFE CHRISTIAN CHURCH**

Paul Buntyn  
Pastor Paul Buntyn

STATE OF TEXAS )

COUNTY OF HAYS)

This instrument was acknowledged before me on June 7<sup>th</sup>, 2019 by  
Pastor Paul Buntyn.



Sheila M. Wallgren  
Notary Public, State of Texas  
My commission expires: 12-8-2021

PREPARED IN THE OFFICE OF:

DAVID K. SERGI AND ASSOCIATES, P.C.  
329 S. Guadalupe St.  
San Marcos, TX 78666  
Tel: 512-392-5010  
Fax: 512-392-5042

AFTER RECORDING RETURN TO:

DAVID K. SERGI AND ASSOCIATES, P.C.  
329 S. Guadalupe St.  
San Marcos, TX 78666  
Tel: 512-392-5010  
Fax: 512-392-5042

THE STATE OF TEXAS

COUNTY OF HAYS

I hereby certify that this instrument was FILED on the  
date and the time stamped hereon by me and was duly  
RECORDED in the Records of Hays County, Texas.

**19020883      RESTRICTIONS**  
06/20/2019 02:35:27 PM Total Fees: \$30.00

 Elaine H. Cardenas

Elaine H. Cardenas, MBA, PhD, County Clerk  
Hays County, Texas



## RESIDENTIAL ZONING

### STATE OF TEXAS - CITY OF SAN MARCOS

WHEREAS, Palace way Partners owns a 59.89ac tract of land situated in the Thomas G. McGehee survey, A-11, Hays County, Texas. Conveyed in volume 723 page 39, Plat records, Hays County, TX. Same being a tract of land described to Palaceway Partners as conveyed in Instrument number 9927062, official public records, Hays County, Texas. And being more particularly described by metes and bounds as follows: Grid north of the Texas state plane coordinate system, NAD 83, South central zone.

The proposed plat divides the property in two plats, the residential plat being 44.99 acres.

Beginning at 1/2" Iron rod with plastic cap found at southeast corner said POB-R same being southeast of Mrs. Millie Gary Et Vir to the State of Texas recorded in the public records Volume 117, Page 493. Hays County, Texas. And lying on the north Right of Way of the State Highway Number 21.

THENCE, North 50°, 26 minutes, 21.87 seconds East along the western right of way of State Highway 21. Drive a distance of 118.16 feet.

THENCE, North 45 degrees, 25 minutes and 53.13 seconds West, parallel with the adjacent gravel road said Cow Trail, drive a distance of 1,530.10 feet towards 1/2" " Iron rod with plastic cap.

THENCE, North 46 degrees, 12 minutes and 08.40 seconds East, towards the adjacent gravel road said Cow Trail, drive a distance of 175.99 feet towards 1/2" " Iron rod. Same lying on the left right of way of Cow Trial.

THENCE, North 0 degrees, 48 minutes and 43.60 seconds East, with the west right of way of said Cow Trial. Drive a distance of 886.52 feet. Same being the northwest corner of the residential parcel.

THENCE, North 46 degrees, 32 minutes and 33.95 seconds West, same being the west side of the Industrial Plat and the right edge of road of Dukes Rd, drive a distance of 1,306.58 feet to 1/2" Iron rod with plastic cap stamped "Byrn Associates". Same being the west side of the Industrial plat.

THENCE, North 53 degrees, 02 minutes and 00.38 seconds West, same being the west side of the Industrial Plat and the right edge of road of Dukes Rd, drive a distance of 224.38 feet to 1/2" Iron rod with plastic cap stamped "Trinity Companies". Same being the northwest corner of the Industrial plat.

THENCE, South 38 degrees, 05 minutes and 05.46 seconds West, of the northwest corner of the Industrial plat and the right edge of road of Dukes Rd, drive a distance of 483.82 feet to 1/2" Iron rod with plastic cap stamped "Byrn survey". And lying on the east right of way of the Harris Hill Road Sport Vehicle Track.

THENCE, South 34 degrees, 57 minutes and 58.46 seconds West, drive a distance of 438.82 feet to 1/2" Iron rod with plastic cap.

THENCE, South 46 degrees, 29 minutes and 03.48 seconds East, being the northwest corner of the proposed plat. drive a distance of 2104.26 feet to 1/2" Iron rod with plastic cap stamped "Trinity Companies.

THENCE, South 45 degrees, 26 minutes and 48.34 seconds East, being part of the left edge of road of Dukes road. Drive a distance of 1,420.16' towards POB-R, same being the west Right of Way of State Highway Number 21.

---

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, TRINITY GROUP, does hereby present this Proposed Plat designating the herein above described property as **PALACE WAY DEVELOPMENT**, an addition to the City of San Marcos, Texas. Said utility easements being hereby reserved for the mutual use and accommodation of all public utilities using or desiring to use same.



Dr. David L. Joyner, P.E  
TX Firm 12656



**TRINITY GROUP**

*A Real Estate Development Service Company*

PAGE 2 OF 2

838 Meyer Rd., NB, TX 78638-1503 • Ph. 830.303.3283  
In Austin 512.807.7310 • Eagle Ford 830.303.3283  
Houston 713.574.1949 • San Antonio 210.209.9976  
[www.trinitycompanies.biz](http://www.trinitycompanies.biz)

## Applicant's Manufactured Home Community Video

The applicant provided the below video which displays an example of the manufactured home community being proposed:

[https://drive.google.com/open?id=1KwvC\\_cuGMkngHo9mjVsBgW4N4jSRgrO0](https://drive.google.com/open?id=1KwvC_cuGMkngHo9mjVsBgW4N4jSRgrO0)

**From:** [Villalobos, Andrea](#)  
**To:** [Villalobos, Andrea](#)  
**Subject:** FW: [EXTERNAL] Comments to be read aloud - Planning and Zoning Meeting  
**Date:** Tuesday, April 28, 2020 8:57:49 AM

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**From:** Paul Hennington  
**Sent:** Tuesday, April 28, 2020 8:42 AM  
**To:** Planning Info <[PlanningInfo@sanmarcostx.gov](mailto:PlanningInfo@sanmarcostx.gov)>  
**Subject:** [EXTERNAL] Comments to be read aloud - Planning and Zoning Meeting

To whom it may concern,

In reference to the Planning and Zoning Meeting tonight (April 28, 2020 at 6pm)

I would like the following read aloud to address both of the following agenda items:

- Agenda Items 9 (ZC-20-07)
- Agenda Item 10 (ZC-20-08)

My name is David Hennington. I live at 4 Cow Trail, San Marcos TX which is adjacent to the subject properties considered in this hearing.

I would like it to be known that these properties were originally all part of a 202 acre tract until a developer subdivided the property.

The developer put it in deed restrictions to limit the use of the land. This was filed with the Hays County Clerk on September 9<sup>th</sup>, 1999. I have attached a copy of the filing.

Some key points are as follows:

- All tracts shall be known and described as residential tracts and shall be used for residential purposes only.
- Double wide manufactured homes are permitted, but single wide manufactured homes are not allowed
- No tract shall be subdivided in a tract smaller than 5 acres
- These restrictions are originally effective for a term of 20 years from date of filing which occurred on September 9<sup>th</sup>, 1999.
- These deed restrictions shall be automatically extended for successive periods of 10 years.
- These deed restrictions may only be amended during the last year of such a 10 year period by an instrument signed by not less than 75% of the Tract owners.

I would like it known that I am contesting the proposed land use and zoning change. I believe that the deed restrictions are active and defensible against the proposed changes.

Two additional points to consider:

- Drainage: These properties drain runoff into a small creek that eventually runs through a culvert under Highway 21. It is already not unusual for heavy rains to cause flooding of the parcels near Cow Trail and 21. If they add more impervious ground cover (roads and parking), It could be catastrophic to those home owners unless a substantial civil engineering effort is conducted.
- Wildlife: The subject property is home to a wide variety of Birds, Reptiles, and Mammal species. Additionally, wild bees and other insects provide pollination for the surrounding agricultural properties. Commercial or dense residential development would have an ecological impact.

Thank you for the opportunity share these statements

Paul Hennington  
4 Cow Trail  
San Marcos, TX  
(512) 632-7475

**CAUTION:** This email is from an EXTERNAL source. Links or attachments may be dangerous. Click the Phish Alert button above if you think this email is malicious .

This Deed is subject to the following covenants, conditions and restrictions:

1. All tracts shall be known and described as residential tracts and shall be used for residential purposes only. The premises shall not be stocked with any livestock in such numbers as to require heavy supplemental feeding thereby creating a nuisance. No fowls or animals shall be kept on the premises in such numbers or in such a manner as may be or may become a nuisance. No noxious, obnoxious or offensive activities of any kind shall be carried on or permitted on any Tract, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

2. No residence shall be erected, placed or permitted to remain on any Tract other than a detached single-family dwelling. A detached single-family dwelling shall consist of only one home, manufactured house or residence not to exceed two (2) stories in height.

A. Permanent Homes.

(1.) Each permanent site-built home and buildings shall be of new construction. Each home shall contain a minimum of 1,100 square feet of living area, exclusive of garages, carports, and porches.

(2.) The exterior of each permanent site-built home shall be complete within six (6) months of beginning construction.

B. Manufactured Homes.

(1.) All manufactured housing shall be double wide homes, no single wide manufactured homes will be allowed.

(2.) All manufactured homes must be skirted within thirty (30) days after placement on property with masonry or plaster.

(3.) Notwithstanding any other restrictions or limitations contained in this Section to the contrary, all manufactured homes shall be anchored to the land in the manner prescribed by the Texas Department of Licensing and Regulation.

(4.) No manufactured home of less than 1,100 square feet shall be allowed.

(5.) All manufactured homes shall be of new construction.

(6.) Roof surfaces shall be clear of weights, anchors, and/or other objects that may be placed thereon. Tires and other unsightly objects that may be placed on roofs are explicitly prohibited.

3. No detached single-family dwelling shall be located nearer than fifty (50) feet to a street line, nor nearer than fifty (50) feet to an interior property line, whether an original line or a subdividing line. For purposes of this restriction, eaves, steps and open porches shall not be considered as a part of a dwelling; however, this shall not be construed to permit any portion of a dwelling to encroach upon another Tract. If two or more tracts are combined as a single homesite then there shall be no setback or interior common lot lines.

4. No basement, tent, or other structure of a temporary nature, shack, barn, garage, or other outbuilding of whatever kind or nature, whether attached or detached, shall at any time be used on any Tract as a residence either temporarily or permanently.

5. No abandoned automobiles, trucks, or any other unsightly property or junk shall ever be kept, stored or placed on a Tract. All automobiles, trucks, vehicles, boats and recreation motor homes shall bear current license and motor vehicle inspection stickers.

6. No pets shall run loose. Pets shall be contained by fencing capable of containing such pet. Each pet must wear an identity collar identifying its owner as well as certification of current vaccination as required by law.

7. All trash shall be disposed of weekly. No Tract shall be used as a dumping ground for rubbish, trash or lawn clippings, and no garbage or other waste shall be kept except in sanitary containers. The premises and improvements thereon shall be maintained in a neat and orderly manner.

8. All mail boxes shall be of type and design and placed in a location approved by the U.S.

ORIGINAL DOCUMENT IN FULL SIZE

Postmaster.

9. No Tract shall be subdivided in a tract smaller than 5.01 acres herein.
10. All anchoring devices, electrical, plumbing and telephone equipment and septic systems shall be installed in accordance with applicable Federal, State of Texas and local laws and ordinances.
11. Arches, awnings, carports, garages, porches, steps, storage building, etc. shall be erected permanently and be of sound construction; compatible in appearance with the dwelling. Fences shall be designed and erected in such a way as to be harmonious with the character of the property. Abandoned signs, rusty roofing metal and/or like materials shall not be used for fencing. No fence shall exceed six (6) feet in height.
12. Grantor, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions and reservations now or hereafter imposed by the Deed Restrictions. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
13. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.
14. The covenants, conditions and restrictions of this Deed shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Grantor or the Owner of any Tract subject to these Deed Restrictions, and their respective legal representatives, heirs, successors and assigns, and, unless amended as provided herein, shall be effective for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than eighty percent (80%) of the Tract Owners; during any succeeding ten (10) year period, the covenants, conditions and restrictions of this Declaration may be amended during the last year of any such ten (10) year period by an instrument signed by not less than seventy-five percent (75%) of the Tract Owners. No amendment shall be effective until recorded in the Official Records of Hays County, Texas, nor until the approval of any governmental regulatory body which is required shall have been obtained.

ORIGINAL DOCUMENT FILED IN

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

EXHIBIT "C" *Lee Carlisle*  
9-9-99 03:41 PM 9921612  
ROSE \$21.00  
LEE CARLISLE, County Clerk  
HAYS COUNTY

7

*WZ* *NA* *E.L.*



## Legislation Text

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**File #:** Ord. 2020-37(b), **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-37, on the second of two readings, approving an update to the Service and Assessment Plan for the Whisper Public Improvement District; making a finding of special benefit to the property in the district, levying additional assessments against property with the district; establishing a lien on such property; approving an updated assessment roll for the district; providing for payment of the assessments in accordance with Chapter 372, Texas Local Government Code; providing for the method of assessment and the payment of the additional assessments; providing for penalties and interest on delinquent assessments; providing for a severability clause; providing an effective date; and providing for related matters.

**Meeting date:** June 2, 2020

**Department:** Finance

**Amount & Source of Funding**

**Funds Required:** [Click or tap here to enter text.](#)

**Account Number:** [Click or tap here to enter text.](#)

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** [Click or tap here to enter text.](#)

**Fiscal Note:**

**Prior Council Action: October 2014 - Council approved term sheet, December 2015 - Term sheet amendment #1 extending date for submission of design plans to June 2016, September 2017 - Term sheet amendment #2 extending date for construction completion to September 2018 and increase of maximum annual assessment, January 2019 - Term sheet amendment #3 extending date for construction completion to May 2019 and create traffic impact analysis criteria, April 2020 - Term sheet amendment #4 referring all terms to the Amended and Restated Financing Agreement upon completion**

**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.
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

Whisper PID (public improvement district) will reimburse the developer for infrastructure, improvement and construction completed for: 28-acre business park, 285 acres of commercial development, 106 acres single family residential, 111 acres master retail and commercial center, and 50,000 square foot commercial spec building. Estimated addition to the tax roles at build out is \$638.2M. A maximum of \$14.6M in PID bonds will be issued to reimburse the developer for improvements that provide special benefit to the district.

**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. \_\_\_\_\_

**AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR, AND APPORTIONING THE COSTS OF, CERTAIN IMPROVEMENTS TO PROPERTY IN AND FOR THE WHISPER PUBLIC IMPROVEMENT DISTRICT; FIXING A CHARGE AND LIEN AGAINST ALL PROPERTIES WITHIN THE DISTRICT, AND THE OWNERS THEREOF; PROVIDING FOR THE MANNER AND METHOD OF COLLECTION OF SUCH ASSESSMENTS; MAKING A FINDING OF SPECIAL BENEFIT TO PROPERTY IN THE DISTRICT AND THE REAL AND TRUE OWNERS THEREOF; APPROVING A SERVICE AND ASSESSMENT PLAN; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Subchapter A of Chapter 372 of the Texas Local Government Code (the "Act") allows for the creation of public improvement districts; and

WHEREAS, a petition was submitted and filed with the City Clerk (the "*City Clerk*") of the City of San Marcos, Texas (the "*City*") pursuant to the Act, requesting the creation of a public improvement district located within the corporate limits of the City to be known as Whisper Public Improvement District (the "*District*" or "*PID*") to provide public improvements within the District to include the design, acquisition, and construction of public improvement projects authorized by Section 372.003(b) of the Act that are necessary for development of the District, which public improvements will include, but not be limited to, streets, roadway construction, water, wastewater, and drainage facilities and improvements, and other improvement projects; and

WHEREAS, the petition contained the signatures of the record owners of taxable real property representing more than 50% of the appraised value of the real property liable for assessments within the District, as determined by the then current ad valorem tax rolls of the Hays Central Appraisal District, and the signatures of record property owners who own taxable real property that constitutes more than 50% of the area of all taxable property that is liable for assessment by the District; and

WHEREAS, on October 6, 2014, after due notice, the City Council (the "*City Council*") of the City held the public hearing in the manner required by law on the advisability of the improvement projects described in the petition as required by Section 372.009 of the Act and on October 6, 2014 the City Council made the findings required by Section 372.009(b) of the Act and, by Resolution No. 2014-143R (the "*Creation Resolution*"), adopted by a majority of the members of the City Council, authorized the creation of the District in accordance with its finding as to the advisability of the improvement projects; and

WHEREAS, following the adoption of Creation Resolution, the City published notice of its authorization of the creation of the District in the *San Marcos Daily Record*, a newspaper of general circulation in the City; and

WHEREAS, no written protests regarding the creation of the District from any owners of record of property within the District were filed with the City Clerk within 20 days after the date of publication of such notice; and

WHEREAS, pursuant to the Act, the proposed assessment roll (the "*Assessment Roll*") and service and assessment plan were filed with the City Clerk; and

WHEREAS, the statutory notice of a public hearing was published on May 8, 2020, to consider the levy of the proposed assessments (the "*Assessments*") on real property within the District was published in the *San Marcos Daily Record*, a newspaper of general circulation in the City and was mailed to the last known address of the owners of the property liable for the Assessments; and

WHEREAS, after notice was provided as required by the Act, the City Council on May 19, 2020 and June 2, 2020, held a public hearing to consider the levy of the proposed Assessments on property within the District, at which any and all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Assessment Roll, and the proposed Assessments, and to offer testimony pertinent to any issue presented on the amount of the Assessments, the allocation of the Actual Costs of the authorized improvements to be undertaken for the benefit of all property to be assessed within the District (the "*Authorized Improvements*"), the purposes of the Assessments, the special benefits of the Authorized Improvements, and the penalties and interest on annual installments and on delinquent annual installments of the Assessments; and

WHEREAS, the City Council finds and determines that the Assessment Roll and the Whisper Public Improvement District Service and Assessment Plan, in a form substantially similar to the attached Exhibit A, which final form shall be approved by the City Manager (the "*Service and Assessment Plan*"), and which is incorporated herein for all purposes, should be approved and that the Assessments should be levied as provided in this Ordinance, the Service and Assessment Plan and the Assessment Roll; and

WHEREAS, the City Council further finds that there were no written objections or evidence submitted to the City Clerk in opposition to the Service and Assessment Plan, the Actual Costs of the Authorized Improvements as described in the Service and Assessment Plan, the Assessment Roll, and the levy of the Assessments; and

WHEREAS, in connection with the levy of the Assessments, concurrently herewith, the owners (the "*Landowners*") of the privately-owned and taxable property located within the District will execute a landowner agreement, wherein the Landowners, among other things, approves and accepts this Ordinance and the Service and Assessment Plan, including the

Assessment Roll, consents to and accepts the levy of the Assessments against their property located within the District and agrees to pay the Assessments; and

WHEREAS, the City Council closed the hearing on June 2, 2020, and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, determined to proceed with the adoption of this Ordinance in conformity with the requirements of the Act; and

WHEREAS, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended.

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

Section 1. All matters stated in the preamble of this Ordinance are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. The Service and Assessment Plan, attached hereto as Exhibit A has been presented to and reviewed by the City Council and the City Council hereby approves the Service and Assessment Plan and adopts the Service and Assessment Plan as the service plan and assessment plan for the District. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Service and Assessment Plan.

Section 3. The Authorized Improvements described in the preamble hereof include the major improvements that will benefit and serve all of the property within the District (the "Major Improvements"). The Major Improvements benefit and serve all of the property within the District and are set forth in Section III.A of the Service and Assessment Plan.

Section 4. The City Council hereby finds and determines upon the evidence presented in reference to the property located within the District that: (i) the enhancement and value to accrue to the District and the real and true owner or owners thereof by virtue of construction of the Major Improvements will be equal to or in excess of the amount of the cost of the proposed Major Improvements; (ii) that the apportionment of the costs of the Major Improvements and the Assessments here and below made are just and equitable and produce substantial equality, considering the benefits received and the burdens imposed thereby, and result in imposing equal shares of the cost of the Major Improvements on property similarly benefitted, and are in accordance with the laws of the State of Texas; (iii) the property assessed is specially benefitted by means of the said Major Improvements in the District in relation to the costs of such improvements; (iv) all procedures that have taken place heretofore with reference to the Major Improvements and Assessments are in all respects regular, proper, and valid; and (v) all prerequisites to the fixing of the assessment liens against the properties within the District, and the personal liability of the real and true owner or owners thereof, whether correctly named herein or not, have been in all things regularly and duly performed in compliance with the Act and the proceedings of the City Council. The cost of said Major Improvements is hereby

assessed and levied as a special assessment against such properties and the real and true owner or owners thereof in the amounts as described in Exhibit F of the Service and Assessment Plan attached hereto.

Section 5. There shall be and is hereby levied and assessed against the property within the District, and against the real and true owners thereof (whether such owners be correctly named or not), the sums of money as listed in Exhibit F of the Service and Assessment Plan attached hereto and made a part hereof shown for each of the respective parcels of property, and the assessed against the same, and the owners thereof.

Section 6. The sums assessed against property located within the District and the real and true owners or owner thereof, whether the owner or owners be named or correctly named, or the properties be correctly described therein or not, together with interest thereon at the rate per annum when required as set forth in the Service and Assessment Plan and with reasonable attorney's fees and all costs and expenses of collection, if incurred, are hereby declared to be and made a first and prior lien upon the respective parcels of property against which same are assessed from and after this date, and a personal liability and charge against the real and true owner or owners thereof, whether or not such owner or owners be correctly named herein, paramount and superior to all other liens, claims or titles except for lawful claims for state, county, school district, or municipality ad valorem taxes; and that the sum so assessed shall be payable to the City or its assigns in accordance with the Assessment Roll attached as Exhibit F to the Service and Assessment Plan.

Section 7. (a) The levy of the Assessments shall be effective on the date of adoption of this Ordinance levying assessments and strictly in accordance with the terms of the Service and Assessment Plan.

(b) The apportionment of the costs of the Major Improvements to be assessed against the property within the District, shall be as set forth in the Service and Assessment Plan.

(c) Assessments and Annual Installments shall be collected, administered and may be reallocated, and the costs of improvements paid, as set forth in: (i) this Ordinance; (ii) the Service and Assessment Plan and (iii) any ordinance, resolution, bond indenture or agreement approved by the City Council.

(d) Each Assessment may be paid in a lump sum or may be paid in Annual Installments pursuant to the terms of the Service and Assessment Plan.

(e) Each Assessment shall accrue and bear interest at the rate or rates specified in the Service and Assessment Plan.

(f) Each Annual Installment shall be due and payable and shall be collected each year in the manner set forth in the Service and Assessment Plan.

(g) Assessments and the interest thereon shall be deposited as and when received by the City into a separate fund to be used to pay the costs incurred for the Major Improvements, including debt service on obligations issued to pay the costs of the Major Improvements, and the establishment of each such fund is hereby approved.

(h) The Annual Installments shall be reduced to equal the actual costs of repaying the related series of Bonds and actual Annual Collection Costs (as provided for in the definition of such term), taking into consideration any other available funds for these costs, such as interest income on account balances.

Section 8. This Ordinance incorporates by reference all provisions and requirements of the Act.

Section 9. If any section, article, paragraph, sentence, clause, phrase, or word in this Ordinance, or application thereof to any persons or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed such remaining portion of this Ordinance, despite such invalidity, which remaining portions shall remain in full force and effect.

Section 10. This Ordinance shall take effect immediately from and after its passage and it is accordingly so ordained.

CONSIDERED AND APPROVED ON First Reading on the 19<sup>th</sup> day of MAY, 2020.

PASSED, APPROVED AND ADOPTED on Second Reading on the 2<sup>nd</sup> day of JUNE, 2020.

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

[SEAL]

Exhibit A

WHISPER PUBLIC IMPROVEMENT DISTRICT  
SERVICE AND ASSESSMENT PLAN

(see attached)

# Whisper Public Improvement District

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SERVICE AND ASSESSMENT PLAN  
MAY 7, 2020



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## INTRODUCTION

Capitalized terms used in this Service and Assessment Plan shall have the meanings given to them in **Section I** unless otherwise defined in this Service and Assessment Plan or unless the context in which a term is used clearly requires a different meaning. Unless otherwise defined, a reference to a “Section” or an “Exhibit” shall be a reference to a Section of this Service and Assessment Plan or an Exhibit attached to and made a part of this Service and Assessment Plan for all purposes.

On October 6, 2014 (the “**Creation Date**”) the City passed and approved Resolution No. 2014-143R authorizing the creation of the District in accordance with the PID Act, which authorization was effective upon publication as required by the PID Act. The purpose of the District is to finance the Actual Costs of the Authorized Improvements for the benefit of property within the District. The District contains approximately 706.1 acres within the corporate limits of the City, as described legally by metes and bounds on **Exhibit A-1** and as depicted by the map on **Exhibit B-1**. Since the Creation Date, the Developer and/ or one or more of the Owners has caused the conveyance or dedication of right-of-way and other Non-Benefitted Property for public improvements (including without limitation Authorized Improvements) so that the Assessed Property is less than the amount of the property within the District.

The PID Act requires a service plan covering a period of at least five years and defining the annual indebtedness and projected cost of the Authorized Improvements. The Service Plan is contained in **Section IV**.

The PID Act also requires that the Service Plan include an assessment plan that assesses the Actual Costs of the Authorized Improvements against Assessed Property within the District based on the special benefits conferred on such property by the Authorized Improvements. The Assessment Plan is contained in **Section V**.

The PID Act requires an Assessment Roll that states the Assessment against each Parcel determined by the method chosen by the City. The Assessment against each Assessed Property must be sufficient to pay the share of the Actual Costs apportioned to the Assessed Property and cannot exceed the special benefit conferred on the Assessed Property by the Authorized Improvements. The Assessment Roll is contained in **Exhibit F**.

## SECTION I: DEFINITIONS

**“Actual Costs”** means, with respect to the Authorized Improvements, (1) the costs incurred by or on behalf of the Developer for the design, planning, acquisition, installation, construction and/or implementation of such Authorized Improvement, including a 4% construction management fee, (2) the costs incurred in preparing the construction plans for such Authorized Improvement, (3) the fees paid for obtaining permits, licenses or other governmental approvals for such Authorized Improvement, (4) the costs incurred by or on behalf of the Developer for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, appraisals, legal, accounting and similar professional services, (5) taxes (property and franchise) related to the Authorized Improvements that benefit the properties within the boundaries of the District, (6) all labor, bonds and materials, including equipment and fixtures, incurred by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Authorized Improvement, (7) all related permitting, zoning and public approval expenses, architectural, engineering, legal and consulting fees, financing charges, taxes, governmental fees and charges, insurance premiums, and miscellaneous expenses, and (8) payment of expenses incurred in the establishment, administration, and operation of the district. Amounts expended for costs described in subsection (3), (4), (7) and (8) above shall be excluded from the amount upon which the general contractor and construction management fees are calculated.

**“Additional Interest”** means the amount collected by application of the Additional Interest Rate.

**“Additional Interest Rate”** means the 0.50% additional interest rate charged on an Assessment as authorized by Section 372.018 of the PID Act.

**“Administrator”** means the City or the person or independent firm designated by the City who shall have the responsibility provided in this Service and Assessment Plan, the Indenture, or any other agreement or document approved by the City Council related to the duties and responsibility of the administration of the District.

**“Amended and Restated Financing Agreement”** means that certain Amended and Restated Financing Agreement between the City and the Owners dated [REDACTED], 2020 passed and approved by Resolution No. 2020-[REDACTED], as amended.

**“Annual Collection Costs”** mean the actual or budgeted costs and expenses related to the creation and operation of the District, and the construction, operation, and maintenance of the Authorized Improvements, including, but not limited to, costs and expenses for: (1) the Administrator and City staff; (2) legal counsel, engineers, accountants, financial advisors, and

other consultants engaged by the City and advisors; (3) calculating, collecting, and maintaining records with respect to Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and Annual Service Plan Updates; (5) paying, and redeeming PID Bonds; (6) investing or depositing Assessments and Annual Installments; and (7) the paying agent/registrar and Trustee in connection with PID Bonds, including their respective legal counsel. Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

**“Annual Installment”** means the annual installment payment of an Assessment as calculated by the Administrator and approved by the City Council, that includes: (1) principal; (2) interest; (3) Annual Collection Costs; and (4) Additional Interest, if applicable.

**“Annual Service Plan Update”** means an update to the Service and Assessment Plan prepared no less frequently than annually by the Administrator and approved by the City Council, in accordance with the PID Act.

**“Assessed Property”** means any Parcel within the District against which an Assessment is levied.

**“Assessment”** means the assessment levied against a Parcel, other than Non-Benefitted Property, and imposed pursuant to the Assessment Ordinance and the provisions herein, as shown on the Assessment Roll, subject to reallocation upon the subdivision of such Parcel or reduction according to the provisions herein and in the PID Act.

**“Assessment Ordinance”** means the ordinance adopted by the City Council in accordance with the PID Act that approves the Service and Assessment Plan and levies the Assessment on Assessed Property within the District, as shown on any Assessment Roll.

**“Assessment Plan”** means the methodology employed to assess the Actual Costs of the Authorized Improvements against Assessed Property within the District based on the special benefits conferred on such property by the Authorized Improvements, as more specifically set forth and described in **Section V**.

**“Assessment Roll”** means the assessment roll for the Assessed Property within the District and included in this Service and Assessment Plan as **Exhibit F**, as updated, modified, or amended from time to time in accordance with the procedures set forth herein and in the PID Act, including updates prepared in connection with the issuance of PID Bonds or in connection with any Annual Service Plan Update.

**“Authorized Improvements”** mean improvements authorized by Section 372.003 of the PID Act, as more specifically described in **Section III** and depicted on **Exhibit C**.

**“City”** means the City of San Marcos, Texas.

**“City Council”** means the governing body of the City.

**“County”** means Hays County, Texas.

**“Delinquent Collection Costs”** mean, for an Assessed Property, interest, penalties, and other costs and expenses authorized by the PID Act that directly or indirectly relate to the collection of delinquent Assessments, delinquent Annual Installments, or any other delinquent amounts due under this SAP, including costs and expenses to foreclose liens.

**“Developer”** means Whisper Master Community Limited Partnership, Ltd., a Texas limited partnership.

**“Developer District Formation Costs”** mean the costs incurred by the Developer and associated with forming the District, levying the Assessments and issuing the PID Bonds.

**“District”** means the Whisper Public Improvement District, consisting of approximately 706.349 acres within the corporate limits of the City, as described legally by metes and bounds on **Exhibit A-1** and as depicted by the map on **Exhibit B-1**.

**“District Formation and Bond Issuance Costs”** mean the costs associated with forming the District and issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, capitalized interest, reserve fund requirements, first year’s Annual Collection Costs, underwriter discount, fees charged by the Texas Attorney General, Developer District Formation Costs, and any other cost or expense directly associated with the establishment of the District and/or the issuance of PID Bonds.

**“Estimated Buildout Value”** means the estimated buildout value of an Assessed Property, based on information from the Developer, which shall be verified by the Administrator and confirmed by the City Council by considering such factors as density, lot size, proximity to amenities, view premiums, location, market conditions, historical sales, builder contracts, discussions with homebuilders, reports from third party consultants, or any other information that may impact value. In the case of single-family residential Lots, there shall be only one Lot Type. The Estimated Buildout Value for any single-family residential Assessed Property shall be calculated by using the average Estimated Buildout Value of all single-family residential Lots within the single-family residential Assessed Property, as calculated by the Administrator based on information provided by the Developer, verified by the Administrator and confirmed and approved by the City Council.

**“Indenture”** means an Indenture of Trust entered into in connection with the issuance of PID Bonds, as amended or supplemented from time to time, between the City and the Trustee setting forth terms and conditions related to the PID Bonds.

**“Lot”** means (1) for any portion of the District for which a subdivision plat has been recorded in the official public records of the County, a tract of land described as a “lot” in such subdivision plat, and (2) for any portion of the District for which a subdivision plat has not been recorded in the official public records of the County, a tract of land anticipated to be described as a “lot” in a final recorded subdivision plat as shown on a concept plan or preliminary plat.

**“Lot Type”** means a classification of final building Lots with similar characteristics (e.g. commercial, light industrial, business park, retail, office, multi-family, single-family residential, buildout value, etc.), as determined by the Administrator and confirmed and approved by the City Council. In the case of single-family residential Lots, there shall be only one Lot Type.

**“Major Improvements”** mean the Authorized Improvements that benefit the entire District and are fully allocated to the Assessed Property.

**“Maximum Assessment”** means, for each Lot Type, an Assessment equal to the lesser of: (1) the amount calculated pursuant to **Section VI.A**, and (2) an amount that produces an average Annual Installment resulting in the Maximum Equivalent Tax Rate. The Maximum Assessment shall be calculated at the time a final plat is recorded, issuance of a site development permit or units are created by a horizontal condominium regime, as applicable, or any other action that would cause the uses within a Parcel to differ from the uses shown on **Exhibit I**.

**“Maximum Equivalent Tax Rate”** means, for each Annual Installment, (i) \$0.17 per \$100 of Estimated Buildout Value for any single-family detached residential Parcels and (ii) \$0.22 per \$100 of Estimated Buildout Value with respect to any other individual Parcel.

**“Non-Benefitted Property”** means Parcels within the boundaries of the District that accrue no special benefit from Authorized improvements as determined by the City Council.

**“Owner(s)”** means (i) Yarrington Partners, Ltd., a Texas limited partnership, (ii) 135 Residential Development, LLC, a Texas limited liability company, (iii) the Developer, (iv) Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company, and (v) any successor owner of the property within the District, or any portion thereof, including a merchant builder, that intends to develop such property for the ultimate purpose of transfer to end users.

**“Owners Association”** means one or more property owners associations formed with respect to all or a portion of the Assessed Properties that may own, operate and/ or maintain some of the

Authorized Improvements and which the City acknowledges are approved and authorized by the City pursuant to Section 372.023(a)(3) of the PID Act.

**“Parcel(s)”** means a property, within the boundaries of the District, identified by either a tax map identification number assigned by the Hays Central Appraisal District for real property tax purposes, by metes and bounds description, by lot and block number in a final subdivision plat recorded in the official public records of the County, or by any other means as determined by the City Council.

**“PID Act”** means Chapter 372, Texas Local Government Code, as amended.

**“PID Bonds”** means those certain “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District)”, that are secured by Assessments.

**“Prepayment”** means the payment of all or a portion of an Assessment before the due date of the final Annual Installment thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest, or penalties on a delinquent installment of Assessment are not to be considered a Prepayment, but rather are to be treated as a payment of the regularly scheduled Assessment.

**“Prepayment Costs”** mean interest, including Additional Interest if applicable, and Annual Collection Costs incurred up to the date of Prepayment.

**“Remaining Property”** shall have the meaning assigned to such term in **Section VI.F**.

**“Service and Assessment Plan”** or **“SAP”** means this Service and Assessment Plan, as it may be modified, amended, supplemented, and updated from time to time.

**“Service Plan”** covers a period of at least five years and defines the annual indebtedness and projected costs of the Authorized Improvements, more specifically described in **Section IV**.

**“Taken Property”** shall have the meaning assigned to such term in **Section VI.F**.

**“Taking”** shall have the meaning assigned to such term in **Section VI.F**.

**“Tract #1”** means approximately 115.686 acres located within the District, as shown on **Exhibit B-2** and more specifically described in **Exhibit A-2**.

**“Tract #2”** means approximately 16.560 acres located within the District, as shown on **Exhibit B-3** and more specifically described in **Exhibit A-3**.

**“Tract #3”** means approximately 130.641 acres located within the District, as shown on **Exhibit B-4** and more specifically described in **Exhibit A-4**.

**“Tract #4”** means approximately 391.493 acres located within the District, as shown on **Exhibit B-5** and more specifically described in **Exhibit A-5**.

**“Tract #5”** means approximately 51.969 acres located within the District, as shown on **Exhibit B-6** and more specifically described in **Exhibit A-6**.

**“Trustee”** means the trustee (or successor trustee) under an Indenture.

## SECTION II: THE DISTRICT

The District includes approximately 706.349 acres within the corporate limits of the City, as described legally by metes and bounds on **Exhibit A-1** and as depicted by the map on **Exhibit B-1**. Development of the District will occur in phases and subject to market demand, is currently anticipated to include 581 single-family homes, approximately 1,300 multi-family units and approximately 4,228,685 square feet of commercial, retail, business park, office and mixed-use space, as well as associated rights-of-way, landscaping, and infrastructure necessary to provide roadways, drainage and utilities to the property within the District.

## SECTION III: AUTHORIZED IMPROVEMENTS

The City, based on information provided by the Owner and its engineer and reviewed by the City staff and by third-party consultants retained by the City, determined that the Authorized Improvements confer a special benefit on the Assessed Property. Major Improvements will be designed and constructed in accordance with City standards and will be owned and operated by the City once accepted unless specifically stated below. The budget for the Authorized Improvements, as well as the allocation of the Actual Costs of the Authorized Improvements, is shown on **Exhibit C**.

### A. Major Improvements

- *Road A*  
Opportunity Boulevard – Improvements including subgrade stabilization (including subgrade treatment, lime stabilization, road base import and compaction), concrete and reinforcing steel for roadways and sidewalks, material and compaction testing, handicapped ramps, and streetlights. All related earthwork, excavation, erosion control, retaining walls, intersections, signage, utility infrastructure, drainage infrastructure including drainage infrastructure flowing to the District detention pond shown on **Exhibit H**, street lighting, landscaping, irrigation, entrance monumentation and re-vegetation of all disturbed areas within the right-of-way are included. The street improvements will provide a benefit to each Lot within the District.
  
- *Road B*  
Fortuna Road – Improvements including subgrade stabilization (including subgrade treatment, lime stabilization, road base import and compaction), concrete and reinforcing steel for roadways and sidewalks, material and compaction testing, handicapped ramps, and streetlights. All related earthwork, excavation, erosion control, retaining walls,

intersections, signage, utility infrastructure, drainage infrastructure including drainage infrastructure flowing to the District detention pond shown on **Exhibit H**, street lighting, landscaping, irrigation and re-vegetation of all disturbed areas within the right-of-way are included. The street improvements will provide a benefit to each Lot within the District.

- *Lift Station & Wastewater Line D*

Improvements including trench excavation and embedment, trench safety, piping, manholes, service connections, testing, related earthwork, excavation, and erosion control and all necessary appurtenances constructed to City standards required to provide wastewater service to the District.

- *Road C*

Susurro Parkway – Improvements including subgrade stabilization (including subgrade treatment, lime stabilization, road base import and compaction), concrete and reinforcing steel for roadways and sidewalks, material and compaction testing, handicapped ramps, and streetlights. All related earthwork, excavation, erosion control, retaining walls, intersections, signage, utility infrastructure, drainage infrastructure including drainage infrastructure flowing to the District detention pond shown on **Exhibit H**, street lighting, landscaping, irrigation and re-vegetation of all disturbed areas within the right-of-way are included. The street improvements will provide a benefit to each Lot within the District.

- *Offsite Wastewater Line B*

Improvements including trench excavation and embedment, trench safety, piping, manholes, service connections, testing, related earthwork, excavation, and erosion control and all necessary appurtenances required to provide wastewater service to the District.

- *Detention Pond*

Improvements providing drainage, detention and water quality treatment of stormwater runoff serving the District and the other Major Improvements, including without limitation the detention basin, water quality facilities, and related drainage inlets, swales, storm sewers, culverts and outfall structures located in the area shown on **Exhibit H**. All related earthwork, excavation, erosion control, retaining walls, drainage infrastructure, landscaping, irrigation and re-vegetation of all disturbed areas within the detention pond area are included. The detention pond will provide a benefit to each Lot within the District.

- *Soft Costs/Construction Management*

Includes engineering, geotechnical, permitting, inspection, surveying, design, and other professional fees and 4.0% construction management fee.

## **B. District Formation and Bond Issuance Costs**

- *Debt Service Reserve Requirement*  
Equals the amount required to fund a reserve under the Indenture in connection with the issuance of PID Bonds.
- *Capitalized Interest*  
Equals the amount of capitalized interest available for payment of interest on PID Bonds as reflected in the Indenture.
- *Underwriter's Discount*  
Equals a percentage of the par amount of a particular series of PID Bonds.
- *Underwriter's Counsel*  
Equals a percentage of the par amount of a particular series of PID Bonds reserved for the underwriter's attorney fees.
- *Cost of Issuance*  
Costs associated with issuing PID Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, fees charged by the Texas Attorney General, and any other cost or expense directly associated with the issuance of PID Bonds.
- *Developer District Formation Costs*  
Expenses directly incurred by the Developer associated with forming the District, levying Assessments, and issuing the PID Bonds.
- *First Year Annual Collection Costs*  
Expenses directly associated with forming the District including first year Annual Collection Costs.

## **SECTION IV: SERVICE PLAN**

The PID Act requires the Service Plan to cover a period of at least five years. The Service Plan is required to define the projected costs and annual indebtedness for the Authorized Improvements undertaken within the District during the five-year period. The Service Plan shall be updated in each Annual Service Plan Update. **Exhibit D** summarizes the Service Plan for the District.

**Exhibit E** summarizes the sources and uses of funds required to construct certain Authorized Improvements. **Exhibit E** will be updated to show the amount required to fund the required

reserves and issue the PID Bonds at the time the PID Bonds are issued. The sources and uses of funds shown on **Exhibit E** shall be updated in each Annual Service Plan Update.

## SECTION V: ASSESSMENT PLAN

The PID Act requires the City to apportion the Actual Costs of the Authorized Improvements to the Assessed Property based on the special benefit received from the Authorized Improvements. The PID Act provides that such costs may be apportioned: (1) equally per front foot or square foot; (2) according to the value of property as determined by the City, with or without regard to improvements constructed on the property; or (3) in any other manner approved by the City that results in imposing equal shares of such costs on property similarly benefited. The PID Act further provides that the governing body may establish by ordinance or order reasonable classifications and formulas for the apportionment of the cost between the municipality and the area to be assessed and the methods of assessing the special benefits for various classes of improvements.

This section of this Service and Assessment Plan describes the special benefit received by each Assessed Property within the District as a result of the Authorized Improvements and provides the basis and justification for the determination that this special benefit exceeds the amount of the Assessments levied on the Assessed Property for such Authorized Improvements.

The determination by the City of the assessment methodologies set forth below is the result of the discretionary exercise by the City Council of its legislative authority and governmental powers and is conclusive and binding on the Owner and all future owners and developers of the Assessed Property.

### A. Assessment Methodology

The City Council, acting in its legislative capacity based on information provided by the Developer and its engineer and reviewed by the City staff and by third-party consultants retained by the City, has determined that the costs of the Major Improvements shall be allocated to each Parcel in the District pro rata based on Estimated Buildout Value of all Parcels. The allocation of the Major Improvements is shown on **Exhibit C**. Upon subdivision of an Assessed Property, the Actual Costs of the Authorized Improvements shall be reallocated based on Estimated Buildout Value as further described in **Section VI**.

### B. Assessments

Assessments will be levied on each Parcel within the Assessed Property according to the Assessment Roll, attached hereto as **Exhibit F**. The projected Annual Installments are shown on **Exhibit G-1**. The projected Annual Installments for Tract #1 are shown on **Exhibit G-2**. The projected Annual Installments for Tract #2 are shown on **Exhibit G-3**. The projected Annual Installments for Tract #3 are shown on **Exhibit G-4**. The projected Annual Installments for Tract

#4 are shown on **Exhibit G-5**. The projected Annual Installments for Tract #5 are shown on **Exhibit G-6**. In no case will the Assessment exceed the Maximum Assessment.

### **C. Findings of Special Benefit**

The City Council, acting in its legislative capacity based on information provided by the Owner and its engineer and reviewed by the City staff and by third-party consultants retained by the City, has found and determined:

- The cost of the Authorized Improvements equal \$14,869,722 as shown on **Exhibit C**; and
- The Assessed Property receives special benefit equal to or greater than the Authorized Improvements; and
- Tract #1, Tract #2, Tract #3, Tract #4 and Tract #5 comprise 100% of the Assessed Property, and will be allocated 100% of the Assessments levied for the Authorized Improvements, which equals \$14,075,000 as shown on the Assessment Roll, attached as **Exhibit F**; and
- The special benefit ( $\geq$  \$14,869,722) received by the Assessed Property from the Authorized Improvements is greater than the amount of Assessments (\$14,075,000) levied on the Assessed Property for the Authorized Improvements; and
- At the time the City Council approved this Service and Assessment Plan, the Owners owned 100% of Tract #1, Tract #2, Tract #3, Tract #4 and Tract #5. In a Landowner Agreement with the City, the Owners acknowledged that the Authorized Improvements confer a special benefit on Tract #1, Tract #2, Tract #3, Tract #4 and Tract #5 and consented to the imposition of the Assessments to pay for the Actual Costs associated therewith. The Owners ratified, confirmed, accepted, agreed to, and approved (1) the determinations and findings by the City Council as to the special benefits described herein and in the Assessment Ordinance, (2) the Service and Assessment Plan and the Assessment Ordinance, and (3) the levying of the Assessments on the Assessed Property.

### **D. Annual Collection Costs**

The Annual Collection Costs shall be paid for on a pro rata basis by each Assessed Property based on the amount of outstanding Assessment remaining on the Assessed Property. The Annual Collection Costs shall be collected as part of and in the same manner as Annual Installments in the amounts shown on the Assessment Roll, which may be revised based on Actual Costs incurred in Annual Service Plan Updates.

## E. Additional Interest

The interest rate on Assessments may exceed the interest rate on the PID Bonds by the Additional Interest Rate. Interest at the rate of the PID Bonds and the Additional Interest shall be collected as part of each Annual Installment and shall be deposited pursuant to the applicable Indenture.

# SECTION VI: TERMS OF THE ASSESSMENTS

## A. Reallocation of Assessments

### 1. Upon Division Prior to Recording of Subdivision Plat

Upon the division of any Assessed Property (without the recording of subdivision plat), the Administrator shall reallocate the Assessment for the Assessed Property prior to the division among the newly divided Assessed Properties according to the following formula:

$$A = B \times (C \div D)$$

Where the terms have the following meanings:

A = the Assessment for the newly divided Assessed Property

B = the Assessment for the Assessed Property prior to division

C = the Estimated Buildout Value of the newly divided Assessed Property

D = the sum of the Estimated Buildout Value for all the newly divided Assessed Properties

The sum of the Assessments for all newly divided Assessed Properties shall equal the Assessment for the Assessed Property prior to subdivision. The calculation shall be made separately for each newly divided Assessed Property. The reallocation of an Assessment for an Assessed Property that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in the next Annual Service Plan Update and approved by the City Council.

### 2. Upon Subdivision by a Recorded Subdivision Plat

Upon the subdivision of any Assessed Property based on a recorded subdivision plat, the Administrator shall reallocate the Assessment for the Assessed Property prior to the subdivision among the new subdivided Lots based on Estimated Buildout Value according to the following formula:

$$A = [B \times (C \div D)]/E$$

Where the terms have the following meanings:

A = the Assessment for the newly subdivided Lot

B = the Assessment for the Parcel prior to subdivision

C = the sum of the Estimated Buildout Value of all newly subdivided Lots with the same Lot Type

D = the sum of the Estimated Buildout Value for all the newly subdivided Lots excluding Non-Benefitted Property

E= the number of Lots with the same Lot Type

Prior to the recording of a subdivision plat, the Developer shall provide the City an Estimated Buildout Value as of the date of the recorded subdivision plat for each Lot created by the recorded subdivision plat.

The sum of the Assessments for all newly subdivided Lots shall not exceed the Assessment for the portion of the Assessed Property subdivided prior to subdivision. The calculation shall be made separately for each newly subdivided Assessed Property. The reallocation of an Assessment for an Assessed Property that is a homestead under Texas law may not exceed the Assessment prior to the reallocation. Any reallocation pursuant to this section shall be reflected in the next Annual Service Plan Update and approved by the City Council.

### *3. Upon Consolidation*

If two or more Lots or Parcels are consolidated, the Administrator shall allocate the Assessments against the Lots or Parcels before the consolidation to the consolidated Lot or Parcel, which allocation shall be approved by the City Council in the next Annual Service Plan Update.

The Assessment for any resulting Lot will not exceed the Maximum Assessment, and compliance may require a mandatory prepayment of Assessments pursuant to **Section VI.B.**

#### **B. True-up of Assessments if Maximum Assessment Exceeded**

If, based on a final subdivision plat, the Assessment for any Lot Type exceeds the Maximum Assessment, the owner of the applicable Assessed Property must partially prepay the Assessment for each Assessed Property that exceeds the Maximum Assessment in an amount sufficient to reduce the Assessment to the Maximum Assessment. If a Prepayment is required, the final subdivision plat of any Assessed Property shall not be recorded without a letter from the Administrator confirming that the Prepayment has been made. The City's approval of a final subdivision plat without payment of such amounts does not eliminate the obligation of the person or entity filing the plat to pay such Assessments.

#### **C. Mandatory Prepayment of Assessments**

If Assessed Property is transferred to a person or entity that is exempt from payment of the Assessments under applicable law or any portion of Assessed Property becomes Non-Benefitted

Property, the owner transferring the Assessed Property or causing the portion to become Non-Benefitted Property shall pay to the City or the Administrator on behalf of the City the full amount of the outstanding Assessment, plus Prepayment Costs and Delinquent Collection Costs, if any, for such Assessed Property, prior to the transfer; provided that, however, such mandatory Prepayment of the Assessment shall not be required for portions of a Parcel that are dedicated or conveyed to the City, any other governmental entity or utility provider, or an Owners Association for use as internal roads, utilities, parks, drainage and detention facilities, and other similar improvements, in which case the Assessment that was allocated to the Parcel will be reallocated to the remainder of the Parcel. If a reallocation to the remainder of the Parcel as provided in the foregoing sentence causes the Assessment for such remainder to exceed the Maximum Assessment, the owner of the remainder of the Parcel must partially prepay the Assessment to the extent it exceeds the Maximum Assessment in an amount sufficient to reduce the Assessment to the Maximum Assessment.

#### **D. Reduction of Assessments**

If as a result of cost savings or Authorized Improvements not being constructed, the Actual Costs of completed Authorized Improvements are less than the Assessments, (i) in the event PID Bonds are not issued, the City Council shall reduce each Assessment on a pro-rata basis such that the sum of the resulting reduced Assessments for all Assessed Property equals the reduced Actual Costs, or (ii) in the event PID Bonds are issued, the Trustee shall apply amounts on deposit in the applicable account of the Project Fund, relating to the PID Bonds, that are not expected to be used for purposes of the Project Fund to redeem outstanding PID Bonds, in accordance with the applicable Indenture. The Assessments shall not, however, be reduced to an amount less than the outstanding PID Bonds.

The Administrator shall update (and submit to the City Council for review and approval as part of the next Annual Service Plan Update) the Assessment Roll and corresponding Annual Installments, as shown on **Exhibit F** and **Exhibit G-1 – Exhibit G-6**, to reflect the reduced Assessments.

#### **E. Prepayment of Assessments**

The owner of the Assessed Property may pay, at any time, all or any part of an Assessment in accordance with the PID Act. Interest costs from the date of Prepayment to the date of redemption of the applicable PID Bonds, if any, may be paid from a reserve established under the applicable Indenture. If an Annual Installment has been billed prior to the Prepayment, the Annual Installment shall be due and payable and shall be credited against the Prepayment.

If an Assessment is pre-paid in full, with Prepayment Costs: (1) the Administrator shall cause the Assessment to be reduced to zero and the Assessment Roll to be revised accordingly; (2) the Administrator shall cause the revised Assessment Roll to be approved by the City Council as part

of the next Annual Service Plan Update; (3) the obligation to pay the Assessment and corresponding Annual Installments shall terminate; and (4) the City shall provide the owner with a recordable “Notice of PID Assessment Termination,” a form of which is attached as **Exhibit J**.

If an Assessment is pre-paid in part, with Prepayment Costs: (1) the Administrator shall cause the Assessment to be reduced and the Assessment Roll revised accordingly; (2) the Administrator shall cause the revised Assessment Roll to be approved by the City Council as part of the next Annual Service Plan Update; and (3) the Assessment obligation that is outstanding will be reduced to the extent a Prepayment is made.

#### **F. Prepayment as a result of Eminent Domain Proceeding or Taking**

If any portion of any Parcel of Assessed Property is taken from an owner as a result of eminent domain proceedings or if a transfer of any portion of any Parcel of Assessed Property is made to an entity with the authority to condemn all or a portion of the Assessed Property in lieu of or as a part of an eminent domain proceeding (a “**Taking**”), the portion of the Assessed Property that was taken or transferred (the “**Taken Property**”) shall be reclassified as Non-Benefitted Property.

For the Assessed Property that is subject to the Taking as described in the preceding paragraph, the Assessment that was levied against the Assessed Property (when it was included in the Taken Property) prior to the Taking shall remain in force against the remaining Assessed Property (the Assessed Property less the Taken Property), (the “**Remaining Property**”) following the reclassification of the Taken Property as Non-Benefitted Property, subject to an adjustment of the Assessment applicable to the Remaining Property after any required Prepayment as set forth below. The owner will remain liable to pay in Annual Installments, or payable as otherwise provided by this Service and Assessment Plan, as updated, or the PID Act, the Assessment that remains due on the Remaining Property, subject to an adjustment in the Annual Installments applicable to the Remaining Property after any required Prepayment as set forth below. Notwithstanding the foregoing, if the Assessment that remains due on the Remaining Property exceeds the Maximum Assessment, the owner will be required to make a Prepayment in an amount necessary to ensure that the Assessment against the Remaining Property does not exceed the Maximum Assessment, in which case the Assessment and Annual Installments applicable to the Remaining Property will be reduced by the amount of the partial Prepayment.

In all instances the Assessment remaining on the Remaining Property shall not exceed the Maximum Assessment.

By way of illustration, if an owner owns 100 acres of Assessed Property subject to a \$100 Assessment and 10 acres is taken through a Taking, the 10 acres of Taken Property shall be reclassified as Non-Benefitted Property and the remaining 90 acres of Remaining Property shall be subject to the \$100 Assessment, (provided that this \$100 Assessment does not exceed the Maximum Assessment on the Remaining Property). If the Administrator determines that the

\$100 Assessment reallocated to the Remaining Property would exceed the Maximum Assessment on the Remaining Property by \$10, then the owner shall be required to pay \$10 as a Prepayment of the Assessment against the Remaining Property and the Assessment on the Remaining Property shall be adjusted to be \$90 and the Annual Installments adjusted accordingly.

Notwithstanding the previous paragraphs in this subsection (F), if the owner notifies the City and the Administrator that the Taking prevents the Remaining Property from being developed for any use which could support the Estimated Buildout Value requirement, the owner shall, upon receipt of the compensation for the Taken Property, be required to prepay the amount of the Assessment required to buy down the outstanding Assessment to the Maximum Assessment on the Remaining Property to support the Estimated Buildout Value requirement. The owner will remain liable to pay the Annual Installments on both the Taken Property and the Remaining Property until such time that such Assessment has been prepaid in full.

Notwithstanding the previous paragraphs in this subsection (F), the Assessments shall not, however, be reduced to an amount less than the outstanding PID Bonds.

#### **G. Payment of Assessment in Annual Installments**

Assessments that are not paid in full shall be due and payable in Annual Installments. **Exhibit G-1** shows the projected Annual Installments for the District. The projected Annual Installments for Tract #1 are shown on **Exhibit G-2**. The projected Annual Installments for Tract #2 are shown on **Exhibit G-3**. The projected Annual Installments for Tract #3 are shown on **Exhibit G-4**. The projected Annual Installments for Tract #4 are shown on **Exhibit G-5**. The projected Annual Installments for Tract #5 are shown on **Exhibit G-6**. In no case will the Assessment for a Lot Type exceed the Maximum Assessment. Annual Installments are subject to adjustment in each Annual Service Plan Update.

The Administrator shall prepare and submit to the City Council for its review and approval an Annual Service Plan Update to allow for the billing and collection of Annual Installments. Each Annual Service Plan Update shall include updated Assessment Rolls and updated calculations of Annual Installments. Annual Collection Costs shall be allocated pro rata among Assessed Properties for which the Assessments remain unpaid in proportion to the amount of the Annual Installments for the Assessed Property. Annual Installments shall be collected by the City in the same manner and at the same time as ad valorem taxes. Annual Installments shall be subject to the penalties, procedures, and foreclosure sale in case of delinquencies as set forth in the PID Act and in the same manner as ad valorem taxes for the City. The City Council may provide for other means of collecting Annual Installments. Assessments shall have the lien priority specified in the PID Act.

Sales of the Assessed Property for nonpayment of Annual Installments shall be subject to the lien for the remaining unpaid Annual Installments against the Assessed Property, and the Assessed Property may again be sold at a judicial foreclosure sale if the purchaser fails to timely pay the Annual Installments as they become due and payable.

The City reserves the right to refund PID Bonds in accordance with the PID Act. In the event of a refunding, the Administrator shall recalculate the Annual Installments so that total Annual Installments will be sufficient to pay the refunding bonds, and the refunding bonds shall constitute "PID Bonds."

Each Annual Installment of an Assessment, including interest on the unpaid principal of the Assessment, shall be updated annually. Each Annual Installment shall be due when billed and shall be delinquent if not paid prior to February 1 of the following year. The initial Annual Installments relating to the PID Bonds shall be due when billed and shall be delinquent if not paid prior to February 1, 2021. Failure of an owner of Assessed Property to receive an invoice for an Annual Installment on the property tax bill or otherwise shall not relieve the owner of Assessed Property of the obligation to pay the Assessment. Assessments, or Annual Installments thereof, that are delinquent shall incur Delinquent Collection Costs.

## SECTION VII: ASSESSMENT ROLL

The Assessment Roll is attached as **Exhibit F**. The Administrator shall prepare and submit to the City Council for review and approval, proposed revisions to the Assessment Roll and Annual Installments for each Parcel within the Assessed Property as part of each Annual Service Plan Update.

## SECTION VIII: ADDITIONAL PROVISIONS

### A. Calculation Errors

If the owner of an Assessed Property claims that an error has been made in any calculation required by this Service and Assessment Plan, including, but not limited to, any calculation made as part of any Annual Service Plan Update, the sole and exclusive remedy of the owner of Assessed Property shall be to submit a written notice of error to the Administrator by December 1<sup>st</sup> of each year following City Council approval of the calculation; otherwise, the owner shall be deemed to have unconditionally approved and accepted the calculation. Upon receipt of a written notice of error from an owner, the Administrator shall provide a written response to the City Council and the owner within 30 days of such referral. The City Council shall consider the

owner's notice of error and the Administrator's response at a public meeting, and within 30 days after adjourning such meeting, the City Council shall make a final determination as to whether an error has been made. If the City Council determines that an error has been made, the City Council shall take such corrective action as is authorized by the PID Act, this Service and Assessment Plan, the applicable Assessment Ordinance, or the applicable Indenture, or is otherwise authorized by the discretionary power of the City Council. The determination by the City Council as to whether an error has been made, and any corrective action taken by the City Council, shall be final and binding on the owner and the Administrator.

#### **B. Amendments**

Amendments to this Service and Assessment Plan must be made by the City Council in accordance with the PID Act. To the extent permitted by the PID Act, this Service and Assessment Plan may be amended without notice to owners of the Assessed Property: (1) to correct mistakes and clerical errors; (2) to clarify ambiguities; and (3) to provide procedures to collect Assessments, Annual Installments, and other charges imposed by this Service and Assessment Plan.

#### **C. Administration and Interpretation**

The Administrator shall: (1) perform the obligations of the Administrator as set forth in this Service and Assessment Plan; (2) administer the District for and on behalf of and at the direction of the City Council; and (3) interpret the provisions of this Service and Assessment Plan. Interpretations of this Service and Assessment Plan by the Administrator shall be in writing and shall be appealable to the City Council by owners of Assessed Property adversely affected by the interpretation. Appeals shall be decided by the City Council after providing an opportunity for all interested parties to be heard at a public meeting of the City Council. Decisions by the City Council shall be final and binding on the owners and developers and their successors and assigns.

#### **D. Severability**

If any provision of this Service and Assessment Plan is determined by a governmental agency or court to be unenforceable, the unenforceable provision shall be deleted and, to the maximum extent possible, shall be rewritten to be enforceable. Every effort shall be made to enforce the remaining provisions.

## LIST OF EXHIBITS

<b>Exhibit A-1</b>	District Legal Description
<b>Exhibit A-2</b>	Tract #1 Legal Description
<b>Exhibit A-3</b>	Tract #2 Legal Description
<b>Exhibit A-4</b>	Tract #3 Legal Description
<b>Exhibit A-5</b>	Tract #4 Legal Description
<b>Exhibit A-6</b>	Tract #5 Legal Description
<b>Exhibit B-1</b>	District Boundary Map
<b>Exhibit B-2</b>	Tract #1 Boundary Map
<b>Exhibit B-3</b>	Tract #2 Boundary Map
<b>Exhibit B-4</b>	Tract #3 Boundary Map
<b>Exhibit B-5</b>	Tract #4 Boundary Map
<b>Exhibit B-6</b>	Tract #5 Boundary Map
<b>Exhibit C</b>	Authorized Improvements
<b>Exhibit D</b>	Service Plan – Five Year Plan
<b>Exhibit E</b>	Service Plan – Sources and Uses
<b>Exhibit F</b>	Assessment Roll
<b>Exhibit G-1</b>	Annual Installments
<b>Exhibit G-2</b>	Annual Installments for Tract #1
<b>Exhibit G-3</b>	Annual Installments for Tract #2
<b>Exhibit G-4</b>	Annual Installments for Tract #3
<b>Exhibit G-5</b>	Annual Installments for Tract #4
<b>Exhibit G-6</b>	Annual Installments for Tract #5
<b>Exhibit H</b>	Map of Major Improvements
<b>Exhibit I</b>	Land Use Matrix
<b>Exhibit J</b>	Notice of PID Assessment Termination

## EXHIBIT A-1 – DISTRICT LEGAL DESCRIPTION

Including that certain approximately 86.948 acre tract, as described below.

**S. CRAIG HOLLMIG, INC.**  
CONSULTING ENGINEERS • SURVEYORS  
410 N. REGUIN STREET  
NEW BRAUNFELS, TEXAS 78130-6765

TEXAS SOCIETY OF PROFESSIONAL ENGINEERS  
AMERICAN SOCIETY OF CIVIL ENGINEERS

TEXAS SURVEYORS ASSOCIATION  
TELEPHONE (832) 425-8535 • FAX: (832) 835-8556

WATER SYSTEMS • SEWER SYSTEMS • SUBDIVISIONS • LAND PLANNING • STREETS • SURVEYING

### FIELD NOTES FOR AN 86.948 ACRE TRACT

Being an 86.948 acre tract of land situated in the Joel Miner Survey, Abstract No. 321, Hays County, Texas, being a portion of that certain tract of land called 97.84 acres conveyed to Albert M. Walker, Trustee, by instrument recorded in Volume 714, Page 603 of the Official Public Records of Hays County, Texas, and all bearings referred to in this description are referenced to a bearing of N 24° 08' 30" E between monumentation found along the Easterly right-of-way line of Interstate Highway 35 (basis is taken from Texas State Highway Department Right-of-Way Map), said 86.948 acre tract of land surveyed under the supervision of Richard A. Goodwin, RPLS #4069, S. Craig Hollmig, Inc., and being more particularly described as follows:

**BEGINNING:** At a ½" iron pin set on the Northeasterly line of the above referenced 97.84 acre tract, same being a Southwesterly line of that certain tract now being a remainder of a 328.824 acre tract described in Volume 720, Page 152 of the Official Public Records of Hays County, Texas, said ½" iron pin set S 45° 57' 20" E 232.0 feet from a ¼" iron pipe found on the Easterly right-of-way line of Interstate Highway 35, for the North corner of the above referenced 97.84 acre tract, for a Northerly corner of this tract;

**THENCE:** Generally along an old meandering cedar post and wire fence (falling down), with a Southwesterly line of said 328.824 acre tract, the Northeasterly line of the above referenced 97.84 acre tract, S 45° 57' 20" E 1,913.50 feet to a ½" iron pin found for a Southwesterly corner of said 328.824 acre tract, situated on the Northwesterly line of a tract called 72.85 acres (Popham Tract), recorded in Volume 895, Page 450 of the Official Public Records of Hays County, Texas, for the East corner of the above referenced 97.84 acre tract, for the East corner of this tract;

**THENCE:** Generally with fence, along a Southeast line of the above referenced 97.84 acre tract, the Northwest line of said 72.85 acre tract, S 44° 19' 36" W 390.40 feet to a ½" iron pin found and S 44° 37' 31" W 551.28 feet to a ¼" iron pin found for the West corner of said 72.85 acre tract, same being the North corner of Saddle Brook Subdivision, a plat recorded in Volume 9, Pages 107-109 of the Map and Plat Records of Hays County, Texas, for a corner of this tract;

**THENCE:** Continuing along the Southeast line of the above referenced 97.84 acre tract, a Northwest line of said Saddle Brook Subdivision, generally along a wood fence, S 44°

16' 53" W 1,278.72 feet to a ½" iron pin set for an interior corner of Saddle Brook Subdivision, for the South corner of this tract;

THENCE: Entering the above referenced 97.84 acre tract, with a Northeasterly line of Saddle Brook Subdivision, N 46° 04' 27" W 1,232.19 feet to a ½" iron pin set on said Northeast line, for a Southwesterly corner of this tract;

THENCE: Leaving the Northeasterly line of Saddle Brook Subdivision, N 24° 08' 30" E 52.37 feet to a ½" iron pin set and N 59° 31' 04" W 90.55 feet to a ½" iron pin set on the Easterly right-of-way line of Interstate Highway 35, for a Southwest corner of this tract, being located N 24° 08' 30" E 30.0 feet from a ½" iron pin found for a corner of Saddle Brook Subdivision;

THENCE: Continuing with the Easterly right-of-way line of Interstate Highway 35, N 24° 08' 30" E 959.44 feet to a ½" iron pin set in the curving Southeast line of that certain 10.67 acre tract described in Deed from Kitty Page Yarrington to State of Texas, dated February 7, 1935, recorded in Volume 110, Page 219 of the Deed Records of Hays County, Texas, for a corner of this tract;

THENCE: Entering the above referenced 97.84 acre tract (which is in conflict with the 10.67 acre tract), with the Southeast line of said 10.67 acre tract, in a curve to the right, having a radius of 2,925.00 feet, an arc length of 415.32 feet, a central angle of 08° 08' 07", and a chord bearing and distance of N 55° 56' 05" E 414.97 feet to a ½" iron pin set for an interior corner of this tract;

THENCE: Continuing with the remainder of said 10.67 acre tract, N 47° 55' 30" W 229.79 feet to a ½" iron pin found on the Easterly right-of-way line of Interstate Highway 35, for a corner of this tract;

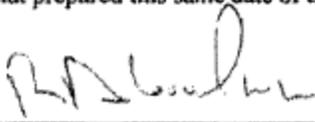
THENCE: Continuing with said Easterly right-of-way line, N 24° 08' 30" E 851.42 feet to a ½" iron pin set in same, for the most Northwesterly corner of this tract;

THENCE: Entering the above referenced 97.84 acre tract, S 45° 57' 20" E 232.00 feet to a ½" iron pin set for an interior corner of this tract and N 24° 08' 30" E 100.00 feet to the Point of Beginning and containing 86.948 acres of land, more or less.

The foregoing field notes represent the results of an on-the-ground survey made under my supervision, October 13, 2005. Reference plat prepared this same date of this 86.948 acre tract.

Job #05-901



  
Richard A. Goodwin, RPLS #4069



Including that certain approximately 99.8 acre tract, as described below.

**VICKREY & ASSOCIATES, Inc.**  
CONSULTING ENGINEERS

**METES AND BOUNDS DESCRIPTION  
FOR A 99.80 ACRE TRACT OF LAND  
OUT OF THE JOEL MINER SURVEY,  
ABSTRACT 321,  
HAYS COUNTY, TEXAS**

Being a 99.80 acre tract of land situated in the Joel Miner Survey, Abstract No. 321 in Hays County, Texas, being the same property called two 50 acre tracts of land conveyed to Jane Richmond Benasutti, Trustee of Thomas R. Richmond Testamentary Family Trust by Deed recorded in Volume 52, Page 66 of the Deed Records of Hays County, Texas, and individually one-half interest to Victoria Elizabeth Richmond a/k/a Elizabeth L. Richmond by Deed recorded in Volume 850, Page 595 of the Deed Records of Hays County, Texas, said 99.80 acre tract being more particularly described by metes and bounds with all bearings being referenced to the North American Datum 1983, Texas Coordinate System, South Central Zone; Ground distances may be converted to grid by dividing by 1.0001700:

**BEGINNING** at a ½-inch iron rod found at the intersection of the Southwest line of County Road No. 159, known as Yarrington Road and the Northwest line of County Road No. 160, known as Harris Hill Road for the East corner of the herein described tract, said Beginning point having Texas South Central Grid Coordinates of (N=13,886,570.38, E= 2,327,818.81);

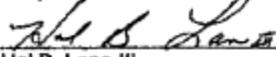
**Thence:** S 43°21'39" W, along the Northwest line of said County Road No. 160, a distance of 2086.12 feet to a found ½ inch iron rod with yellow cap, for a Northeast corner of a 318.105 acre tract of land recorded in Volume 2715, Page 533 of the Official Public Records of Hays County, Texas, being the South corner of the herein described tract;

**Thence:** N 46°11'01" W, along the common line of said 318.105 acre tract and the herein described tract, a distance of 2092.35 feet to a found ½ inch iron pipe in concrete being a re-entrant corner of said 318.105 acre tract and the West corner of the herein described tract;

**Thence:** N 43°31'53" E, along a Southeasterly line of said 318.105 acre tract, passing the common corner of said 318.105 acre tract and a 201.496 acre tract recorded in Volume 2494, Page 403 of the Official Public Records of Hays County, Texas, at a distance of 818.94 feet, and continuing along the Southeast line of said 201.496 acre tract, for a total distance of 2075.38 feet, to a found ½" iron rod on the Southwest line of said County Road No. 159 and being the North corner of the herein described tract;

**Thence:** S 46°28'39" E, along said Southwest line of County Road No. 159, a distance of 2086.11 feet to the POINT OF BEGINNING and containing 99.80 acres of land, more or less.

**Note:** Survey Plat of even date accompanies this legal description.

  
Hal B. Lane III  
Registered Professional Land Surveyor  
Texas Registration Number 4690  
Vickrey & Associates, Inc.



Job No. 2042-002-104  
99.80 Acres 041106  
April 6, 2006  
April 11, 2006

N:\2042-002\MSB\99.80 Acres (FINAL) 041106.rtf

12940 Country Parkway • San Antonio, Texas 78216 • 210-349-3271 • FAX 210-349-2561



Including that certain approximately 318.105 acre tract, as described below.

201-53-7113



**Professional Land Surveying, Inc.  
Surveying and Mapping**

Office: 512-443-1724  
Fax: 512-441-6987

2807 Manchaca Road  
Building One  
Austin, Texas 78704

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**318.105 ACRES  
JOEL MINER SURVEY**

A DESCRIPTION OF 318.105 ACRES IN THE JOEL MINER SURVEY, HAYS COUNTY, TEXAS, BEING A PORTION OF A 328.824 ACRE TRACT OF LAND DESCRIBED IN TRUSTEE'S DEED TO JIM McCROCKLIN, TRUSTEE, DATED MARCH 1, 1988, OF RECORD IN VOLUME 720, PAGE 152 OF THE REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS; SAID 318.105 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a ½" rebar found in the east right-of-way line of Interstate Highway 35 (right-of-way width varies) for the west corner of said 328.824 acre tract and the north corner of a 97.84 acre tract of land described in Volume 714, Page 603 of the Real Property Records of Hays County, Texas;

**THENCE** North 22°55'27" East, with the east right-of-way line of said IH-35 and the northwest line of the 328.824 acre tract, a distance of 1366.86 feet to a ½" rebar with cap set for the southwest corner of Lot 1, San Marcos Technology Park, a subdivision of record in Volume 5, Page 147 of the Plat Records of Hays County, Texas, from which a concrete highway monument found bears North 22°55'27" East, a distance of 2010.30 feet;

**THENCE** South 67°05'52" East, over and across the 328.824 acre tract with the southwest line of said San Marcos Technology Park, a distance of 1606.37 feet to a ½" rebar with cap set for an angle point in the north line of the 328.824 acre tract and the south corner of Lot 3, San Marcos Technology Park;

**THENCE** with the north line of the 328.824 acre tract and the southeast line of Lots 3 and 4, San Marcos Technology Park, the following three (3) courses:

1. North 43°06'54" East, a distance of 1113.31 feet to a ½" rebar found;
2. North 41°52'41" East, a distance of 231.92 feet to a ½" rebar found;
3. North 43°00'24" East, a distance of 894.28 feet to a ½" rebar found in the southwest line of a 214.40 acre tract of land described in Volume 773, Page 816 of the Real Property Records of Hays County, Texas, for the east corner of Lot 4, San Marcos Technology Park and the north corner of the 328.824 acre tract;

**THENCE** South 47°05'53" East, with the northeast line of the 328.824 acre tract

and the southwest line of said 214.40 acre tract, a distance of 2136.85 feet to a ½" rebar found for the south corner of the 214.40 acre tract and the northeast corner of the 328.824 acre tract and in the northwest line of a 100 acre tract of land described in Volume 52, Page 68 of the Deed Records of Hays County, Texas;

**THENCE** with the common line of the 328.824 acre tract and the said 100 acres, the following two (2) courses:

1. South 42°49'26" West, a distance of 819.02 feet to a ½" iron pipe found for the west corner of the 100.00 acre tract;
2. South 46°53'58" East, a distance of 2092.27 feet to a ½" rebar with cap set in the northwest right-of-way line of County Road 160 (Harris Hill Road, right-of-way width varies) for the easternmost corner of the 328.824 acre tract;

**THENCE** with the northwest right-of-way line of said C.R. 160 and the southeast line of the 328.824 acre tract, the following six (6) courses:

1. South 43°41'13" West, a distance of 675.23 feet to a ½" rebar with cap set;
2. South 45°13'02" West, a distance of 369.18 feet to a ½" rebar with cap set;
3. South 45°38'13" West, a distance of 508.86 feet to a ½" rebar with cap set;
4. South 57°29'20" West, a distance of 74.15 feet to a ½" rebar with cap set;
5. South 33°18'43" West, a distance of 64.34 feet to a ½" rebar with cap set;
6. South 45°42'28" West, a distance of 395.47 feet to a ½" rebar found for the south corner of the 328.824 acre tract and the east corner of a 36.40 acre tract of land described in Volume 1435, Page 407 of the Official Public Records of Hays County, Texas;

**THENCE** North 47°04'03" West, with a southwest line of the 328.824 acre tract and the northeast line of said 36.40 acre tract, a distance of 3052.04 feet to a ½" rebar found for the north corner of the 36.40 acre tract;

**THENCE** South  $42^{\circ}56'45''$  West, with a southwest line of the 328.824 acre tract and the northwest line of the 36.40 acre tract, passing at a distance of 521.59 feet a  $\frac{1}{2}$ " rebar found for the west corner of the 36.40 acre tract and the north corner of a 36.40 acre tract described in Document No. 9924088 of the Official Public Records of Hays County, Texas, for a total distance of 1163.93 feet to a  $\frac{1}{2}$ " rebar found for the east corner of a 6.6 acre tract described in Volume 946, Page 575 of the Official Public Records of Hays County, Texas, being in the northwest line of a 72.85 acre tract described in Volume 895, Page 450 of the Official Public Records of Hays County, Texas;

**THENCE** North  $47^{\circ}09'41''$  West, with a southwest line of the 328.824 acre tract and the northeast lines of said 6.6 acre tract and said 97.84 acre tract, a distance of 2145.66 feet to the **POINT OF BEGINNING**, containing 318.105 acres of land, more or less.

Surveyed on the ground September 12, 2003. Attachments: survey drawing 111-005-T1. Bearing Basis: Grid Azimuth for Texas Central Zone, 1983/93 HARN Values from LCRA Control Network.



Robert C. Watts, Jr.  
Registered Professional Land Surveyor  
State of Texas No. 4995



3-11-05



Including that certain approximately 85.81 acre tract, as described below.



SPOT ON SURVEYING

1345 Elliott Ranch Rd., Buda Texas 78610

FIELD NOTES-METES AND BOUNDS DESCRIPTION

Texas Firm No. 10193894 - J/N:0019-15-005

BEING 85.81 ACRES OF LAND OUT OF THE JOEL MINER SURVEY, HAYS COUNTY, TEXAS AND BEING A PORTION OF THAT 201.496 ACRE TRACT OF LAND OUT OF THE WILLIAM WARD SURVEY NO. 3 AND THE JOEL MINER SURVEY AS DESCRIBED TO YARRINGTON PARTNERS, L.T.D. A TEXAS LIMITED PARTNERSHIP IN VOLUME 2494, PAGE 403, AS DOCUMENT NO. 04018594, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, (O.P.R.H.C.TX.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a found iron rod with cap stamped "SAM INC.", being accepted as the most Southerly corner of the 3.275 Acres of land conveyed to Hays County from Yarrington Partners, L.T.D. in Document No. 14036525, recorded in Volume 5090, Page 263, O.P.R.H.C.TX., said point being accepted as an angle point in the Southwest and Northwest Right of Way limits of Yarrington Road;

THENCE S 43° 28' 13" W, 1239.58 feet, along the Northwest Right of Way of said Yarrington Road to a found 1/2" iron rod, down 4", accepted as an angle point in the Northwest and Southwest Right of Way limits of said Yarrington Road;

THENCE S 46° 29' 38" E, 535.61 feet, along the Southwest Right of Way limits of said Yarrington Road to a set iron rod and cap stamped, "SPOT ON SURVEYING", (SIRC) said point to be used as the TRUE POINT OF BEGINNING for the description of this 85.81 Acre tract herein;

THENCE S 46° 29' 38" E, 3144.84 feet, continuing along the Southwest Right of Way limits of said Yarrington Road to a found 1/2" iron rod, down 6", accepted as the East corner of said 201.496 Acre tract also being the East corner of the 85.81 Acre tract described herein and accepted as the North corner of that 99.80 Acres conveyed to the State of Texas in Document No. 06017062, as recorded in Volume 2941, Page 831, O.P.R.H.C.TX.;

THENCE S 43° 31' 37" W, 1256.19 feet, along the common line of said 201.496 and 99.80 Acre tracts to a found 1/2" iron rod, flush, accepted as the South corner of said 201.496 Acre tract also being the South corner of the 85.81 Acre tract described herein and accepted as the East corner of that 318.105 Acres conveyed to the State of Texas in Document No. 05018360, as recorded in Volume 2715, Page 533, O.P.R.H.C.TX.;

THENCE N 46° 28' 03" W, 1315.46 feet, along the common line of said 201.496 and 318.105 Acre tracts to a found 1/2" iron rod, down 2", accepted as the Southerly limits of Gas easement described in Volume 801, Page 847, Deed Records, Hays County, Texas, D.R.H.C.TX., also being accepted as the Southwesterly limits of that 50 foot wide gas pipeline easement described in Volume 230, Page 120, Real Property Records, Hays County, Texas, R.P.R.H.C.TX. and being an angle point in the Southwesterly line of the 85.81 Acre tract described herein;

THENCE N 46° 18' 25" W, 1503.36 feet, along the Southwesterly line of said 201.496 Acre tract and the Northeasterly lines of said 318.105 Acre tract with the Northeasterly lines of Lot 4, of the San Marcos Technology Park, Subdivision as recorded in Volume 5, Page 147, Plat Records, Hays County, Texas, P.R.H.C.TX. and the 0.769 Acre tract to Federales Electric Cooperative, Inc. as recorded in Volume 826, Page 691, O.P.R.H.C.TX., to a found iron rod with cap stamped "BYRN SURVEYING", said point being accepted as the West corner of the 85.81 acre tract described herein also being accepted as the Southeasterly limits of that (ten) 10 foot wide easement to the City of San Marcos for waterline purposes as recorded in Volume 1207, Page 627, O.P.R.H.C.TX. and the Southeasterly limits of a (one hundred) 100 foot wide easement to the Lower Colorado River Authority (LCRA) as recorded in Volume 148, Page 570, D.R.H.C.TX., a found 3/4" iron pipe accepted as the East corner of Lot 5 of said San Marcos Technology Park, Subdivision falls N 46° 18' 25" W, 1.11 feet from said point for a witness corner;

THENCE N 28° 54' 22" E, 1291.61 feet, along the Easterly limits of said 10 foot and 100 foot wide easements to the POINT OF BEGINNING hereof, containing a calculated area of 3,738,047.2 sq. ft., 85.81 Acres, said field notes being described in accordance with a survey made on the ground by me or under my direction. All bearings shown are based on NAD 83 Texas State Plane Coordinate System, South Central Zone. All distances shown are surface or ground distances.

Scott A. Hahn, RPLS 6375



January 19, 2016

Date

Including that certain approximately 201.496 acre tract, save and except, that certain 85.81 acre tract, as described below.

FIELD NOTES  
FOR  
A 201.496 ACRE TRACT

Being a 201.496 acre tract of land, being approximately 94.659 acres out of the William Ward Survey No. 3 and approximately 106.837 acres out of the Joel Miner Survey, Hays County, Texas, and being out of a tract called 214.40 acres conveyed to Yarrington Properties by Warranty Deed recorded in Volume 773, Page 816 of the Official Public Records of Hays County, Texas, and all bearings referred to in this description are rotated to and referenced to a bearing of N 45° 52' W between iron pins found along the Southwest line of the above referenced 214.40 acre tract, and all bearings and distances referred to in this description as record calls are taken from Volume 773, Page 816 of the Official Public Records of Hays County, Texas, said 201.496 acre tract of land surveyed under the supervision of Richard A. Goodwin, RPLS #4069, S. Craig Hollmig, Inc., and being more particularly described as follows:

**BEGINNING:** At a concrete highway monument found at the intersection of the Southwest line of a road, called County Road No. 159, called Yarrington Road, with the Southeast line of Interstate Highway No. 35, for the most Northerly corner of the above referenced 214.40 acre tract, for the most Northerly corner and Point of Beginning of this tract;

**THENCE:** Leaving Interstate Highway No. 35, with a Southwest line of Yarrington Road, S 46° 02' 04" E 1812.44 feet (record call: S 46° 01' 00" E – 1813.06 feet) to a ½" iron pin found for a corner of the above referenced 214.40 acre tract, for a corner of this tract;

**THENCE:** Continuing along the Southwest line of said Yarrington Road and a turn to the right in said Yarrington Road, S 36° 43' 40" E 14.10 feet, a ½" iron pin set, S 02° 13' 26" E 44.83 feet, a ½" iron pin set, and S 40° 10' 14" W 32.45 feet to a ½" iron pin found in the Northwest line of said Yarrington Road, for a corner of the above referenced 214.40 acre tract, for a corner of this tract;

**THENCE:** Along said Northwest line, S 43° 58' 45" W 1263.87 feet (record call: S 43° 59' 00" W – 1263.40 feet) to a ½" iron pin found at a turn in said Yarrington Road, for an interior corner of the above referenced 214.40 acre tract, for an interior corner of this tract;

**THENCE:** Along a Southwest line of said Yarrington Road, a Northeast line of the above referenced 214.40 acre tract, S 45° 58' 21" E 3700.49 feet (record call: S 45° 58'

00" E - 3700.64 feet) to a 1/2" iron pin found in same, for the Lower East corner of the above referenced 214.40 acre tract, for the East corner of this tract;

THENCE: Along the Southeast line of the above referenced 214.40 acre tract, the Northwest line of a tract called 100 acres recorded in Volume 52, Page 68 of the Deed Records of Hays County, Texas, S 44° 02' 31" W 1256.51 feet to a 1/2" iron pin found at fence corner, for the South corner of the above referenced 214.40 acre tract, an East corner of a tract called 328.824 acres described in Volume 720, Page 155 of the Official Public Records of Hays County, Texas, for the South corner of this tract;

THENCE: Along the Southwest line of the above referenced 214.40 acre tract, the Northeast line of said 328.824 acre tract, the general direction of an existing fence, N 45° 52' 00" W 2136.80 feet to a 1/2" iron pin found at fence corner, for a North corner of said 328.824 acre tract, a corner of the above referenced 214.40 acre tract, the East corner of Lot 4 of San Marcos Technology Park, a subdivision of record in Volume 5, Page 147 of the Map and Plat Records of Hays County, Texas, for a corner of this tract;

THENCE: Along the Northeast line of Lots 4 and 5 of said San Marcos Technology Park, and continuing along the Southwest line of the above referenced 214.40 acre tract, the general direction of an existing fence, N 45° 47' 19" W 692.77 feet, a 1/2" iron pin found, N 45° 52' 57" W 696.50 feet to a 1/2" iron pin set and N 46° 02' 37" W 201.81 feet to a 1/4" pipe found at fence corner, for an interior corner of the above referenced 214.40 acre tract, the North corner of Lot 5, the East corner of Lot 6, for an interior corner of this tract;

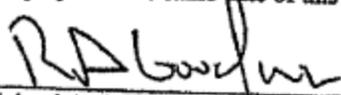
THENCE: Along the North line of Lot 6, S 82° 00' 53" W 1041.40 feet to a 1/2" iron pin found at the Northwest corner of Lot 6, lying in the Southeast line of Interstate Highway No. 35, for the most Westerly corner of this tract;

THENCE: Along the Southeast line of Interstate Highway No. 35, as now found upon the ground, N 21° 19' 20" E (record call: N 21° 17' E) 416.11 feet, a 1/2" iron pin found, N 24° 08' 41" E 2699.76 feet (record call: N 24° 09' E - 2700.00 feet) to a 1/2" iron pin found, N 24° 55' 22" E 367.45 feet to a concrete monument found, N 24° 56' 43" E 85.45 feet (record call for last two calls: N 24° 55' E - 452.99 feet) to a concrete monument found and N 79° 32' 49" E 57.95 feet (record call: 57.80 feet) to the Point of Beginning and containing 201.496 acres of land, more or less.

The foregoing field notes represent the results of an on-the-ground survey made under my supervision, August 1, 2003. Reference plat prepared this same date of this 201.496 acre tract.

Job #03-643



  
Richard A. Goodwin, RPLS #4069



SPOT ON SURVEYING

1345 Elliott Ranch Rd., Buda Texas 78610

FIELD NOTES-METES AND BOUNDS DESCRIPTION

Texas Firm No. 10193894 - J/N:0019-15-005

BEING 85.81 ACRES OF LAND OUT OF THE JOEL MINER SURVEY, HAYS COUNTY, TEXAS AND BEING A PORTION OF THAT 201.496 ACRE TRACT OF LAND OUT OF THE WILLIAM WARD SURVEY NO. 3 AND THE JOEL MINER SURVEY AS DESCRIBED TO YARRINGTON PARTNERS, LTD. A TEXAS LIMITED PARTNERSHIP IN VOLUME 2494, PAGE 403, AS DOCUMENT NO. 04018594, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, (O.P.R.H.C.TX.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a found iron rod with cap stamped "SAM INC.", being accepted as the most Southerly corner of the 3.275 Acres of land conveyed to Hays County from Yarrington Partners, LTD. in Document No. 14036525, recorded in Volume 5090, Page 263, O.P.R.H.C.TX., said point being accepted as an angle point in the Southwest and Northwest Right of Way limits of Yarrington Road;

THENCE S 43° 28' 13" W, 1239.58 feet, along the Northwest Right of Way of said Yarrington Road to a found 1/2" iron rod, down 4", accepted as an angle point in the Northwest and Southwest Right of Way limits of said Yarrington Road;

THENCE S 46° 29' 38" E, 535.61 feet, along the Southwest Right of Way limits of said Yarrington Road to a set iron rod and cap stamped, "SPOT ON SURVEYING", (SIRC) said point to be used as the TRUE POINT OF BEGINNING for the description of this 85.81 Acre tract herein;

THENCE S 46° 29' 38" E, 3144.84 feet, continuing along the Southwest Right of Way limits of said Yarrington Road to a found 1/2" iron rod, down 6", accepted as the East corner of said 201.496 Acre tract also being the East corner of the 85.81 Acre tract described herein and accepted as the North corner of that 99.80 Acres conveyed to the State of Texas in Document No. 06017062, as recorded in Volume 2941, Page 831, O.P.R.H.C.TX.;

THENCE S 43° 31' 37" W, 1256.19 feet, along the common line of said 201.496 and 99.80 Acre tracts to a found 1/2" iron rod, flush, accepted as the South corner of said 201.496 Acre tract also being the South corner of the 85.81 Acre tract described herein and accepted as the East corner of that 318.105 Acres conveyed to the State of Texas in Document No. 05018360, as recorded in Volume 2715, Page 533, O.P.R.H.C.TX.;

THENCE N 46° 26' 03" W, 1315.46 feet, along the common line of said 201.496 and 318.105 Acre tracts to a found 1/2" iron rod, down 2", accepted as the Southerly limits of Gas easement described in Volume 801, Page 847, Deed Records, Hays County, Texas, D.R.H.C.TX., also being accepted as the Southwesterly limits of that 50 foot wide gas pipeline easement described in Volume 230, Page 120, Real Property Records, Hays County, Texas, R.P.R.H.C.TX. and being an angle point in the Southwesterly line of the 85.81 Acre tract described herein;

THENCE N 46° 18' 25" W, 1503.36 feet, along the Southwesterly line of said 201.496 Acre tract and the Northeasterly lines of said 318.105 Acre tract with the Northeasterly lines of Lot 4, of the San Marcos Technology Park, Subdivision as recorded in Volume 5, Page 147, Plat Records, Hays County, Texas, P.R.H.C.TX. and the 0.769 Acre tract to Federales Electric Cooperative, Inc. as recorded in Volume 826, Page 691, O.P.R.H.C.TX., to a found iron rod with cap stamped "BYRN SURVEYING", said point being accepted as the West corner of the 85.81 acre tract described herein also being accepted as the Southeasterly limits of that (ten) 10 foot wide easement to the City of San Marcos for waterline purposes as recorded in Volume 1207, Page 627, O.P.R.H.C.TX. and the Southeasterly limits of a (one hundred) 100 foot wide easement to the Lower Colorado River Authority (LCRA) as recorded in Volume 148, Page 570, D.R.H.C.TX., a found 3/4" iron pipe accepted as the East corner of Lot 5 of said San Marcos Technology Park, Subdivision fails N 46° 18' 25" W, 1.11 feet from said point for a witness corner;

THENCE N 28° 54' 22" E, 1291.61 feet, along the Easterly limits of said 10 foot and 100 foot wide easements to the POINT OF BEGINNING hereof, containing a calculated area of 3,738,047.2 sq. ft., 85.81 Acres, said field notes being described in accordance with a survey made on the ground by me or under my direction. All bearings shown are based on NAD 83 Texas State Plane Coordinate System, South Central Zone. All distances shown are surface or ground distances.

Scott A. Hahn, RPLS 6375



January 19, 2016

Date

## EXHIBIT A-2 – TRACT #1 LEGAL DESCRIPTION

### FIELD NOTES FOR A 201.496 ACRE TRACT

Being a 201.496 acre tract of land, being approximately 94.659 acres out of the William Ward Survey No. 3 and approximately 106.837 acres out of the Joel Miner Survey, Hays County, Texas, and being out of a tract called 214.40 acres conveyed to Yarrington Properties by Warranty Deed recorded in Volume 773, Page 816 of the Official Public Records of Hays County, Texas, and all bearings referred to in this description are rotated to and referenced to a bearing of N 45° 52' W between iron pins found along the Southwest line of the above referenced 214.40 acre tract, and all bearings and distances referred to in this description as record calls are taken from Volume 773, Page 816 of the Official Public Records of Hays County, Texas, said 201.496 acre tract of land surveyed under the supervision of Richard A. Goodwin, RPLS #4069, S. Craig Hollmig, Inc., and being more particularly described as follows:

**BEGINNING:** At a concrete highway monument found at the intersection of the Southwest line of a road, called County Road No. 159, called Yarrington Road, with the Southeast line of Interstate Highway No. 35, for the most Northerly corner of the above referenced 214.40 acre tract, for the most Northerly corner and Point of Beginning of this tract;

**THENCE:** Leaving Interstate Highway No. 35, with a Southwest line of Yarrington Road, S 46° 02' 04" E 1812.44 feet (record call: S 46° 01' 00" E – 1813.06 feet) to a ½" iron pin found for a corner of the above referenced 214.40 acre tract, for a corner of this tract;

**THENCE:** Continuing along the Southwest line of said Yarrington Road and a turn to the right in said Yarrington Road, S 36° 43' 40" E 14.10 feet, a ½" iron pin set, S 02° 13' 26" E 44.83 feet, a ½" iron pin set, and S 40° 10' 14" W 32.45 feet to a ½" iron pin found in the Northwest line of said Yarrington Road, for a corner of the above referenced 214.40 acre tract, for a corner of this tract;

**THENCE:** Along said Northwest line, S 43° 58' 45" W 1263.87 feet (record call: S 43° 59' 00" W – 1263.40 feet) to a ½" iron pin found at a turn in said Yarrington Road, for an interior corner of the above referenced 214.40 acre tract, for an interior corner of this tract;

**THENCE:** Along a Southwest line of said Yarrington Road, a Northeast line of the above referenced 214.40 acre tract, S 45° 58' 21" E 3700.49 feet (record call: S 45° 58'

00" E - 3700.64 feet) to a 1/2" iron pin found in same, for the Lower East corner of the above referenced 214.40 acre tract, for the East corner of this tract;

THENCE: Along the Southeast line of the above referenced 214.40 acre tract, the Northwest line of a tract called 100 acres recorded in Volume 52, Page 68 of the Deed Records of Hays County, Texas, S 44° 02' 31" W 1256.51 feet to a 1/2" iron pin found at fence corner, for the South corner of the above referenced 214.40 acre tract, an East corner of a tract called 328.824 acres described in Volume 720, Page 155 of the Official Public Records of Hays County, Texas, for the South corner of this tract;

THENCE: Along the Southwest line of the above referenced 214.40 acre tract, the Northeast line of said 328.824 acre tract, the general direction of an existing fence, N 45° 52' 00" W 2136.80 feet to a 1/2" iron pin found at fence corner, for a North corner of said 328.824 acre tract, a corner of the above referenced 214.40 acre tract, the East corner of Lot 4 of San Marcos Technology Park, a subdivision of record in Volume 5, Page 147 of the Map and Plat Records of Hays County, Texas, for a corner of this tract;

THENCE: Along the Northeast line of Lots 4 and 5 of said San Marcos Technology Park, and continuing along the Southwest line of the above referenced 214.40 acre tract, the general direction of an existing fence, N 45° 47' 19" W 692.77 feet, a 1/2" iron pin found, N 45° 52' 57" W 696.50 feet to a 1/2" iron pin set and N 46° 02' 37" W 201.81 feet to a 1/4" pipe found at fence corner, for an interior corner of the above referenced 214.40 acre tract, the North corner of Lot 5, the East corner of Lot 6, for an interior corner of this tract;

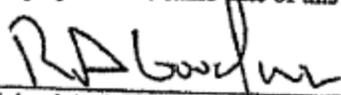
THENCE: Along the North line of Lot 6, S 82° 00' 53" W 1041.40 feet to a 1/2" iron pin found at the Northwest corner of Lot 6, lying in the Southeast line of Interstate Highway No. 35, for the most Westerly corner of this tract;

THENCE: Along the Southeast line of Interstate Highway No. 35, as now found upon the ground, N 21° 19' 20" E (record call: N 21° 17' E) 416.11 feet, a 1/2" iron pin found, N 24° 08' 41" E 2699.76 feet (record call: N 24° 09' E - 2700.00 feet) to a 1/2" iron pin found, N 24° 55' 22" E 367.45 feet to a concrete monument found, N 24° 56' 43" E 85.45 feet (record call for last two calls: N 24° 55' E - 452.99 feet) to a concrete monument found and N 79° 32' 49" E 57.95 feet (record call: 57.80 feet) to the Point of Beginning and containing 201.496 acres of land, more or less.

The foregoing field notes represent the results of an on-the-ground survey made under my supervision, August 1, 2003. Reference plat prepared this same date of this 201.496 acre tract.

Job #03-643



  
Richard A. Goodwin, RPLS #4069

Save and except, that certain 85.81 acre tract, as described below.



SPOT ON SURVEYING

1345 Elliott Ranch Rd., Buda Texas 78610

FIELD NOTES-METES AND BOUNDS DESCRIPTION

Texas Firm No. 10193894 - J/N:0019-15-005

BEING 85.81 ACRES OF LAND OUT OF THE JOEL MINER SURVEY, HAYS COUNTY, TEXAS AND BEING A PORTION OF THAT 201.496 ACRE TRACT OF LAND OUT OF THE WILLIAM WARD SURVEY NO. 3 AND THE JOEL MINER SURVEY AS DESCRIBED TO YARRINGTON PARTNERS, LTD. A TEXAS LIMITED PARTNERSHIP IN VOLUME 2494, PAGE 403, AS DOCUMENT NO. 04018594, OFFICIAL PUBLIC RECORDS, HAYS COUNTY, TEXAS, (O.P.R.H.C.TX.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a found iron rod with cap stamped "SAM INC.", being accepted as the most southerly corner of the 3.275 Acres of land conveyed to Hays County from Yarrington Partners, LTD. in Document No. 14036525, recorded in Volume 5090, Page 263, O.P.R.H.C.TX., said point being accepted as an angle point in the Southwest and Northwest Right of Way limits of Yarrington Road;

THENCE S 43° 28' 13" W, 1239.58 feet, along the Northwest Right of Way of said Yarrington Road to a found 1/2" iron rod, down 4", accepted as an angle point in the Northwest and Southwest Right of Way limits of said Yarrington Road;

THENCE S 46° 29' 38" E, 535.61 feet, along the Southwest Right of Way limits of said Yarrington Road to a set iron rod and cap stamped, "SPOT ON SURVEYING", (SIRC) said point to be used as the TRUE POINT OF BEGINNING for the description of this 85.81 Acre tract herein;

THENCE S 46° 29' 38" E, 3144.84 feet, continuing along the Southwest Right of Way limits of said Yarrington Road to a found 1/2" iron rod, down 6", accepted as the East corner of said 201.496 Acre tract also being the East corner of the 85.81 Acre tract described herein and accepted as the North corner of that 99.80 Acres conveyed to the State of Texas in Document No. 06017062, as recorded in Volume 2941, Page 831, O.P.R.H.C.TX.;

THENCE S 43° 31' 37" W, 1256.19 feet, along the common line of said 201.496 and 99.80 Acre tracts to a found 1/2" iron rod, flush, accepted as the South corner of said 201.496 Acre tract also being the South corner of the 85.81 Acre tract described herein and accepted as the East corner of that 318.105 Acres conveyed to the State of Texas in Document No. 05018360, as recorded in Volume 2715, Page 533, O.P.R.H.C.TX.;

THENCE N 46° 26' 03" W, 1315.46 feet, along the common line of said 201.496 and 318.105 Acre tracts to a found 1/2" iron rod, down 2", accepted as the southerly limits of Gas easement described in Volume 801, Page 847, Deed Records, Hays County, Texas, D.R.H.C.TX., also being accepted as the Southwesterly limits of that 50 foot wide gas pipeline easement described in Volume 230, Page 120, Real Property Records, Hays County, Texas, R.P.R.H.C.TX. and being an angle point in the Southwesterly line of the 85.81 Acre tract described herein;

THENCE N 46° 18' 25" W, 1503.36 feet, along the Southwesterly line of said 201.496 Acre tract and the Northeasterly lines of said 318.105 Acre tract with the Northeasterly lines of Lot 4, of the San Marcos Technology Park, Subdivision as recorded in Volume 5, Page 147, Plat Records, Hays County, Texas, P.R.H.C.TX. and the 0.769 Acre tract to Federales Electric Cooperative, Inc. as recorded in Volume 826, Page 691, O.P.R.H.C.TX., to a found iron rod with cap stamped "BYRN SURVEYING", said point being accepted as the West corner of the 85.81 acre tract described herein also being accepted as the Southeasterly limits of that (ten) 10 foot wide easement to the City of San Marcos for waterline purposes as recorded in Volume 1207, Page 627, O.P.R.H.C.TX. and the Southeasterly limits of a (one hundred) 100 foot wide easement to the Lower Colorado River Authority (LCRA) as recorded in Volume 148, Page 570, D.R.H.C.TX., a found 3/4" iron pipe accepted as the East corner of Lot 5 of said San Marcos Technology Park, Subdivision file N 46° 18' 25" W, 1.11 feet from said point for a witness corner;

THENCE N 28° 54' 22" E, 1291.61 feet, along the Easterly limits of said 10 foot and 100 foot wide easements to the POINT OF BEGINNING hereof, containing a calculated area of 3,738,047.2 sq. ft., 85.81 Acres, said field notes being described in accordance with a survey made on the ground by me or under my direction. All bearings shown are based on NAD 83 Texas State Plane Coordinate System, South Central Zone. All distances shown are surface or ground distances.

Scott A. Hahn, RPLS 6375



January 19, 2016

Date

## EXHIBIT A-3 – TRACT #2 LEGAL DESCRIPTION

FIELD NOTE DESCRIPTION  
16.56 ACRES  
JOEL MINOR SURVEY  
HAYS COUNTY, TEXAS

FIELD NOTE DESCRIPTION OF 16.56 ACRES OF LAND OUT OF THE JOEL MINOR SURVEY, HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 318.05 ACRE TRACT DESCRIBED IN A DEED TO WHISPER MASTER COMMUNITY LIMITED PARTNERSHIP RECORDED IN DOCUMENT NUMBER 2016-16000334 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS. THE SAID 16.56 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

*NOTE: All steel pins set cited herein are ½ inch diameter with cap marked Lenz & Assoc. All nails set cited herein are 60d with washer marked Lenz & Assoc. Bearings cited herein are based on the Texas Coordinate System of 1983 (NAD83), South Central Zone.*

**COMMENCING**, at a ½ inch diameter steel pin found with cap marked DOUCET in the interior of the said 318.05 acre tract at the north end of a 25.00 foot radius curve on the west line of Fortuna Road, as dedicated by the plat of Whisper PID Improvements Plat, of record in Document Number 19030333 of the Plat Records of Hays County, Texas, from which a ½ inch diameter steel pin found with cap marked DOUCET on the north line of Opportunity Boulevard at the west end of said curve bears a chord bearing and distance of S 42°22'38" W, 35.36 feet;

THENCE, N 02°37'22" W, a distance of 841.73 feet, through the interior of the said 318.05 acre tract, along the west line of Fortuna Road, to a ½ inch diameter steel pin steel pin found with cap marked DOUCET;

THENCE, continuing with the west line of Fortuna Road with a curve to the right, having a central angle of 15°58'47", a radius of 535.00 feet, an arc of 148.90 feet and a chord bearing and distance of N 05°21'01" E, 148.42 feet to a steel pin set for the **PLACE OF BEGINNING** of the herein described tract;

THENCE, continuing to traverse the interior of the said 318.05 acre tract, the following eight (8) courses and distances:

- 1) N 76°42'40" W, 39.59 feet to a steel pin set;
- 2) S 23°17'22" W, 293.17 feet to a steel pin set;
- 3) S 87°59'58" W, 668.17 feet to a steel pin set;
- 4) N 02°00'02" W, 205.93 feet to a steel pin set;
- 5) With a curve to the right, having a central angle of 25°17'23", a radius of 385.00 feet, an arc of 169.94 feet and a chord bearing and distance of N 10°38'40" E, 168.56 feet to a steel pin set;

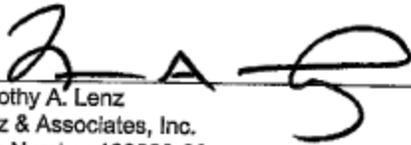
- 6) N 23°17'22" E, 759.80 feet to a steel pin set;
- 7) S 66°42'38" E, 667.95 feet to a steel pin set;
- 8) S 46°14'43" E, 98.21 feet to a steel pin set on the west line of Fortuna Road, from which a ½ inch diameter steel pin found with cap marked Doucet bears N 23°17'48" E, 986.89 feet;

THENCE, continuing to traverse the interior of the said 318.05 acre tract, along the west line of Fortuna Road, the following two (2) courses and distances:

- 1) S 23°17'48" W, 397.99 feet to a steel pin found with cap marked Doucet;
- 2) With a curve to the left, having a central angle of 09°58'23", a radius of 535.00 feet, an arc of 93.13 feet and a chord bearing and distance of S 18°18'36" W, 93.01 feet to the **PLACE OF BEGINNING**, containing 16.56 acres of land, more or less.

**This description prepared for the benefit of Whisper Industrial 2019 QOZB, LLC and Simmons Bank, an Arkansas State Charter Bank.**

DECEMBER 30, 2019



Timothy A. Lenz  
Lenz & Associates, Inc.  
Firm Number 100290-00  
4150 Freidrich Lane, Suite A-1  
Austin, Texas 78744  
(512) 443-1174



Whisper (16.56 ac).doc

## EXHIBIT A-4 – TRACT #3 LEGAL DESCRIPTION

### PROPERTY DESCRIPTION

#### FIELD NOTES FOR A 130.641 ACRE TRACT

Being a 130.641 acre tract of land, out of the Joel Miner Survey, Hays County, Texas, and being out of a 318.105 acre tract and a 99.800 tract, conveyed to Whisper Master Community Limited Partnership by a Deed Without Warranty recorded in Document Number 2016-16000334 of the Official Public Records of Hays County, Texas, being more particularly described as follows:

COMMENCING at a point in the Northwesterly R.O.W. of County Road 160 (Harris Hill Road), being the intersection of the Southwesterly line of a 318.105 acre tract, conveyed to Whisper Master Community Limited Partnership by a Deed With Warranty recorded in Document No. 2016-16000334 in the Official Public Records of Hays County, Texas;

Thence N 46°21'27" W, a distance of 23.53 feet to the beginning point of said 318.105 acre tract;

Thence: Along the Southwesterly line of said 318.105 acre tract, N 46°21'27" W, a distance of 2,227.77 feet to the Southwesterly corner of said 318.105 acre tract;

Thence: Leaving said 318.105 acre tract and traversing thru the interior of the said 318.105 tract, N 23°17'22" E, a distance of 830.41 feet to an interior corner;

Thence: N 50°54'24" E, a distance of 84.97 feet to an interior corner;

Thence: S 89°50'45" E, a distance of 408.50 feet to an interior corner;

Thence: S 71°04'04" E, a distance of 52.81 feet to an interior corner;

Thence: S 89°50'45" E, a distance of 111.50 feet to an interior corner;

Thence: N 00°09'15" E, a distance of 70.50 feet to an interior corner;

Thence: N 89°50'45" W, a distance of 121.50 feet to an interior corner;

Thence: N 00°09'15" E, a distance of 365.15 feet to a corner point on the south right-of-way of Whisper Hills Blvd;

Thence: With the south right-of-way of Whisper Hills Blvd., N 87°22'38" E, a distance of 606.71 feet to a corner point on said south right-of-way;

Thence: Leaving said south right-of-way, S 00°09'15" W, a distance of 306.12 feet to an interior corner;

Thence: S 87°13'46" W, a distance of 121.90 feet to an interior corner;

Thence: Along a curve to the right, an arc length of 9.27 feet, a radius of 181.50 feet, a chord bearing of S 01°18'29" E and a chord distance of 9.26 feet to an interior corner;

Thence: S 00°09'15" W, a distance of 73.16 feet to an interior corner;

Thence: N 88°55'36" E, a distance of 160.33 feet to an interior corner;

Thence: N 01°04'24" W, a distance of 10.00 feet to an interior corner;

Thence: N 88°55'36" E, crossing the said 318.105 acre tract and said 99.800 acre tract boundary line a distance of 601.21 feet, thence continuing thru the said 99.800 acre tract for a total distance of 669.07 feet to an interior corner;

Thence: N 00°09'15" E, a distance of 65.73 feet to an interior corner;

Thence: Along a curve to the left, an arc length of 144.19 feet, a radius of 2975.00 feet, a chord bearing of N 01°14'03" W and a chord distance of 144.18 feet to an interior corner;

Thence: N 02°37'22" W, a distance of 166.05 feet to an interior corner;

Thence: Along a curve to the left, an arc length of 39.27 feet, a radius of 25.00 feet, a chord bearing of N 47°37'24" W and a chord distance of 35.36 feet to a corner point on the south right-of-way of said Whisper Hills Blvd.;

Thence: Along the south right-of-way of Whisper Hills Blvd., N 87°22'38" E, a distance of 100.00 feet to a corner point;

Thence: Leaving said right-of-way along a curve to the left, an arc length of 39.27 feet, a radius of 25.00 feet, a chord bearing of S 42°22'37" W and a chord distance of 35.36 feet to an interior corner;

Thence: S 02°37'22" E, a distance of 166.05 feet to an interior corner;

Thence: Along a curve to the right, an arc length of 146.62 feet, a radius of 3025.00 feet, a chord bearing of S 01°14'03" E and a chord distance of 146.60 feet to an interior corner

Thence: S 00°09'15" W, a distance of 64.66 feet to an interior corner;

Thence: N 88°55'36" E, a distance of 361.77 feet to an interior corner ;

Thence: S 46°21'27" E, a distance of 214.73 feet to an interior corner;

Thence: N 45°55'20" E, a distance of 293.36 feet to an interior corner;

Thence: Along a curve to the left, an arc length of 143.55 feet, a radius of 262.00 feet, a chord bearing of N 30°13'34" E and a chord distance of 141.76 feet to an interior corner;

Thence: N 14°31'48" E, a distance of 256.58 feet to a corner point on the south right-of-way of said Whisper Hills Blvd.;

Thence: Along said south right-of-way a curve to the right, an arc length of 303.28 feet, a radius of 955.00 feet, a chord bearing of S 75°48'18" E and a chord distance of 302.01 feet to a corner point;

Thence: Leaving said south right-of-way, S 14°31'48" W, a distance of 258.35 feet to an interior corner;

Thence: Along a curve to the right an arc length of 79.50 feet, a radius of 564.00 feet, a chord bearing of S 18°34'05" W and a chord distance of 79.43 feet to an interior corner;

Thence: S 46°21'27" E, a distance of 582.83 feet a Northeast corner point;

Thence: S 43°51'51" W, crossing the said 99.800 acre tract and said 318.105 acre tract boundary line a distance of 847.96 feet, thence continuing thru the said 318.105 acre tract for a total distance of 1507.06 feet to a point;

Thence: A curve to the right, an arc length of 31.57 feet, a radius of 619.00 feet, a chord bearing of S 45°19'32" W and a chord distance of 31.57 feet to a point;

Thence: S 46°47'12" W, a distance of 1393.50 feet to the Point of Beginning and containing 130.641 acres, more or less.



March 28, 2019

## EXHIBIT A-5 – TRACT #4 LEGAL DESCRIPTION

Being approximately 706.349 acres of land within the District as more particularly described in **Exhibit A-1**; SAVE AND EXCEPT the approximately 115.686-acre tract of land comprising Tract #1 as more particularly described in **Exhibit A-2**; SAVE AND EXCEPT the approximately 16.560-acre tract of land comprising Tract #2 as more particularly described in **Exhibit A-3**; SAVE AND EXCEPT the approximately 130.641-acre tract of land comprising Tract #3 as more particularly described in **Exhibit A-4**; SAVE AND EXCEPT the approximately 51.969-acre tract of land comprising Tract #3 as more particularly described in **Exhibit A-5**.

## EXHIBIT A-6 – TRACT #5 LEGAL DESCRIPTION



### METES AND BOUNDS DESCRIPTION FOR

A 51.969 acre, or 2,263,776 square feet more or less, tract of land out of a portion of that 85.81 acre tract described in Special Warranty Deed to Whisper Master Community Limited Partnership (WMCLP) recorded in Document Number 2016-16011214 of the Official Public Records of Hays County, Texas, and out of a portion of that 99.80 acre tract described in Deed Without Warranty to Whisper Master Community Limited Partnership (WMCLP) recorded in Document Number 2016-16000334 of the Official Public Records of Hays County, Texas, situate in the Joel Miner Survey, Abstract 321, partially in the City of San Marcos, Hays County, Texas. Said 51.969 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System established for the South Central Zone from the North American Datum of 1983 NAD 83 (NA2011) epoch 2010.00:

- COMMENCING: At a found 1/2" iron rod marked "Spot On" on the southwest right-of-way line of County Road No. 159, variable width right-of-way (aka Yarrington Road), at the north corner of said WMCLP 85.81 acre tract, at an east corner of the Yarrington Partners, LTD tract recorded in Volume 2494, Page 403 of the Official Public Records of Hays County, Texas;
- THENCE: S 46°29'26" E, along the southwest right-of-way line of said County Road No. 159, a distance of 1614.02 feet to a set 1/2" iron rod with yellow cap marked "Pape-Dawson", at the northeast corner of Fortuna Road, 70-foot wide public right-of-way, dedicated in Whisper PID Infrastructure Improvements Plat recorded in Document Number 19030333 of the Plat Records of Hays County, Texas, on the northeast line of said WMCLP 85.81 acre tract, for a northerly corner of the herein described tract, same being the POINT OF BEGINNING;
- THENCE: S 46°29'26" E, continuing along the southwest right-of-way line of said County Road No. 159, at a distance of 1531.09 feet pass a found 1/2" iron rod for a northwest corner of said WMCLP 99.80 acre tract, for the southeast corner of said WMCLP 85.81 acre tract, and continuing for a total distance of 1938.27 feet to a set 1/2" iron rod with yellow cap marked "Pape-Dawson", on the northeast line of said WMCLP 99.80 acre tract, for the southeast corner of the herein described tract;
- THENCE: S 43°30'22" W, departing the southwest line of said County Road No. 159, over and across said WMCLP 99.80 acre tract, a distance of 1256.46 feet to a set 1/2" iron rod with yellow cap marked "Pape-Dawson" for the south corner of the herein described tract;

Page 1 of 2

THENCE: N 46°26'18" W, continuing over and across said WMCLP 99.80 acre tract, at a distance of 407.57 feet pass a found 1/2" iron rod at the southeast corner of a 318.105 acre tract described by deed to Whisper Master Community Limited Partnership (WMCLP) recorded in Document Number 2016-16000334 of the Official Public Records of Hays County, Texas, at the south corner of said WMCLP 85.81 acre tract, continuing for a total distance of 1579.85 feet to a set 1/2" iron rod with yellow cap marked "Pape-Dawson" on the southeast right-of-way line of said Fortuna Road, for the west corner of the herein described tract;

THENCE: Along and with the southeast right-of-way line of said Fortuna Road, the following bearings and distances:

N 23°17'58" E, a distance of 1012.74 feet to a set 1/2" iron rod with yellow cap marked "Pape-Dawson";

Northeasterly, along a tangent curve to the right, said curve having a radius of 465.00 feet, a central angle of 20°12'33", a chord bearing and distance of N 33°24'15" E, 163.16 feet, for an arc length of 164.01 feet to a set 1/2" iron rod with yellow cap marked "Pape-Dawson";

N 43°30'31" E, a distance of 123.99 feet to a set 1/2" iron rod with yellow cap marked "Pape-Dawson";

THENCE: Northeasterly, along a tangent curve to the right, said curve having a radius of 20.00 feet, a central angle of 90°00'00", a chord bearing and distance of N 88°30'31" E, 28.28 feet, for an arc length of 31.42 feet to the POINT OF BEGINNING and containing 51.969 acres partially in the City of San Marcos, Hays County, Texas. Said tract being described in conjunction with a survey made on the ground and a survey map prepared under job number 11152-04 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.  
DATE: November 27, 2019  
JOB NO. 11152-04  
DOC. ID. N:\CIVIL\11152-04\Word\11152-04 FN 51.969 AC.docx

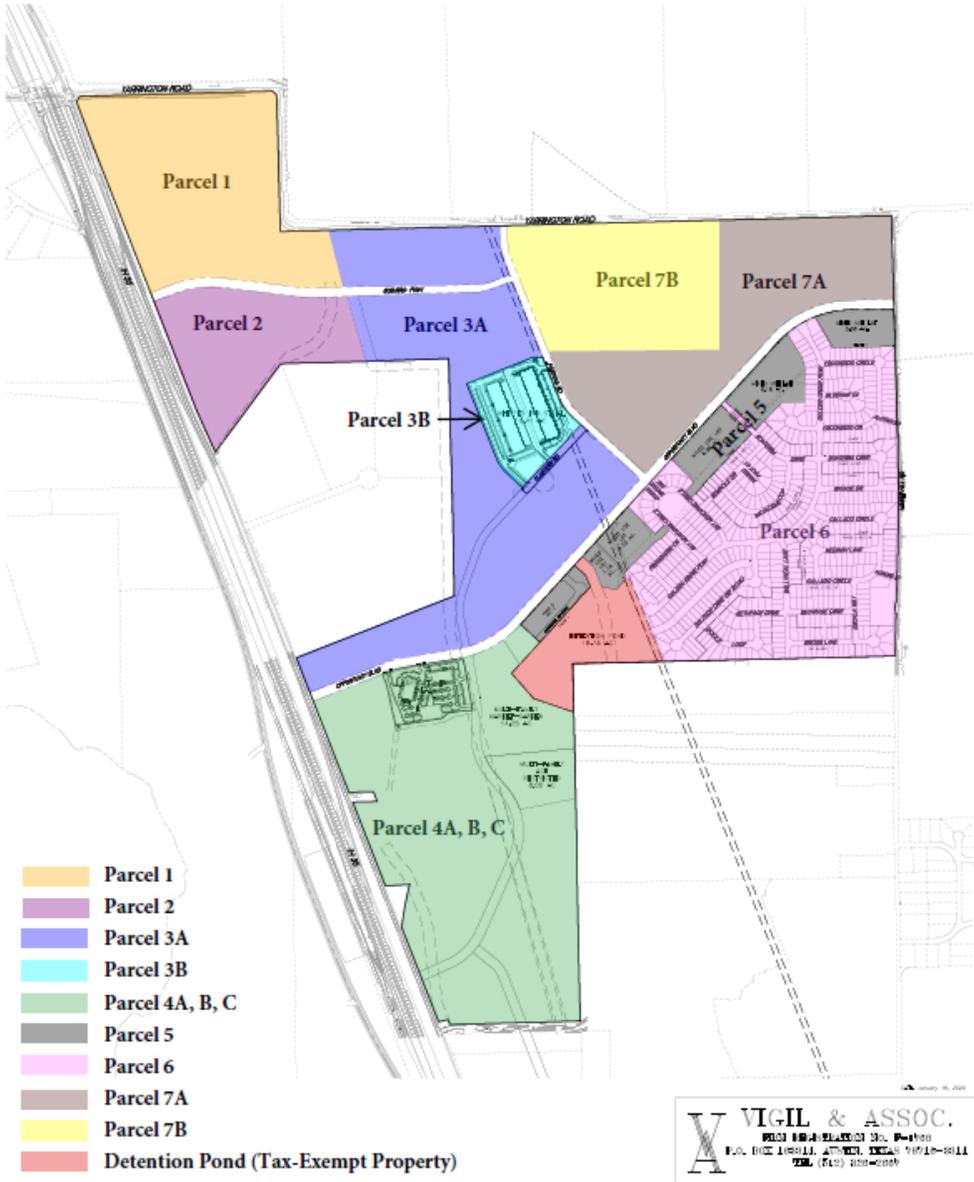


*G. E. Buchanan*  
12/02/2019



**EXHIBIT B-1 – DISTRICT BOUNDARY MAP**

# WHISPER LAND USE PLAN



**EXHIBIT B-2 – TRACT #1 BOUNDARY MAP**



**X VIGIL & ASSOC.**  
PLANNING & ENGINEERING  
P.O. BOX 108111, ATLANTA, GEORGIA 30388-0111  
TEL: (404) 525-4200

# EXHIBIT B-3 – TRACT #2 BOUNDARY MAP



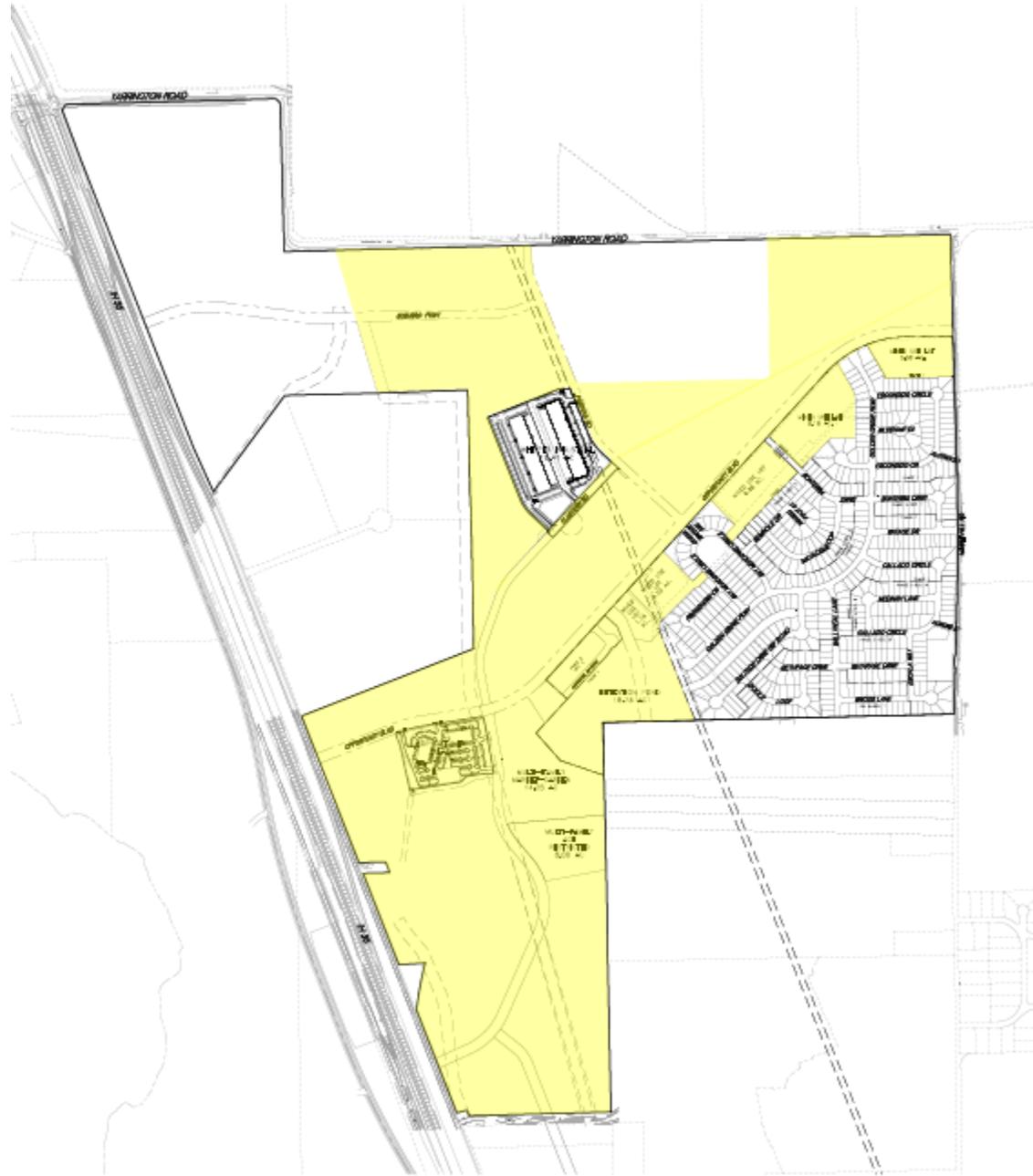
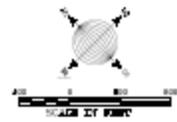
**X VIGIL & ASSOC.**  
PLANNING & ENGINEERING  
P.O. BOX 108011, ATWATER, TEXAS 76710-8011  
TEL: (817) 250-2000

# EXHIBIT B-4 – TRACT #3 BOUNDARY MAP



**VIGIL & ASSOC.**  
FIELD REPRESENTATIVE, P.O. BOX 108111  
P.O. BOX 108111, ATTYN, TEXAS 75210-8111  
TEL. (214) 350-2222

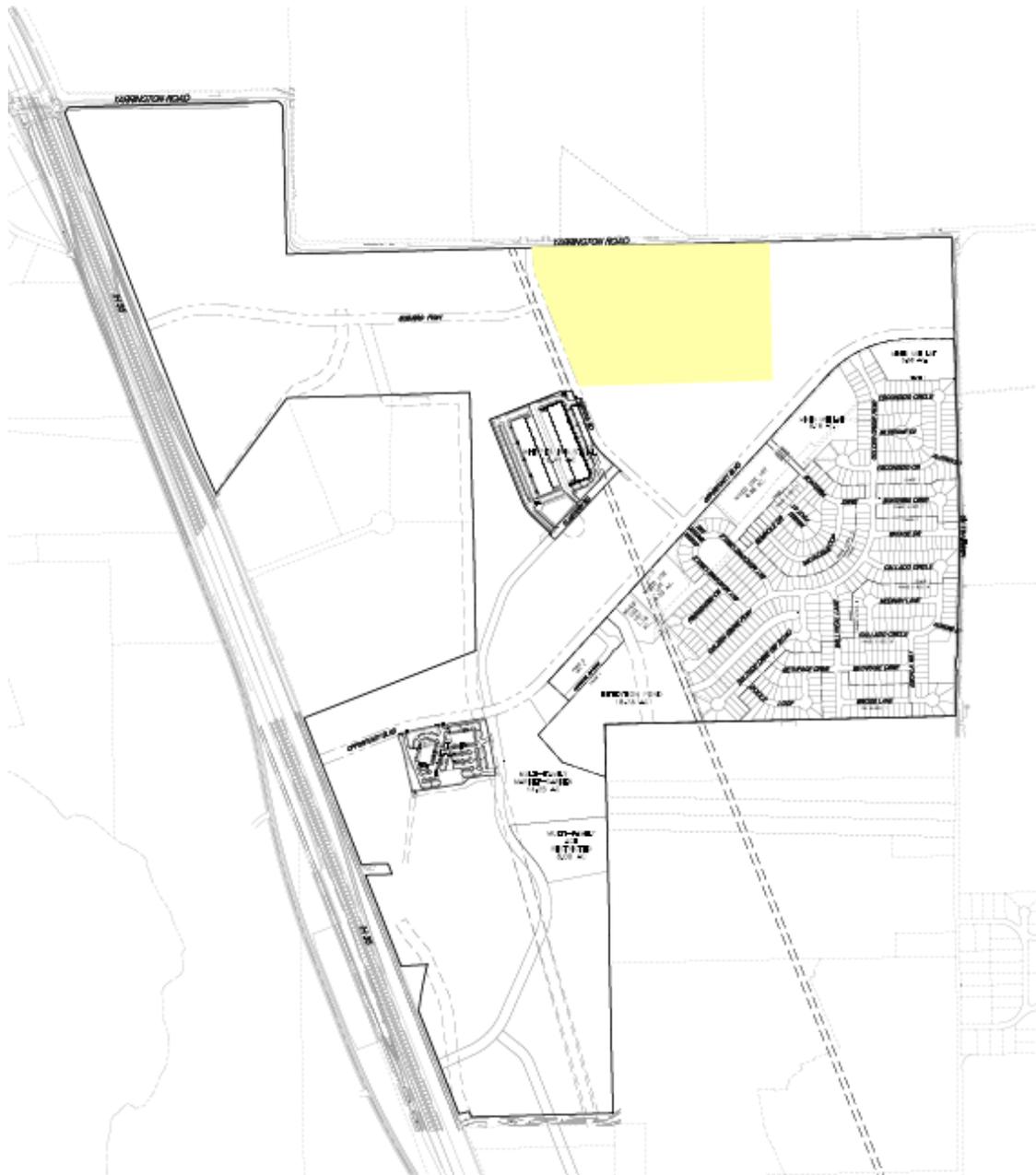
**EXHIBIT B-5 – TRACT #4 BOUNDARY MAP**



**X VIGIL & ASSOC.**  
P.O. BOX 10000, DALLAS, TEXAS 75210-0000  
TEL. (214) 350-0000

EXHIBIT B-6 – TRACT #5 BOUNDARY MAP

TRACT #5



**VIGIL & ASSOC.**  
FIELD SURVEYORS, INC.  
P.O. BOX 108111, ATTEN. VIGIL, DALLAS, TEXAS 75210-8111  
TEL. (214) 350-0100

## EXHIBIT C – AUTHORIZED IMPROVEMENTS

Authorized Improvements	Total Costs [a]	Whisper PID	
		%	Cost
<i>Major Improvements</i>			
Road A [b]	\$ 5,214,299	100.00%	\$ 5,214,299
Road B [b]	2,179,637	100.00%	2,179,637
Lift Station & Wastewater Line D	285,746	100.00%	285,746
Road C [b]	2,284,880	100.00%	2,284,880
Offsite Wastewater Line B	315,750	100.00%	315,750
Detention Pond	209,699	100.00%	209,699
Construction Management (4%)	419,600	100.00%	419,600
Soft Costs	824,099	100.00%	824,099
	\$ 11,733,710		\$ 11,733,710
 <i>District Formation and Bond Issuance Costs</i>			
Debt Service Reserve Fund	\$ 1,066,556		\$ 1,066,556
Capitalized Interest	562,706		562,706
Underwriter's Discount	281,500		281,500
Underwriter's Counsel	140,750		140,750
Cost of Issuance	844,500		844,500
Developer District Formation Costs	200,000		200,000
First Year Annual Collection Costs	40,000		40,000
	\$ 3,136,012		\$ 3,136,012
 <b>Total</b>	 <b>\$ 14,869,722</b>		 <b>\$ 14,869,722</b>

Footnotes:

[a] Costs provided by Sundance Analytics dated April 27, 2020. Costs may not add due to rounding.

[b] Net of proportionate share of \$1,592,682 in City cost participation.

## EXHIBIT D – SERVICE PLAN – FIVE YEAR PLAN

Five Year Service Plan						
Installments Due		1/31/2021	1/31/2022	1/31/2023	1/31/2024	1/31/2025
Principal		\$ -	\$ 195,000	\$ 205,000	\$ 215,000	\$ 225,000
Interest		840,556	840,556	830,075	819,056	807,500
Capitalized Interest		(420,278)	-	-	-	-
	(1)	\$ 420,278	\$ 1,035,556	\$ 1,035,075	\$ 1,034,056	\$ 1,032,500
Annual Collection Costs	(2)	\$ 40,800	\$ 41,616	\$ 42,448	\$ 43,297	\$ 44,163
Additional Interest Reserve	(3)	\$ 70,375	\$ 70,375	\$ 69,400	\$ 68,375	\$ 67,300
<b>Total Annual Installment</b>	<b>(4) = (1) + (2) + (3)</b>	<b>\$ 531,453</b>	<b>\$ 1,147,547</b>	<b>\$ 1,146,923</b>	<b>\$ 1,145,729</b>	<b>\$ 1,143,963</b>

## EXHIBIT E – SERVICE PLAN – SOURCES AND USES

Sources of Funds	
PID Bond Par	\$ 14,075,000
Developer Contribution [a]	794,722
<b>Total Sources</b>	<b>\$ 14,869,722</b>

Uses of Funds	
Major Improvements	\$ 11,733,710
<i>District Formation and Bond Issuance Costs</i>	
Debt Service Reserve Fund	\$ 1,066,556
Capitalized Interest	562,706
Underwriter's Discount	281,500
Underwriter's Counsel	140,750
Cost of Issuance	844,500
Developer District Formation Costs	200,000
First Year Annual Collection Costs	40,000
	<b>\$ 3,136,012</b>
 <b>Total Uses</b>	 <b>\$ 14,869,722</b>

Footnotes:

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[a] Non-reimbursable to the Developer.

## EXHIBIT F – ASSESSMENT ROLL

Property ID	Whisper PID	
	Outstanding Assessment	Annual Installment due 1/31/21
<i>Tract #1</i>	\$ 2,083,452	\$ 78,668
<i>Tract #2</i>	\$ 337,519	\$ 12,744
<i>Tract #3</i>	\$ 2,784,116	\$ 105,125
<i>Tract #4</i>	\$ 7,672,311	\$ 289,696
<i>Tract #5</i>	\$ 1,197,602	\$ 45,220
<b>Total</b>	<b>\$ 14,075,000</b>	<b>\$ 531,453</b>

Note: For billing purposes only, until a plat has been recorded within Tract #1, Tract #2, Tract #3, Tract #4 or Tract #5, the Annual Installment will be billed to each property ID within each Tract based on the Hays Central Appraisal District acreage.

**[Will be updated to reflect all Property IDs within each Tract for billing purposes. Need to verify all new Property IDs are active and able to bill come 9/1/2020.]**

## EXHIBIT G-1 – ANNUAL INSTALLMENTS

Installments Due 1/31	Principal	Interest [a]	Capitalized Interest	Additional Interest	Annual Collection Costs	Annual Installment
2020 [b]	\$ -	\$ 142,428	\$ (142,428)	\$ -	\$ -	\$ -
2021	\$ -	\$ 840,556	\$ (420,278)	\$ 70,375	\$ 40,800	\$ 531,453
2022	\$ 195,000	\$ 840,556	\$ -	\$ 70,375	\$ 41,616	\$ 1,147,547
2023	\$ 205,000	\$ 830,075	\$ -	\$ 69,400	\$ 42,448	\$ 1,146,923
2024	\$ 215,000	\$ 819,056	\$ -	\$ 68,375	\$ 43,297	\$ 1,145,729
2025	\$ 225,000	\$ 807,500	\$ -	\$ 67,300	\$ 44,163	\$ 1,143,963
2026	\$ 240,000	\$ 795,406	\$ -	\$ 66,175	\$ 45,046	\$ 1,146,628
2027	\$ 255,000	\$ 782,506	\$ -	\$ 64,975	\$ 45,947	\$ 1,148,429
2028	\$ 265,000	\$ 768,800	\$ -	\$ 63,700	\$ 46,866	\$ 1,144,366
2029	\$ 280,000	\$ 754,556	\$ -	\$ 62,375	\$ 47,804	\$ 1,144,735
2030	\$ 295,000	\$ 739,506	\$ -	\$ 60,975	\$ 48,760	\$ 1,144,241
2031	\$ 315,000	\$ 723,650	\$ -	\$ 59,500	\$ 49,735	\$ 1,147,885
2032	\$ 330,000	\$ 704,750	\$ -	\$ 57,925	\$ 50,730	\$ 1,143,405
2033	\$ 355,000	\$ 684,950	\$ -	\$ 56,275	\$ 51,744	\$ 1,147,969
2034	\$ 375,000	\$ 663,650	\$ -	\$ 54,500	\$ 52,779	\$ 1,145,929
2035	\$ 400,000	\$ 641,150	\$ -	\$ 52,625	\$ 53,835	\$ 1,147,610
2036	\$ 425,000	\$ 617,150	\$ -	\$ 50,625	\$ 54,911	\$ 1,147,686
2037	\$ 450,000	\$ 591,650	\$ -	\$ 48,500	\$ 56,010	\$ 1,146,160
2038	\$ 480,000	\$ 564,650	\$ -	\$ 46,250	\$ 57,130	\$ 1,148,030
2039	\$ 510,000	\$ 535,850	\$ -	\$ 43,850	\$ 58,272	\$ 1,147,972
2040	\$ 540,000	\$ 505,250	\$ -	\$ 41,300	\$ 59,438	\$ 1,145,988
2041	\$ 575,000	\$ 472,850	\$ -	\$ 38,600	\$ 60,627	\$ 1,147,077
2042	\$ 610,000	\$ 437,631	\$ -	\$ 35,725	\$ 61,839	\$ 1,145,195
2043	\$ 650,000	\$ 400,269	\$ -	\$ 32,675	\$ 63,076	\$ 1,146,020
2044	\$ 690,000	\$ 360,456	\$ -	\$ 29,425	\$ 64,337	\$ 1,144,219
2045	\$ 735,000	\$ 318,194	\$ -	\$ 25,975	\$ 65,624	\$ 1,144,793
2046	\$ 785,000	\$ 273,175	\$ -	\$ 22,300	\$ 66,937	\$ 1,147,412
2047	\$ 835,000	\$ 225,094	\$ -	\$ 18,375	\$ 68,275	\$ 1,146,744
2048	\$ 890,000	\$ 173,950	\$ -	\$ 14,200	\$ 69,641	\$ 1,147,791
2049	\$ 945,000	\$ 119,438	\$ -	\$ 9,750	\$ 71,034	\$ 1,145,221
2050	\$ 1,005,000	\$ 61,556	\$ -	\$ 5,025	\$ 72,454	\$ 1,144,036
<b>Total</b>	<b>\$ 14,075,000</b>	<b>\$ 17,196,259</b>	<b>\$ (562,706)</b>	<b>\$ 1,407,425</b>	<b>\$ 1,655,178</b>	<b>\$ 33,771,156</b>

[a] Interest is calculated at a 5.83% rate for illustration purposes.

[b] Capitalized Interest for Annual Installment due 1/31/20 funds the 9/1/20 interest payment in full.

*Note: The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

## EXHIBIT G-2 – ANNUAL INSTALLMENTS FOR TRACT #1

Installments Due 1/31	Principal	Interest [a]	Capitalized Interest	Additional Interest	Annual Collection Costs	Annual Installment
2020 [b]	\$ -	\$ 21,082.84	\$ (21,082.84)	\$ -	\$ -	\$ -
2021	\$ -	\$ 124,423.32	\$ (62,211.66)	\$ 10,417.26	\$ 6,039.42	\$ 78,668.34
2022	\$ 28,864.87	\$ 124,423.32	\$ -	\$ 10,417.26	\$ 6,160.21	\$ 169,865.66
2023	\$ 30,345.12	\$ 122,871.84	\$ -	\$ 10,272.93	\$ 6,283.41	\$ 169,773.30
2024	\$ 31,825.37	\$ 121,240.79	\$ -	\$ 10,121.21	\$ 6,409.08	\$ 169,596.45
2025	\$ 33,305.62	\$ 119,530.17	\$ -	\$ 9,962.08	\$ 6,537.26	\$ 169,335.14
2026	\$ 35,526.00	\$ 117,740.00	\$ -	\$ 9,795.55	\$ 6,668.01	\$ 169,729.55
2027	\$ 37,746.37	\$ 115,830.47	\$ -	\$ 9,617.92	\$ 6,801.37	\$ 169,996.13
2028	\$ 39,226.62	\$ 113,801.60	\$ -	\$ 9,429.19	\$ 6,937.39	\$ 169,394.81
2029	\$ 41,446.99	\$ 111,693.18	\$ -	\$ 9,233.06	\$ 7,076.14	\$ 169,449.37
2030	\$ 43,667.37	\$ 109,465.40	\$ -	\$ 9,025.82	\$ 7,217.67	\$ 169,376.26
2031	\$ 46,627.87	\$ 107,118.28	\$ -	\$ 8,807.49	\$ 7,362.02	\$ 169,915.65
2032	\$ 48,848.24	\$ 104,320.60	\$ -	\$ 8,574.35	\$ 7,509.26	\$ 169,252.45
2033	\$ 52,548.87	\$ 101,389.71	\$ -	\$ 8,330.11	\$ 7,659.44	\$ 169,928.13
2034	\$ 55,509.37	\$ 98,236.78	\$ -	\$ 8,067.36	\$ 7,812.63	\$ 169,626.14
2035	\$ 59,209.99	\$ 94,906.22	\$ -	\$ 7,789.81	\$ 7,968.89	\$ 169,874.91
2036	\$ 62,910.62	\$ 91,353.62	\$ -	\$ 7,493.76	\$ 8,128.26	\$ 169,886.26
2037	\$ 66,611.24	\$ 87,578.98	\$ -	\$ 7,179.21	\$ 8,290.83	\$ 169,660.26
2038	\$ 71,051.99	\$ 83,582.31	\$ -	\$ 6,846.16	\$ 8,456.64	\$ 169,937.10
2039	\$ 75,492.74	\$ 79,319.19	\$ -	\$ 6,490.90	\$ 8,625.78	\$ 169,928.60
2040	\$ 79,933.49	\$ 74,789.62	\$ -	\$ 6,113.43	\$ 8,798.29	\$ 169,634.84
2041	\$ 85,114.36	\$ 69,993.61	\$ -	\$ 5,713.76	\$ 8,974.26	\$ 169,796.00
2042	\$ 90,295.24	\$ 64,780.36	\$ -	\$ 5,288.19	\$ 9,153.74	\$ 169,517.53
2043	\$ 96,216.24	\$ 59,249.78	\$ -	\$ 4,836.72	\$ 9,336.82	\$ 169,639.55
2044	\$ 102,137.24	\$ 53,356.53	\$ -	\$ 4,355.64	\$ 9,523.56	\$ 169,372.96
2045	\$ 108,798.36	\$ 47,100.63	\$ -	\$ 3,844.95	\$ 9,714.03	\$ 169,457.96
2046	\$ 116,199.61	\$ 40,436.72	\$ -	\$ 3,300.96	\$ 9,908.31	\$ 169,845.60
2047	\$ 123,600.86	\$ 33,319.50	\$ -	\$ 2,719.96	\$ 10,106.47	\$ 169,746.79
2048	\$ 131,742.23	\$ 25,748.95	\$ -	\$ 2,101.95	\$ 10,308.60	\$ 169,901.74
2049	\$ 139,883.61	\$ 17,679.73	\$ -	\$ 1,443.24	\$ 10,514.78	\$ 169,521.36
2050	\$ 148,765.11	\$ 9,111.86	\$ -	\$ 743.83	\$ 10,725.07	\$ 169,345.87
<b>Total</b>	<b>\$ 2,083,451.60</b>	<b>\$ 2,545,475.90</b>	<b>\$ (83,294.50)</b>	<b>\$ 208,334.06</b>	<b>\$ 245,007.64</b>	<b>\$ 4,998,974.69</b>

[a] Interest is calculated at a 5.83% rate for illustration purposes.

[b] Capitalized Interest for Annual Installment due 1/31/20 funds the 9/1/20 interest payment in full.

*Note: The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

## EXHIBIT G-3 – ANNUAL INSTALLMENTS FOR TRACT #2

Installments Due 1/31	Principal	Interest [a]	Capitalized Interest	Additional Interest	Annual Collection Costs	Annual Installment
2020 [b]	\$ -	\$ 3,415.42	\$ (3,415.42)	\$ -	\$ -	\$ -
2021	\$ -	\$ 20,156.58	\$ (10,078.29)	\$ 1,687.60	\$ 978.39	\$ 12,744.27
2022	\$ 4,676.11	\$ 20,156.58	\$ -	\$ 1,687.60	\$ 997.95	\$ 27,518.24
2023	\$ 4,915.91	\$ 19,905.24	\$ -	\$ 1,664.22	\$ 1,017.91	\$ 27,503.27
2024	\$ 5,155.71	\$ 19,641.01	\$ -	\$ 1,639.64	\$ 1,038.27	\$ 27,474.62
2025	\$ 5,395.51	\$ 19,363.89	\$ -	\$ 1,613.86	\$ 1,059.04	\$ 27,432.29
2026	\$ 5,755.21	\$ 19,073.88	\$ -	\$ 1,586.88	\$ 1,080.22	\$ 27,496.19
2027	\$ 6,114.91	\$ 18,764.54	\$ -	\$ 1,558.10	\$ 1,101.82	\$ 27,539.37
2028	\$ 6,354.71	\$ 18,435.86	\$ -	\$ 1,527.53	\$ 1,123.86	\$ 27,441.96
2029	\$ 6,714.41	\$ 18,094.29	\$ -	\$ 1,495.76	\$ 1,146.34	\$ 27,450.80
2030	\$ 7,074.11	\$ 17,733.39	\$ -	\$ 1,462.18	\$ 1,169.26	\$ 27,438.95
2031	\$ 7,553.71	\$ 17,353.16	\$ -	\$ 1,426.81	\$ 1,192.65	\$ 27,526.34
2032	\$ 7,913.42	\$ 16,899.94	\$ -	\$ 1,389.04	\$ 1,216.50	\$ 27,418.90
2033	\$ 8,512.92	\$ 16,425.13	\$ -	\$ 1,349.48	\$ 1,240.83	\$ 27,528.36
2034	\$ 8,992.52	\$ 15,914.36	\$ -	\$ 1,306.91	\$ 1,265.65	\$ 27,479.43
2035	\$ 9,592.02	\$ 15,374.81	\$ -	\$ 1,261.95	\$ 1,290.96	\$ 27,519.74
2036	\$ 10,191.52	\$ 14,799.29	\$ -	\$ 1,213.99	\$ 1,316.78	\$ 27,521.57
2037	\$ 10,791.02	\$ 14,187.79	\$ -	\$ 1,163.03	\$ 1,343.11	\$ 27,484.96
2038	\$ 11,510.42	\$ 13,540.33	\$ -	\$ 1,109.08	\$ 1,369.98	\$ 27,529.81
2039	\$ 12,229.82	\$ 12,849.71	\$ -	\$ 1,051.53	\$ 1,397.38	\$ 27,528.43
2040	\$ 12,949.23	\$ 12,115.92	\$ -	\$ 990.38	\$ 1,425.32	\$ 27,480.84
2041	\$ 13,788.53	\$ 11,338.97	\$ -	\$ 925.63	\$ 1,453.83	\$ 27,506.95
2042	\$ 14,627.83	\$ 10,494.42	\$ -	\$ 856.69	\$ 1,482.91	\$ 27,461.84
2043	\$ 15,587.03	\$ 9,598.46	\$ -	\$ 783.55	\$ 1,512.56	\$ 27,481.61
2044	\$ 16,546.23	\$ 8,643.76	\$ -	\$ 705.61	\$ 1,542.82	\$ 27,438.42
2045	\$ 17,625.33	\$ 7,630.30	\$ -	\$ 622.88	\$ 1,573.67	\$ 27,452.19
2046	\$ 18,824.34	\$ 6,550.75	\$ -	\$ 534.76	\$ 1,605.15	\$ 27,514.99
2047	\$ 20,023.34	\$ 5,397.76	\$ -	\$ 440.63	\$ 1,637.25	\$ 27,498.98
2048	\$ 21,342.24	\$ 4,171.33	\$ -	\$ 340.52	\$ 1,669.99	\$ 27,524.08
2049	\$ 22,661.14	\$ 2,864.12	\$ -	\$ 233.81	\$ 1,703.39	\$ 27,462.46
2050	\$ 24,099.95	\$ 1,476.12	\$ -	\$ 120.50	\$ 1,737.46	\$ 27,434.03
<b>Total</b>	<b>\$ 337,519.16</b>	<b>\$ 412,367.10</b>	<b>\$ (13,493.71)</b>	<b>\$ 33,750.12</b>	<b>\$ 39,691.24</b>	<b>\$ 809,833.90</b>

[a] Interest is calculated at a 5.83% rate for illustration purposes.

[b] Capitalized Interest for Annual Installment due 1/31/20 funds the 9/1/20 interest payment in full.

*Note: The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

## EXHIBIT G-4 – ANNUAL INSTALLMENTS FOR TRACT #3

Installments Due 1/31	Principal	Interest [a]	Capitalized Interest	Additional Interest	Annual Collection Costs	Annual Installment
2020 [b]	\$ -	\$ 28,173.00	\$ (28,173.00)	\$ -	\$ -	\$ -
2021	\$ -	\$ 166,266.89	\$ (83,133.44)	\$ 13,920.58	\$ 8,070.48	\$ 105,124.50
2022	\$ 38,572.13	\$ 166,266.89	\$ -	\$ 13,920.58	\$ 8,231.89	\$ 226,991.48
2023	\$ 40,550.19	\$ 164,193.63	\$ -	\$ 13,727.72	\$ 8,396.52	\$ 226,868.06
2024	\$ 42,528.24	\$ 162,014.06	\$ -	\$ 13,524.97	\$ 8,564.45	\$ 226,631.73
2025	\$ 44,506.30	\$ 159,728.17	\$ -	\$ 13,312.33	\$ 8,735.74	\$ 226,282.54
2026	\$ 47,473.39	\$ 157,335.96	\$ -	\$ 13,089.80	\$ 8,910.46	\$ 226,809.60
2027	\$ 50,440.47	\$ 154,784.26	\$ -	\$ 12,852.43	\$ 9,088.67	\$ 227,165.83
2028	\$ 52,418.53	\$ 152,073.08	\$ -	\$ 12,600.23	\$ 9,270.44	\$ 226,362.28
2029	\$ 55,385.62	\$ 149,255.59	\$ -	\$ 12,338.14	\$ 9,455.85	\$ 226,435.19
2030	\$ 58,352.71	\$ 146,278.61	\$ -	\$ 12,061.21	\$ 9,644.97	\$ 226,337.49
2031	\$ 62,308.82	\$ 143,142.15	\$ -	\$ 11,769.44	\$ 9,837.87	\$ 227,058.28
2032	\$ 65,275.91	\$ 139,403.62	\$ -	\$ 11,457.90	\$ 10,034.62	\$ 226,172.05
2033	\$ 70,221.05	\$ 135,487.07	\$ -	\$ 11,131.52	\$ 10,235.31	\$ 227,074.96
2034	\$ 74,177.17	\$ 131,273.81	\$ -	\$ 10,780.42	\$ 10,440.02	\$ 226,671.41
2035	\$ 79,122.31	\$ 126,823.18	\$ -	\$ 10,409.53	\$ 10,648.82	\$ 227,003.84
2036	\$ 84,067.46	\$ 122,075.84	\$ -	\$ 10,013.92	\$ 10,861.80	\$ 227,019.01
2037	\$ 89,012.60	\$ 117,031.79	\$ -	\$ 9,593.58	\$ 11,079.03	\$ 226,717.01
2038	\$ 94,946.78	\$ 111,691.03	\$ -	\$ 9,148.52	\$ 11,300.61	\$ 227,086.94
2039	\$ 100,880.95	\$ 105,994.23	\$ -	\$ 8,673.78	\$ 11,526.63	\$ 227,075.59
2040	\$ 106,815.12	\$ 99,941.37	\$ -	\$ 8,169.38	\$ 11,757.16	\$ 226,683.03
2041	\$ 113,738.32	\$ 93,532.46	\$ -	\$ 7,635.30	\$ 11,992.30	\$ 226,898.39
2042	\$ 120,661.53	\$ 86,565.99	\$ -	\$ 7,066.61	\$ 12,232.15	\$ 226,526.28
2043	\$ 128,573.76	\$ 79,175.47	\$ -	\$ 6,463.30	\$ 12,476.79	\$ 226,689.33
2044	\$ 136,485.99	\$ 71,300.33	\$ -	\$ 5,820.44	\$ 12,726.33	\$ 226,333.08
2045	\$ 145,387.25	\$ 62,940.57	\$ -	\$ 5,138.01	\$ 12,980.85	\$ 226,446.67
2046	\$ 155,277.54	\$ 54,035.59	\$ -	\$ 4,411.07	\$ 13,240.47	\$ 226,964.67
2047	\$ 165,167.83	\$ 44,524.85	\$ -	\$ 3,634.68	\$ 13,505.28	\$ 226,832.64
2048	\$ 176,047.15	\$ 34,408.32	\$ -	\$ 2,808.84	\$ 13,775.39	\$ 227,039.69
2049	\$ 186,926.46	\$ 23,625.43	\$ -	\$ 1,928.61	\$ 14,050.89	\$ 226,531.39
2050	\$ 198,794.81	\$ 12,176.18	\$ -	\$ 993.97	\$ 14,331.91	\$ 226,296.88
<b>Total</b>	<b>\$ 2,784,116.37</b>	<b>\$ 3,401,519.44</b>	<b>\$ (111,306.44)</b>	<b>\$ 278,396.80</b>	<b>\$ 327,403.70</b>	<b>\$ 6,680,129.87</b>

[a] Interest is calculated at a 5.83% rate for illustration purposes.

[b] Capitalized Interest for Annual Installment due 1/31/20 funds the 9/1/20 interest payment in full.

*Note: The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

## EXHIBIT G-5 – ANNUAL INSTALLMENTS FOR TRACT #4

Installments Due 1/31	Principal	Interest [a]	Capitalized Interest	Additional Interest	Annual Collection Costs	Annual Installment
2020 [b]	\$ -	\$ 77,637.56	\$ (77,637.56)	\$ -	\$ -	\$ -
2021	\$ -	\$ 458,188.89	\$ (229,094.45)	\$ 38,361.55	\$ 22,240.16	\$ 289,696.16
2022	\$ 106,294.89	\$ 458,188.89	\$ -	\$ 38,361.55	\$ 22,684.96	\$ 625,530.30
2023	\$ 111,745.91	\$ 452,475.53	\$ -	\$ 37,830.08	\$ 23,138.66	\$ 625,190.18
2024	\$ 117,196.93	\$ 446,469.20	\$ -	\$ 37,271.35	\$ 23,601.44	\$ 624,538.91
2025	\$ 122,647.95	\$ 440,169.86	\$ -	\$ 36,685.36	\$ 24,073.47	\$ 623,576.63
2026	\$ 130,824.48	\$ 433,577.54	\$ -	\$ 36,072.12	\$ 24,554.94	\$ 625,029.07
2027	\$ 139,001.01	\$ 426,545.72	\$ -	\$ 35,418.00	\$ 25,046.03	\$ 626,010.76
2028	\$ 144,452.03	\$ 419,074.41	\$ -	\$ 34,723.00	\$ 25,546.95	\$ 623,796.39
2029	\$ 152,628.56	\$ 411,310.12	\$ -	\$ 34,000.74	\$ 26,057.89	\$ 623,997.31
2030	\$ 160,805.09	\$ 403,106.33	\$ -	\$ 33,237.59	\$ 26,579.05	\$ 623,728.07
2031	\$ 171,707.13	\$ 394,463.06	\$ -	\$ 32,433.57	\$ 27,110.63	\$ 625,714.38
2032	\$ 179,883.66	\$ 384,160.63	\$ -	\$ 31,575.03	\$ 27,652.85	\$ 623,272.16
2033	\$ 193,511.21	\$ 373,367.61	\$ -	\$ 30,675.61	\$ 28,205.90	\$ 625,760.33
2034	\$ 204,413.25	\$ 361,756.94	\$ -	\$ 29,708.06	\$ 28,770.02	\$ 624,648.26
2035	\$ 218,040.80	\$ 349,492.14	\$ -	\$ 28,685.99	\$ 29,345.42	\$ 625,564.35
2036	\$ 231,668.35	\$ 336,409.69	\$ -	\$ 27,595.79	\$ 29,932.33	\$ 625,606.16
2037	\$ 245,295.90	\$ 322,509.59	\$ -	\$ 26,437.45	\$ 30,530.98	\$ 624,773.91
2038	\$ 261,648.96	\$ 307,791.84	\$ -	\$ 25,210.97	\$ 31,141.59	\$ 625,793.36
2039	\$ 278,002.02	\$ 292,092.90	\$ -	\$ 23,902.72	\$ 31,764.43	\$ 625,762.07
2040	\$ 294,355.07	\$ 275,412.78	\$ -	\$ 22,512.71	\$ 32,399.72	\$ 624,680.28
2041	\$ 313,433.64	\$ 257,751.48	\$ -	\$ 21,040.94	\$ 33,047.71	\$ 625,273.77
2042	\$ 332,512.21	\$ 238,553.67	\$ -	\$ 19,473.77	\$ 33,708.66	\$ 624,248.32
2043	\$ 354,316.29	\$ 218,187.30	\$ -	\$ 17,811.21	\$ 34,382.84	\$ 624,697.64
2044	\$ 376,120.37	\$ 196,485.42	\$ -	\$ 16,039.63	\$ 35,070.49	\$ 623,715.92
2045	\$ 400,649.96	\$ 173,448.05	\$ -	\$ 14,159.02	\$ 35,771.90	\$ 624,028.94
2046	\$ 427,905.06	\$ 148,908.24	\$ -	\$ 12,155.77	\$ 36,487.34	\$ 625,456.41
2047	\$ 455,160.16	\$ 122,699.06	\$ -	\$ 10,016.25	\$ 37,217.09	\$ 625,092.56
2048	\$ 485,140.77	\$ 94,820.49	\$ -	\$ 7,740.45	\$ 37,961.43	\$ 625,663.14
2049	\$ 515,121.38	\$ 65,105.62	\$ -	\$ 5,314.74	\$ 38,720.66	\$ 624,262.40
2050	\$ 547,827.50	\$ 33,554.44	\$ -	\$ 2,739.14	\$ 39,495.07	\$ 623,616.15
<b>Total</b>	<b>\$ 7,672,310.51</b>	<b>\$ 9,373,714.99</b>	<b>\$ (306,732.01)</b>	<b>\$ 767,190.17</b>	<b>\$ 902,240.62</b>	<b>\$ 18,408,724.29</b>

[a] Interest is calculated at a 5.83% rate for illustration purposes.

[b] Capitalized Interest for Annual Installment due 1/31/20 funds the 9/1/20 interest payment in full.

*Note: The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

## EXHIBIT G-6 – ANNUAL INSTALLMENTS FOR TRACT #5

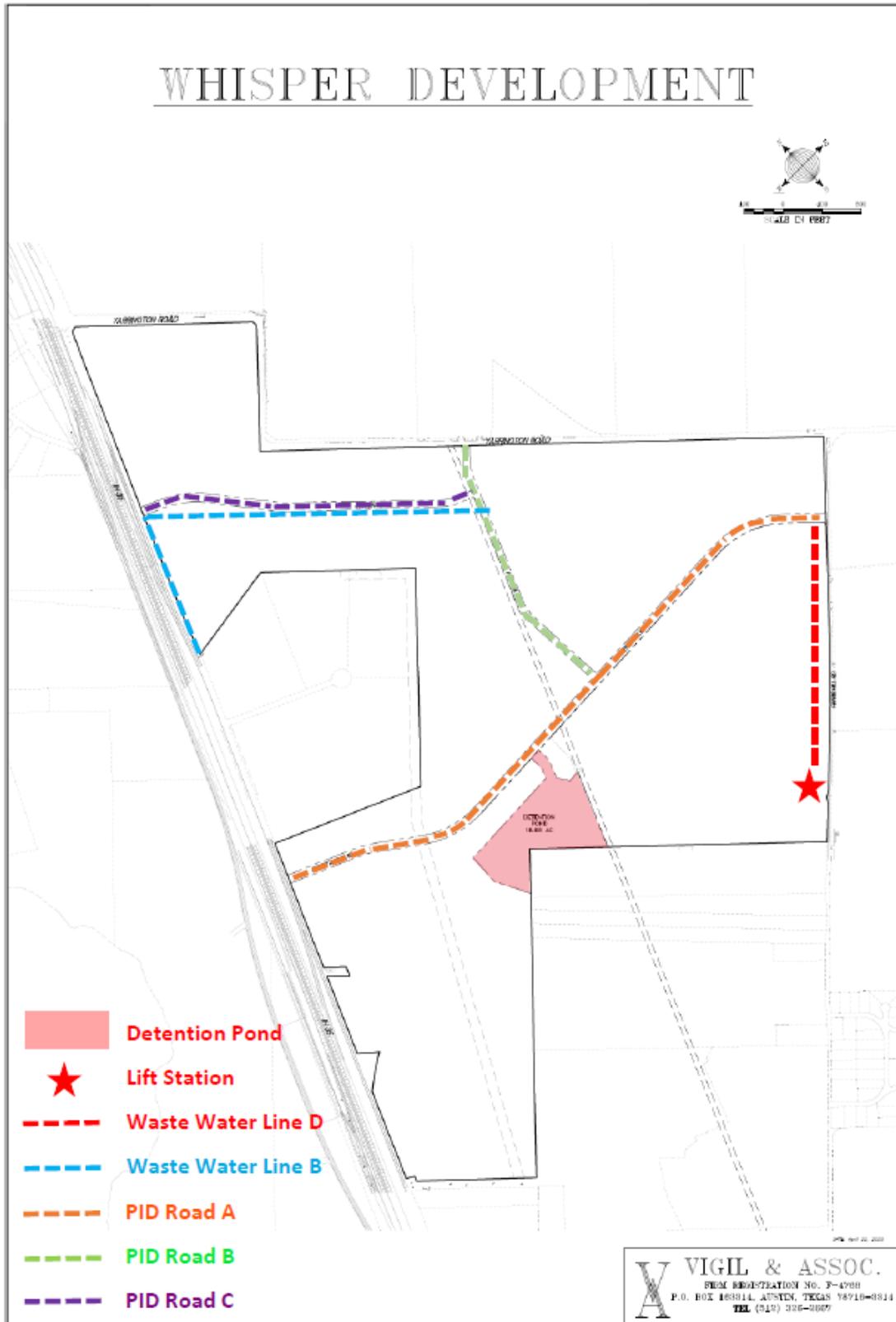
Installments Due 1/31	Principal	Interest [a]	Capitalized Interest	Additional Interest	Annual Collection Costs	Annual Installment
2020 [b]	\$ -	\$ 12,118.76	\$ (12,118.76)	\$ -	\$ -	\$ -
2021	\$ -	\$ 71,520.58	\$ (35,760.29)	\$ 5,988.01	\$ 3,471.56	\$ 45,219.86
2022	\$ 16,592.00	\$ 71,520.58	\$ -	\$ 5,988.01	\$ 3,540.99	\$ 97,641.58
2023	\$ 17,442.88	\$ 70,628.76	\$ -	\$ 5,905.05	\$ 3,611.81	\$ 97,588.50
2024	\$ 18,293.75	\$ 69,691.20	\$ -	\$ 5,817.84	\$ 3,684.04	\$ 97,486.84
2025	\$ 19,144.62	\$ 68,707.91	\$ -	\$ 5,726.37	\$ 3,757.73	\$ 97,336.63
2026	\$ 20,420.93	\$ 67,678.89	\$ -	\$ 5,630.65	\$ 3,832.88	\$ 97,563.35
2027	\$ 21,697.24	\$ 66,581.27	\$ -	\$ 5,528.54	\$ 3,909.54	\$ 97,716.58
2028	\$ 22,548.11	\$ 65,415.04	\$ -	\$ 5,420.05	\$ 3,987.73	\$ 97,370.93
2029	\$ 23,824.42	\$ 64,203.08	\$ -	\$ 5,307.31	\$ 4,067.48	\$ 97,402.29
2030	\$ 25,100.72	\$ 62,922.52	\$ -	\$ 5,188.19	\$ 4,148.83	\$ 97,360.27
2031	\$ 26,802.47	\$ 61,573.35	\$ -	\$ 5,062.69	\$ 4,231.81	\$ 97,670.32
2032	\$ 28,078.78	\$ 59,965.21	\$ -	\$ 4,928.68	\$ 4,316.45	\$ 97,289.10
2033	\$ 30,205.96	\$ 58,280.48	\$ -	\$ 4,788.28	\$ 4,402.77	\$ 97,677.49
2034	\$ 31,907.70	\$ 56,468.12	\$ -	\$ 4,637.25	\$ 4,490.83	\$ 97,503.90
2035	\$ 34,034.88	\$ 54,553.66	\$ -	\$ 4,477.71	\$ 4,580.65	\$ 97,646.90
2036	\$ 36,162.06	\$ 52,511.57	\$ -	\$ 4,307.54	\$ 4,672.26	\$ 97,653.43
2037	\$ 38,289.24	\$ 50,341.84	\$ -	\$ 4,126.73	\$ 4,765.70	\$ 97,523.52
2038	\$ 40,841.86	\$ 48,044.49	\$ -	\$ 3,935.28	\$ 4,861.02	\$ 97,682.65
2039	\$ 43,394.47	\$ 45,593.98	\$ -	\$ 3,731.07	\$ 4,958.24	\$ 97,677.76
2040	\$ 45,947.09	\$ 42,990.31	\$ -	\$ 3,514.10	\$ 5,057.40	\$ 97,508.90
2041	\$ 48,925.14	\$ 40,233.48	\$ -	\$ 3,284.37	\$ 5,158.55	\$ 97,601.54
2042	\$ 51,903.19	\$ 37,236.82	\$ -	\$ 3,039.74	\$ 5,261.72	\$ 97,441.48
2043	\$ 55,306.68	\$ 34,057.75	\$ -	\$ 2,780.22	\$ 5,366.96	\$ 97,511.61
2044	\$ 58,710.17	\$ 30,670.21	\$ -	\$ 2,503.69	\$ 5,474.30	\$ 97,358.37
2045	\$ 62,539.09	\$ 27,074.22	\$ -	\$ 2,210.14	\$ 5,583.78	\$ 97,407.23
2046	\$ 66,793.45	\$ 23,243.70	\$ -	\$ 1,897.44	\$ 5,695.46	\$ 97,630.05
2047	\$ 71,047.81	\$ 19,152.60	\$ -	\$ 1,563.48	\$ 5,809.37	\$ 97,573.26
2048	\$ 75,727.61	\$ 14,800.92	\$ -	\$ 1,208.24	\$ 5,925.56	\$ 97,662.32
2049	\$ 80,407.41	\$ 10,162.60	\$ -	\$ 829.60	\$ 6,044.07	\$ 97,443.67
2050	\$ 85,512.64	\$ 5,237.65	\$ -	\$ 427.56	\$ 6,164.95	\$ 97,342.80
<b>Total</b>	<b>\$ 1,197,602.36</b>	<b>\$ 1,463,181.55</b>	<b>\$ (47,879.05)</b>	<b>\$ 119,753.85</b>	<b>\$ 140,834.43</b>	<b>\$ 2,873,493.13</b>

[a] Interest is calculated at a 5.83% rate for illustration purposes.

[b] Capitalized Interest for Annual Installment due 1/31/20 funds the 9/1/20 interest payment in full.

*Note: The figures shown above are estimates only and subject to change in Annual Service Plan Updates. Changes in Annual Collection Costs, reserve fund requirements, interest earnings, or other available offsets could increase or decrease the amounts shown.*

# EXHIBIT H – MAP OF MAJOR IMPROVEMENTS



## EXHIBIT I – LAND USE MATRIX

Parcel	Lot Description	Acreage [a]	Units/SF	AV Per Unit/SF	Total Assessed Value
<b>TRACT #1</b>					
1	Retail/Commercial	69.393	500,000	\$ 125	\$ 62,500,000
2	Retail/Commercial	46.293	375,000	\$ 100	\$ 37,500,000
<b>TRACT #2</b>					
3B	Business Park	16.560	180,000	\$ 90	\$ 16,200,000
<b>TRACT #3</b>					
6	Single Family	130.641	581	\$ 230,000	\$ 133,630,000
<b>TRACT #4 [b]</b>					
3A	Business Park	121.280	950,000	\$ 90	\$ 85,500,000
4A	Commercial	81.993	300,000	\$ 110	\$ 33,000,000
4B	Office	49.290	375,000	\$ 150	\$ 56,250,000
4C	Multi-Family	32.900	1,300	\$ 85,000	\$ 110,500,000
5	Mixed Use	33.370	110,000	\$ 100	\$ 11,000,000
7A	Business Park	72.660	800,000	\$ 90	\$ 72,000,000
<b>TRACT #5</b>					
7B	Business Park	51.969	638,685	\$ 90	\$ 57,481,650
<b>Total</b>		<b>706.349</b>			<b>\$ 675,561,650</b>

Footnotes:

[a] Acres shown are rounded. Actual acreages per Tract are shown in Exhibits A-2, A-3, A-4, A-5 and A-6.

[b] Approximately 20 acres within Parcel 4 of Tract #4 is planned to be used as a detention pond. Such 20 acres of land is Non-Benefitted Property and is not subject to an Assessment.

**EXHIBIT J – NOTICE OF PID ASSESSMENT TERMINATION**



P3Works, LLC  
9284 Huntington Square, Suite 100  
North Richland Hills, TX 76182

---

[Date]  
Hays County Clerk's Office  
Honorable [County Clerk Name]  
Hays County  
712 S. Stagecoach Trail  
San Marcos, TX 78666

**Re: City of San Marcos Lien Release documents for filing**

Dear Ms./Mr. [County Clerk Name],

Enclosed is a lien release that the City of San Marcos is requesting to be filed in your office. Lien release for [insert legal description]. Recording Numbers: [Plat]. Please forward copies of the filed documents below:

City of San Marcos  
Attn: [City Secretary]  
630 E. Hopkins  
San Marcos, TX 78666

Please contact me if you have any questions or need additional information.

Sincerely,  
[Signature]

P3Works, LLC  
P: (817)393-0353  
admin@p3-works.com







## Legislation Text

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**File #:** Res. 2020-106R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-106R, rejecting the sole bid received in response to an invitation for bids (IFB No. 220-163) from MA Smith Contracting Company, Inc. for the Guadalupe Street Improvements Project; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** Engineering & CIP, Laurie Moyer, 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:** Guadalupe Street Improvements

**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 - Multimodal transportation network to improve accessibility and mobility, minimize congestion and reduce pollution

Core Services

Not Applicable

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

Transportation Master Plan

**Background Information:**

Council action is requested to reject the sole bid from MA Smith Contracting Company, Inc. on the Guadalupe Street Improvements project. The bid, in the amount of \$2,415,446.55, is significantly higher than the estimated construction cost of \$1.2million. The City has decided to reject this bid, pursuant to conditions of the bidding and contract documents, Invitation for Bids, Section 8 and Instructions to Bidders, Section 8.

Analyzing the complexity of this project, Engineering & CIP has decided to split Guadalupe Street Improvements project into three sub-projects. The smaller projects will allow some work to be completed in house and may open work for smaller contractors. The new projects will be:

- **Project 1: Guadalupe St Improvements Bike Lane Pavement Markings & Median Islands** - This project includes bike lane striping, delineators and concrete median islands and will be constructed in-house by the City's public works division (using IDIQ concrete contractor and pavement marking crew). No bidding will be required to complete these tasks.  
Construction: January - March 2021
- **Project 2: Guadalupe St Improvements Bike Lane Signals** - This project includes bike signals required for proposed bike lanes and will go out for bidding to hire an external contractor  
Proposed Bidding: May - August 2020  
Construction: September - October 2020
- **Project 3: Guadalupe St Pedestrian Improvements** - This project includes sidewalk along Guadalupe St between MLK and Railroad Tracks, landscaping & irrigation, electric infrastructure and pedestrian lighting; and will go out for bidding to hire an external contractor  
Proposed Bidding: May - August 2020  
Construction: September - January 2021

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

NA

**Alternatives:**

NA

**Recommendation:**

Staff recommends approval of this Resolution

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS REJECTING THE SOLE BID RECEIVED IN RESPONSE TO AN INVITATION FOR BIDS (IFB NO. 220-163) FROM MA SMITH CONTRACTING COMPANY, INC. FOR THE GUADALUPE STREET IMPROVEMENTS PROJECT; AND DECLARING AN EFFECTIVE DATE.**

**RECITALS:**

**1.** The City received one bid in response to an Invitation for Bids (IFB No. 220-163) for the Guadalupe Street Improvements Project (the “Project”) from MA Smith Contracting Company, Inc.

**2.** After review of the bid, the City determined that the bid exceeds the current amount budgeted for the Project and that proceeding with an award of a construction contract for the Project at this time is not in the City’s best interest.

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

**PART 1.** The sole bid received in response to IFB No. 220-163 for the Guadalupe Street Improvements Project is rejected.

**PART 2.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

## MAILING LABEL

Cut along the outer border and affix this label to your outermost sealed bid envelope to identify it as a "Sealed Bid".

### SEALED BID • DO NOT OPEN

SEALED BID NO.: 220-163

BID TITLE: S. Guadalupe Street Improvements

DUE DATE/TIME: ~~March 19, 2020~~ prior to 2:00 PM (Local Time)

April 7, 2020

SUBMITTED BY: MA Smith Contracting Co LLC

(Name of Bidder)

Austin, TX  
(City/State of Bidder)

**DELIVER TO:**

City of San Marcos  
Office of the Purchasing Manager  
Building 4 (Behind the Municipal Bldg)  
630 East Hopkins Street  
San Marcos, Texas 78666



**BID FORM**  
(UNIT PRICE)

The undersigned, in compliance with the Invitation for Bid and Instructions to Bidders for **S. Guadalupe Street Improvements 220-163**, for the City of San Marcos, having examined the Project Manual, Drawings and Addenda, the site of the proposed Work, and being familiar with all of the conditions surrounding construction of the proposed Project, having conducted all inquiries, tests, and investigations deemed necessary and proper; hereby proposes to furnish all labor, permits, material, machinery, tools, supplies, equipment, and incidentals, and to perform all Work required for construction of the Project in accordance with the Project Manual, Drawings, and Addenda within the time indicated.

The Bidder will enter the line item subtotal in the "Unit Total" column on the Bid Schedule, which is the product of the "Estimated Quantity" multiplied by the "Unit Price". Any mathematical errors will be corrected for the purpose of determining the correct Unit Total to be entered in the Bid Schedule. The Unit Total, including any corrected Unit Prices, will then be totaled to determine the actual amount of the Bid. The items listed in the Bid Schedule are the items of work that will be measured for payment.

Bidder agrees to perform all other items specified in the technical specifications and in these Bidding and Contract Documents, all work incidental to the specified items, and all work which may be reasonably inferred from the Contract Documents for the construction of the completed Project at no additional cost to the Owner. The following items of work are required to be performed but will not be measured for payment:

- 1) None Listed.

The Owner reserves the right to reject any and all bids, and may reject a bid if a bidder does not acknowledge receipt of all addenda issued by the Owner.

The Bidder offers to construct the Project in accordance with the Contract Documents for the contract price and to finally complete and achieve final acceptance (when fully completed and finished to the satisfaction of the Owner) of the Project by the date defined in the Project Schedule on page PS-1 incorporated here by reference. The Bidder understands and accepts the provisions of the Contract Documents relating to liquidated damages if the Project is not completed on time in accordance with the Supplementary Conditions.

In submitting this bid, Bidder represents to the Owner and Engineer that it:

- 1) Fully recognizes the time required for the completion of this Project, and is taking into consideration all factors including, but not limited to, the character of work involved in the Project, the nature of the Project site, the potential for weather-related impacts on the construction schedule, and market conditions related to materials and equipment to be used in the Project.
- 2) Has examined, read, and understands the Contract Documents;

## Bid Schedule

**Project: S. Guadalupe Street (SL 82) Improvements #220-163**

Submitted by: MA Smith Contracting Co., Inc

(Contractor)

Date: 4/2/2020

(Note: Legibly print or write unit and lump sum prices for each item in this bid.):

Item No.	Spec Reference	Unit Description	Bid Quantity	Unit Measure	Unit Price	Unit Total
1	100-6002	PREPARING RIGHT OF WAY	67	STA	\$ 5,000.00	\$ 335,000.00
2	104-6015	REMOVING CONC (SIDEWALKS)	26	SY	\$ 35.00	\$ 910.00
3	104-6017	REMOVING CONC (DRIVEWAYS)	131	SY	\$ 40.00	\$ 5,240.00
4	104-6021	REMOVING CONC (CURB)	29	LF	\$ 20.00	\$ 580.00
5	105-6011	REMOVING STAB BASE AND ASPH PAV (2"-6")	465	SY	\$ 30.00	\$ 13,950.00
6	162-6002	BLOCK SODDING	24	SY	\$ 27.00	\$ 648.00
7	170-6001	IRRIGATION SYSTEMS	1	LS	\$ 30,000.00	\$ 30,000.00
8	193-6001 COSM-1	PLANT MAINTENANCE	12	MO	\$ 184.00	\$ 2,208.00
9	193-6007 COSM-2	IRRIGATION SYSTEM OPERATION AND MAINTENANCE	12	MO	\$ 257.00	\$ 3,084.00
10	193-6011 COSM-3	TREE WELL SOIL CELLS	9	EA	\$ 7,500.00	\$ 67,500.00
11	401-6001	FLOWABLE BACKFILL	100	CY	\$ 160.00	\$ 16,000.00
12	416-6002	DRILL SHAFT (24 IN)	17.1	LF	\$ 490.00	\$ 8,379.00
13	500-6001	MOBILIZATION	1	LS	\$ 200,000.00	\$ 200,000.00
14	502-6001	BARRICADES, SIGNS AND TRAFFIC HANDLING	6	MO	\$ 6,000.00	\$ 36,000.00
15	529-6001	CONC CURB (TY 1)	31	LF	\$ 100.00	\$ 3,100.00
16	529-6005	CONC CURB MONO (TY II)	801	LF	\$ 35.00	\$ 28,035.00
17	529-6008	CONC CURB & GUTTER (TY II)	69	LF	\$ 50.00	\$ 3,450.00
18	531-6002	CONC SIDEWALKS (5")	6	sy	\$ 200.00	\$ 1,200.00
19	531-6003	CONC SIDEWALKS (6")	448	SY	\$ 60.00	\$ 26,880.00
20	531-6006	CURB RAMPS (TY 3)	2	EA	\$ 2,000.00	\$ 4,000.00
21	618-6033	CONDT (PVC) (SCH 40) (4")	2300	LF	\$ 45.00	\$ 103,500.00
22	618-6037	CONDT (PVC) (SCH 40) (6")	2760	LF	\$ 56.00	\$ 154,560.00
23	618-6040	CONDT (PVC)(SCH 80) (1")	1452	LF	\$ 6.00	\$ 8,712.00
24	618-6047	CONDT (PVC)(SCH 80) (2") (BORE)	60	LF	\$ 88.00	\$ 5,280.00
25	618-6053	CONDT (PVC) (SCH 80) (3")	1400	LF	\$ 260.00	\$ 364,000.00
26	620-6007	ELEC CONDR (NO.8) BARE	745	LF	\$ 10.00	\$ 7,450.00
27	624-6001	GROUND BOX TY A	12	EA	\$ 4,400.00	\$ 52,800.00
28	636-6001	ALUMINUM SIGNS (TY A)	70.5	SF	\$ 123.00	\$ 8,671.50
29	644-6001	IN SM RD SN SUP&AM TY 10BWG(1)SA(P)	75	EA	\$ 850.00	\$ 63,750.00

## Bid Schedule

Project: S. Guadalupe Street (SL 82) Improvements #220-163

Submitted by: MA Smith Contracting Co., Inc

(Contractor)

Date: 4/2/2020

(Note: Legibly print or write unit and lump sum prices for each item in this bid.):

Item No.	Spec Reference	Unit Description	Bid Quantity	Unit Measure	Unit Price	Unit Total
30	644 6068	RELOCATE SM RD SN SUP&AM TY 10 BWG	13	EA	\$ 600.00	\$ 7,800.00
31	644 6076	REMOVE SM RD SN SUP & AM	7	EA	\$ 300.00	\$ 2,100.00
32	658-COSM-1	GREEN VERTICAL DELINEATORS	313	EA	\$ 262.00	\$ 82,006.00
33	658-COSM-2	CYCLE LANE SEPERATORS	177	EA	\$ 166.00	\$ 29,382.00
34	666-6003	REFL PAV MRK TY I (W) 4" (BRK) (100 MIL)	1376	LF	\$ 0.75	\$ 1,032.00
35	666-6009	REFL PAV MRK TY I (W) 4" (LNDR) (100MIL)	343	LF	\$ 0.75	\$ 257.25
36	666-6012	REFL PAV MRK TY I (W) 4" (SLD) (100MIL)	3248	LF	\$ 0.58	\$ 1,883.84
37	666-6033	REFL PAV MRK TY I (W) 8" (LNDR) (100MIL)	4475	LF	\$ 0.92	\$ 4,117.00
38	666-6036	REFL PAV MRK TY I (W) 8" (SLD) (100MIL)	7080	LF	\$ 0.92	\$ 6,513.60
39	666-6048	REFL PAV MRK TY I (W) 24" (SLD) (100MIL)	2375	LF	\$ 6.00	\$ 14,250.00
40	666-6054	REFL PAV MRK TY I (W) (ARROW) (100MIL)	10	EA	\$ 125.00	\$ 1,250.00
41	666-6078	REFL PAV MRK TY I (W) (WORD) (100MIL)	18	EA	\$ 155.00	\$ 2,790.00
42	666-6093	REFL PAV MRK TY I (W) (RR XING) (100MIL)	4	EA	\$ 580.00	\$ 2,320.00
43	666-6105	REFL PAV MRK TY I (W) (BIKE ARW) (100MIL)	48	EA	\$ 125.00	\$ 6,000.00
44	666-6108	REFL PAV MRK TY I (W) BIKE RR XING (100MIL)	8	EA	\$ 550.00	\$ 4,400.00
45	666-6111	REFL PAV MRK TY I (W) (BIKE SYML) (100MIL)	50	EA	\$ 306.00	\$ 15,300.00
46	666-6120	REFL PAV MRK TY I (Y) 4" (BRK) (100MIL)	2637	LF	\$ 0.75	\$ 1,977.75
47	666-6126	REFL PAV MRK TY I (Y) 4" (SLD) (100MIL)	1593	LF	\$ 0.58	\$ 923.94
48	666-6138	REFL PAV MRK TY I (Y) 8" (SLD) (100MIL)	149	LF	\$ 1.25	\$ 186.25
49	666-COSM-1	GREEN REFLECTORIZED TYPE 1 THERMO	10039	SF	\$ 15.00	\$ 150,585.00
50	666-COSM-2	SHARROWS / CHEVRONS (PAINT 4" (W))	176	EA	\$ 115.00	\$ 20,240.00
51	668-6056	PRE PM TY B(ACC PRK) (BL&WH) (W/BORDR)SM	4	EA	\$ 390.00	\$ 1,560.00
52	672-6007	REFL PAV MRKR TY I-C	8	EA	\$ 24.00	\$ 192.00
53	672-6009	REFL PAV MRKR TY II-A-A	147	EA	\$ 7.25	\$ 1,065.75
54	672-6010	REFL PAV MRKR TY II-C-R	36	EA	\$ 14.00	\$ 504.00
55	677-6001	ELIM EXT PAV MRK & MRKS (4")	4466	LF	\$ 0.80	\$ 3,572.80
56	677-6003	ELIM EXT PAV MRK & MRKS (8")	1354	LF	\$ 1.95	\$ 2,640.30
57	677-6005	ELIM EXT PAV MRK & MRKS (12")	599	LF	\$ 2.90	\$ 1,737.10
58	677-6007	ELIM EXT PAV MRK & MRKS (24")	884	LF	\$ 5.00	\$ 4,420.00

## Bid Schedule

**Project: S. Guadalupe Street (SL 82) Improvements #220-163**

Submitted by: MA Smith Contracting Co., Inc

(Contractor)

Date: 4/2/2020

(Note: Legibly print or write unit and lump sum prices for each item in this bid.):

Item No.	Spec Reference	Unit Description	Bid Quantity	Unit Measure	Unit Price	Unit Total
59	677-6008	ELIM EXT PAV MRK & MRKS (ARROW)	8	EA	\$ 110.00	\$ 880.00
60	677-6012	ELIM EXT PAV MRK & MRKS (WORD)	7	EA	\$ 140.00	\$ 980.00
61	677-6016	ELIM EXT PAV MRK & MRKS (RR XING)	6	EA	\$ 510.00	\$ 3,060.00
62	677-6021	ELIM EXT PAV MRK & MRKS (JIGGLE)	124	EA	\$ 7.00	\$ 868.00
63	678-6001	PAV SURF PREP FOR MRK (4")	4483	LF	\$ 0.19	\$ 851.77
64	678-6004	PAV SURF PREP FOR MRK (8")	7505	LF	\$ 0.35	\$ 2,626.75
65	678-6008	PAV SURF PREP FOR MRK (24")	2303	LF	\$ 1.15	\$ 2,648.45
66	678-6009	PAV SURF PREP FOR MRK (ARROW)	8	EA	\$ 40.00	\$ 320.00
67	678-6016	PAV SURF PREP FOR MRK (WORD)	14	EA	\$ 49.00	\$ 686.00
68	678-6020	PAV SURF PREP FOR MRK (RR XING)	10	EA	\$ 80.00	\$ 800.00
69	678-6026	PAV SURF PREP FOR MRK (BIKE ARROW)	23	EA	\$ 40.00	\$ 920.00
70	678-6028	PAV SURF PREP FOR MRK (BIKE SYMBOL)	25	EA	\$ 49.00	\$ 1,225.00
71	682-COSM-1	VEH SIG SEC (8") LED (GRN W/ BIKE SYMBOL)	10	EA	\$ 730.00	\$ 7,300.00
72	682-COSM-2	VEH SIG SEC (8") LED (YEL W/ BIKE SYMBOL)	10	EA	\$ 736.00	\$ 7,360.00
73	682-COSM-3	VEH SIG SEC (8") LED (RED W/ BIKE SYMBOL)	10	EA	\$ 736.00	\$ 7,360.00
74	682-COSM-4	BACK PLATE (8") (3 SEC)	10	EA	\$ 245.00	\$ 2,450.00
75	684-6010	TRF SIG CBL (TY A) (12 AWG) (5 CONDR)	905	LF	\$ 13.50	\$ 12,217.50
76	687-6001	PED POLE ASSEMBLY	3	EA	\$ 16,000.00	\$ 48,000.00
77	COSM-414S-C	CONCRETE RETAINING WALLS	14	CY	\$ 1,500.00	\$ 21,000.00
78	COSM 433S-A	TYPE I P.C. CONCRETE DRIVEWAY	753	SF	\$ 20.00	\$ 15,060.00
79	COSM-434S	PC CONCRETE MEDIANS AND ISLANDS	1395	SF	\$ 30.00	\$ 41,850.00
80	COSM-437S-B	TREE GRATES AND FRAMES	9	EA	\$ 5,000.00	\$ 45,000.00
81	COSM-439S	PARKING LOT BUMPER CURBS "WHEEL STOPS"	18	EA	\$ 110.00	\$ 1,980.00
82	COSM 485S	CONCRETE PAVER UNITS FOR SIDEWALK RAMPS	146	SF	\$ 100.00	\$ 14,600.00
83	COSM-508S-1	MISC. STRUCTURES - CONCRETE VAULT SMEU	1	EA	\$ 40,000.00	\$ 40,000.00
84	COSM-508S-2	MISC. STRUCTURES - SMEU TRANSFORMER PAD	1	EA	\$ 20,000.00	\$ 20,000.00
85	COSM-510o-1	1" WATER LINE TAP	1	EA	\$ 1,100.00	\$ 1,100.00
86	COSM-510o-2	1" WATER METER	1	EA	\$ 5,000.00	\$ 5,000.00
87	COSM-551o	PIPE UNDERDRAINS TYPE 11, 4 IN SCH 40	451	LF	\$ 25.00	\$ 11,275.00

## Bid Schedule

Project: S. Guadalupe Street (SL 82) Improvements #220-163

Submitted by: MA Smith Contracting Co., Inc

(Contractor)

Date: 4/2/2020

(Note: Legibly print or write unit and lump sum prices for each item in this bid.):

Item No.	Spec Reference	Unit Description	Bid Quantity	Unit Measure	Unit Price	Unit Total
88	COSM 608S	PLANTING TYPE MEXICAN WHITE OAK, SIZE 3"	9	EA	\$ 1,000.00	\$ 9,000.00
89	COSM 642S-1-SM	SILT FENCE	27	LF	\$ 10.00	\$ 270.00
90	COSM-648S	8" MULCH SOCK	611	LF	\$ 14.00	\$ 8,554.00
91	COSM 866S-4	JIGGLE BAR TILE	1044	EA	\$ 40.00	\$ 41,760.00
92	COSM 16120S-1	WIRING - PEDESTRIAN LIGHTING	10	EA	\$ 465.00	\$ 4,650.00
93	COSM 16120S-2	WIRING - IRRIGATION CONTROLLER	1	EA	\$ 250.00	\$ 250.00
94	COSM 16120S-3	WIRING - RECEPTACLE AT TREE WELLS	9	EA	\$ 850.00	\$ 7,650.00
95	COSM 16120S-4	ELECTRICAL PEDESTAL PAD	1	EA	\$ 61,000.00	\$ 61,000.00
96	COSM 16550S-1	STREET LIGHT STANDARD FOUNDATION	10	EA	\$ 1,500.00	\$ 15,000.00
97	COSM 16550S-2	PEDESTRIAN LIGHT ASSEMBLY (INSTALLATION ONLY)	10	EA	\$ 400.00	\$ 4,000.00
98	COSM 17000	UPRR RIGHT OF ENTRY AGREEMENT	1	LS	\$ 20,000.00	\$ 20,000.00
<b>TOTAL =</b>						<b>\$ 2,415,446.55</b>

TOTAL BID PRICE (WORDS): Two million Four Hundred Fifteen Four  
Hundred Forty Six dollars and Fifty Five Cents

- 3) Is familiar with the Project area and site, and all local, state, and federal laws and regulations that in any manner may affect cost, progress, or performance of the work;
- 4) Has made and studied the results of examinations, investigations, and tests of subsurface and latent physical conditions which may affect the cost, progress, or performance of the work that the bidder considers necessary to assure construction of the Project at the contract price within the contract time and in accordance with the Contract Documents, and no additional examinations, investigations, tests, reports, or similar information will be required by the bidder for these purposes;
- 5) Has reviewed all information in the Contract Documents with respect to existing underground facilities at or near the Project site, and the bidder assumes responsibility for the exact nature and location of these underground facilities; and no additional examinations, investigations, tests, reports, or similar information will be required by the bidder in order to construct the Project at the contract price within the contract time and in accordance with the Contract Documents, including Section 3.04 of the General Conditions;
- 6) Has correlated the results of all such observations, examinations, investigations, tests, reports, and studies with the terms and conditions of the Contract Documents; and
- 7) Has given the Owner written notice of all conflicts, omissions, errors, or discrepancies discovered in the contract documents and the written response or resolution of the issue by Owner is acceptable to the Bidder.
- 8) Is a duly qualified, capable, and bondable business entity, that it is not in or contemplating bankruptcy or receivership, and that it is not currently delinquent with respect to payment of taxes assessed by any political subdivision.

The Bidder certifies that it is familiar with the statutory obligation to provide workers' compensation insurance coverage for all employees engaged in work on the Project, and that, if awarded the contract, the bidder will ensure that this coverage is maintained in full force and effect for all of its employees and for all employees of subcontractors engaged in work on this Project, and will provide certificates of insurance for all coverages to the Owner.

The Bidder acknowledges receipt of the following addenda:

Addenda No. 1	Addenda No. 3
Addenda No. 2	Addenda No. 4

Bidder encloses with this bid, all documents listed in **Instructions To Bidders, Article 1, Introduction.**

The Bidder certifies that the bid prices contained in this bid have been carefully checked and are submitted as correct and final.

By my signature attached hereto, I acknowledge that time is of the essence and that the Owner will be damaged if the Project is not completed on time in accordance with the Contract Documents.

MA Smith Contracting Co Inc.

Printed Name of Bidder

By:   
Signature

4.1.2020  
Date

Travis Rayland  
Printed Name

Pres.  
Title

Mailing Address:

15308 Ginyer St.  
Street

Austin, Tex. 78728  
City, State, Zip Code

512.990.7640  
Telephone

travisrayland@SCCITX.com  
Email Address

Attestation:

  
Signature

Travis Rayland  
Printed Name

Sec.  
Title

(AFFIX SEAL AND ATTESTATION IF CORPORATION)

**Bid Bond**

STATE OF TEXAS

COUNTY OF HAYS

We, Smith Contracting Co., Inc., 15308 Ginger St., Austin, TX 78728 (Contractor name and address), as Principal, and Liberty Mutual Insurance Company, P.O. Box 34526, Seattle, WA 98124 (Surety name and address), as Surety, a corporation duly organized under the laws of the State of Massachusetts, and duly authorized and admitted to write surety bonds in Texas, and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder, are held and firmly bound unto the City of San Marcos, Texas, as Oblige, in the sum of Five-Percent of Greatest Amount Bid dollars (\$ 5% GAB ).

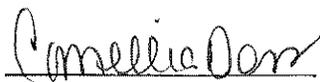
If this bond exceeds \$100,000.00 the surety certifies that it either 1) holds a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law, or 2) has obtained qualified reinsurance for any liability in excess of \$100,000.00 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas, and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

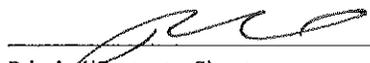
The Principal has submitted a bid to the Oblige for the **S. Guadalupe Street Improvements, IFB 220-163.**

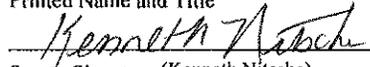
If the Oblige accepts the bid of the Principal, and the Principal enters into a contract with the Oblige in accordance with the terms of the bid, and promptly delivers all bonds, insurance certificates and other documents to the Oblige in accordance with the Contract Documents, then this obligation will be null and void, otherwise to remain in full force and effect.

Signed and sealed on April 2nd, 2020.

  
Witness

  
Witness (Canellia Doss)

  
Principal/Contractor Signature Seal  
Travis Rayland - Pres.  
Printed Name and Title

  
Surety Signature (Kenneth Nitsche) Seal  
Attorney-In-Fact  
Title



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8197872

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, David Ferguson, Violet Frosch, Kenneth Nitsche, Gary A. Nitsche, Robert James Nitsche, Robert K. Nitsche, Craig Parker, Nina Smith

all of the city of Giddings state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of November, 2018.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company
By: David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 1st day of November, 2018 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 2nd day of April, 2020.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

UNANIMOUS WRITTEN CONSENT OF THE DIRECTORS OF  
M. A. SMITH CONTRACTING COMPANY, INC.

IN LIEU OF SPECIAL MEETING

The TEXAS BUSINESS ORGANIZATIONS CODE provides that unless otherwise restricted by the Articles of Incorporation or Bylaws, any action required or permitted to be taken at any meeting of the board of directors of a Texas corporation may be taken without a meeting of the board of directors if a consent, in writing, setting forth the action so taken is signed by all the directors. Accordingly, pursuant to such statutory authority, the undersigned, being all of the directors of M. A. SMITH CONTRACTING COMPANY, INC., a Texas corporation (the "Corporation"), hereby consents to the adoption of the following resolutions as of July 1, 2015:

1. ELECTION OF OFFICERS.

RESOLVED, that the following person(s) be elected to the respective offices set forth beside their names below, to serve until the next annual meeting of the board of directors and until his successors are elected and qualified or his earlier death, resignation or removal:

Name	Office
TRAVIS RAGLAND	President, Treasurer, and Secretary

2. MISCELLANEOUS.

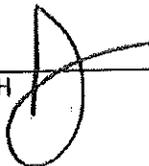
RESOLVED, that all acts of the officers of the Corporation during the previous fiscal year are hereby ratified and approved; and be it further

RESOLVED, that in addition to and without limiting the foregoing, the appropriate officers of the Corporation be, and each of them hereby is, authorized to take, or cause to be taken, such further action and to execute and deliver, or cause to be executed and delivered, for and in the name and on behalf of the Corporation, all collateral documents, literature, application forms, letters, instruments, notices, press releases, and all such further instruments and documents as such officer, with the advice of counsel, may deem to be necessary or advisable in order to effect the purpose and intent of the foregoing resolutions and to be in the best interests of the Corporation (as conclusively evidenced by the taking of such action or the execution and delivery of such instruments, as the case may be, by or under the direction of any authorized officer), and all action heretofore taken by the officers of the Corporation in connection with the subject of the foregoing resolutions be, and it hereby is, approved, ratified and confirmed in all respects as the act and deed of the Corporation.

DATED to be effective July 1, 2015.

DIRECTORS:

MACK SMITH



TRAVIS RAGLAND



UNANIMOUS WRITTEN CONSENT OF THE DIRECTORS  
M. A. SMITH CONTRACTING COMPANY, INC.

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Coby Shorter, III  
Deputy Secretary of State

**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

**M. A. SMITH CONTRACTING COMPANY, Inc.**  
File Number: 133926800  
Assumed Name:  
Smith Contracting Co., Inc.

The undersigned, as Secretary of State of Texas, hereby certifies that the assumed name certificate for the above named entity has been received in this office and filed as provided by law on the date shown below.

ACCORDINGLY the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law hereby issues this Certificate of Filing.

Dated: 02/02/2015

Effective: 02/02/2015



A handwritten signature in cursive script that reads "Coby Shorter III".

Coby Shorter, III  
Deputy Secretary of State

Form 503  
(Revised 09/13)

Return in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512 463-5709  
Filing Fee: \$25



This space reserved for office use.

### Assumed Name Certificate

#### Assumed Name

1. The assumed name under which the business or professional service is, or is to be, conducted or rendered is: Smith Contracting Co., Inc.

#### Entity Information

2. The legal name of the entity filing the assumed name is:

M.A. Smith Contracting Company, Inc.

*State the name of the entity as currently shown in the records of the secretary of state or on its organizational documents, if not filed with the secretary of state.*

3. The entity filing the assumed name is a: (Select the appropriate entity type below.)

- For-profit Corporation
- Nonprofit Corporation
- Professional Corporation
- Professional Association
- Other
- Limited Liability Company
- Limited Partnership
- Limited Liability Partnership
- Cooperative Association

*Specify type of entity. For example, foreign real estate investment trust, state bank, insurance company, etc.*

4. The file number, if any, issued to the entity by the secretary of state is: 133926800

5. The state, country, or other jurisdiction of formation of the entity is: Texas

6. The entity's principal office address is:

15308 Ginger St.

*Street or Mailing Address*

Austin  
*City*

TX  
*State*

Travis  
*Country*

78728  
*Postal or Zip Code*

#### Period of Duration

7a. The period during which the assumed name will be used is 10 years from the date of filing with the secretary of state.

OR

7b. The period during which the assumed name will be used is \_\_\_\_\_ years from the date of filing with the secretary of state (not to exceed 10 years).

OR

7c. The assumed name will be used until \_\_\_\_\_ (not to exceed 10 years).  
*mm/dd/yyyy*

**County or Counties in which Assumed Name Used**

8. The county or counties where business or professional services are being or are to be conducted or rendered under the assumed name are:

All counties

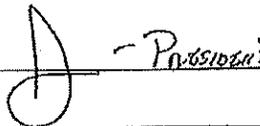
All counties with the exception of the following counties: \_\_\_\_\_

Only the following counties: \_\_\_\_\_

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and also certifies that the person is authorized to sign on behalf of the identified entity. If the undersigned is acting in the capacity of an attorney in fact for the entity, the undersigned certifies that the entity has duly authorized the undersigned in writing to execute this document.

Date: February 2, 2015

 \_\_\_\_\_

Signature of a person authorized by law to sign on behalf of the identified entity (see instructions)



**B. Qualifications**

10. Has your company ever failed to complete, defaulted, or been terminated on a project?        Yes   ✓   No. If yes, give project name and location, owner and engineer names, and explanation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Has your company been convicted of a criminal offense committed in the United States involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official(s)? If so, did the conviction occur within three (3) years immediately preceding the date of the submission of your bid, this Statement of Bidder's Qualifications, or the date identified as the contract award date in the Invitation For Bid?        Yes   ✓   No. If yes, explain: \_\_\_\_\_

\_\_\_\_\_

12. Is your company involved in a pending investigation(s) or criminal prosecution of a criminal offense alleged to have been committed in the United States involving fraud, theft, bribery, kickbacks, or unlawful gifts to a public official?        Yes   ✓   No. If yes, explain: \_\_\_\_\_

\_\_\_\_\_

13. Does your company have previous final judgments filed against it by the Owner for breach of contract, fraud, misrepresentation or conversion?        Yes   ✓   No.

14. Has your company refused to execute a contract with the Owner following an award of the contract by the San Marcos City Council?        Yes   ✓   No.

15. Did your company violate the anti-lobbying provisions of a current or previous contract by making contact with a member of the San Marcos City Council prior to award of the contract?        Yes   ✓   No. If yes, explain: \_\_\_\_\_

\_\_\_\_\_

16. Does your company have any involvement in prior, pending, or threatened claims or litigation alleging 1) fraud, misrepresentation, or conversion; 2) non-compliance by your company with any obligations under any current contract or previous contract within the last five (5) years, including completion and acceptance, remaining on schedule, and cooperation with the Owner; or 3) any error or omission by your company in performing services under any current contract or previous contract within the last five (5) years; and/or 4) non-payment to subcontractors and material suppliers?        Yes   ✓   No. If you answered yes to either 1, 2, 3, or 4 above, provide project name and location, owner and engineer names, and explanation of the nature, status, and/or outcome of such claim or litigation (attach additional pages if necessary).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Has your company or any of your subcontractors' companies ever failed to take corrective action on items of work under warranty during the warranty period? \_\_\_\_\_ Yes  No. If yes, provide project name and location, owner and engineer names, and explanation of the nature, status, and/or outcome of the warranty issue (attach additional pages if necessary).

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18. Has your company or any of your subcontractors' companies been cited for safety violations on any project within the last five (5) years?  Yes \_\_\_\_\_ No. If yes, provide project name and location, owner and engineer names, and explanation of the nature, status, and/or outcome of the safety issue. (attach additional pages if necessary).

*See Attached.*

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19. Has your company failed to remit sales tax, property tax, or utility payments to the City of San Marcos in a timely manner? \_\_\_\_\_ Yes  No. Your company certifies that it is not in arrears in the payment of any obligations to the City of San Marcos, including, without limitation, property or sales taxes, fees, or utility charges:  Yes \_\_\_\_\_ No. If no, explain:

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20. In order to be considered qualified for the work included in this Contract, your company must have completed five (5) projects of a substantially similar character involving construction of sidewalks and traffic signals with a cost in excess of \$500,000 for a public entity in the last five (5) years. List ALL projects of a substantially similar character involving construction of construction sidewalks and traffic signals with a cost in excess of \$500,000 that your company has completed as a prime contractor or subcontractor within the last five (5) years. You may attach your own list if it contains all of this information.

Project Name	Owner Name and Telephone Number	Engineer Name and Telephone Number	Completion Date
<i>See attached for 5 yrs street projects.</i>			

21. List **ALL** experience you have had as the prime contractor or subcontractor on projects with the City of San Marcos as the Owner within the last five (5) years. Give project name, Engineer name and telephone numbers, project status, and whether the project is on schedule. You may attach your own list if it contains all of this information.

Project Name	Engineer Name and Telephone Number	Scheduled Completion Date	Estimated Completion Date	Project Status
<i>See attached</i>				

22. List **ALL** projects with a cost in excess of \$1,000,000.00 that your company is presently constructing as a prime contractor or subcontractor. Give project name and location, owner and Engineer names with corresponding telephone numbers, project status, and whether the project is on schedule. You may attach your own list if it contains all of this information.

Project Name	Owner/Engineer Name and Telephone Number	Scheduled Completion Date	Estimated Completion Date	Project Status
<i>See attached.</i>				

23. List the name, position, residence address, background, and experience of each principal member of your firm, including the officers: *See attached resumes.*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

24. List bank references, including contact name and title, address, and telephone

number: BOST - Michael Wellner  
512.730.2078 1111 W 5th St, Austin 78701

25. Will you provide a detailed financial statement and furnish any other pertinent information that may be required by the City of San Marcos, Texas?  Yes  No. If no, explain: \_\_\_\_\_

**C. Certifications**

Your company certifies that:

26. You will complete the work involved in this Project utilizing no less than 30% of your own forces.

27. Your company certifies that it will keep a full time Superintendent/Manager assigned to this Project who is experienced in construction of bike lanes, bike signals, pavement markings and sidewalk construction, and that this Superintendent/Manager has sufficient knowledge, skills, and experience in substantially similar Project work.  Yes  No If no, explain: \_\_\_\_\_

The Project Superintendent/Manager will be available at all times while work is being performed and this designee will not be changed during the Project except for causes beyond the Contractor's control.

28. Your company certifies that it is able to meet the insurance requirements and provide Certificates of Insurance as specified in the Contract Documents.  Yes  No If no, explain: \_\_\_\_\_

29. Child Support Statement: Under Section 231.006, Family Code, the vendor or applicant (the bidder) that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Contract award will be contingent upon your provision of the social security numbers of each individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent in your business entity. In submitting your bid you certify that you will provide this information upon request by the Owner.

30. Convict Labor and Prison Produced Materials. No construction work will be performed by convict labor at the site or within the limits of this Project from the time of award of the contract or the start of work on force account until final acceptance of the work by TxDOT unless it is labor

performed by convicts who are on parole, supervised release or probation. In addition, materials produced by convict labor may only be incorporated into this Project if the materials have been produced by convicts who are on parole, supervised release or on probation from a prison.

31. Title VI and Nondiscrimination Program. You meet the requirements of Special Provisions SP 000-002L, SP 000-003L, and SP 000-004L, which are set forth verbatim in these bid documents. In addition, you certify that you and your subcontractors accept the following as your operating EEO policy:

"It is the policy of the Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color or national origin, age or disability. Such action shall include: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

In addition, when recruiting employees, you will include in all advertisements for employees, the notation: "An Equal-Opportunity-Employer."

32. Non-Collusion Certification: Do you certify that all of the following are true and correct concerning your company's bid?  Yes  No

1) That you are fully informed of the contents of the bid and the circumstances of its preparation;

2) That your bid is genuine and is not a collusive or sham bid;

3) That neither you nor anyone else acting on behalf of your company has agreed, colluded, or conspired in any manner with any other bidder, firm, or person to submit a collusive or sham bid, or to refrain from bidding, or sought by communication or conference with any other bidder, firm, or person to fix the prices, overhead, profit, or any cost element in your bid or in any other bid, or to secure through any collusion, conspiracy, or agreement any advantage against the City of San Marcos or any other bidder; and

4) The prices quoted in your bid are fair and proper and are not affected by any collusion, conspiracy, connivance, or unlawful agreement on the part of your company or anyone acting on its behalf.

33. Prohibition on Contracts with Companies Boycotting Israel. Pursuant to Chapter 2270 and 808, *Texas Government Code*. By signing below as an authorized signer, the bidder certifies that it is not ineligible to receive the award of or payments for this procurement and acknowledges that this procurement may be terminated and payment may be withheld if this certification is inaccurate. Failure to maintain the requirements under this provision will be considered a material breach.

34. 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. By signing below as an authorized signer, the bidder hereby certifies that it is not ineligible to receive the award of or payments under this procurement and acknowledges that the procurement 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.

35. I authorize and request any person or firm to furnish any information requested by the City of San Marcos to verify the information contained in this Statement of Bidder's Qualifications.

By: [Signature]  
Signature of Authorized Representative

Travis Rayland  
Printed Name of Authorized Representative

Pres / Sec.  
Printed Title of Authorized Representative

MA Smith Contracting Co Inc  
Name of Business

4.1.2020  
Date

State of Texas

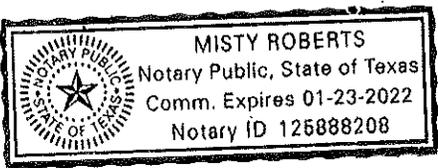
County of Travis

Travis Rayland, being duly sworn, deposes and says that s/he is  
Pres / Sec of MA Smith Contracting Co Inc and that all of the information  
and responses contained in this Statement of Bidder's Qualifications are true and correct.

Subscribed and sworn to before me on April 1, 2020.

[Signature]  
Notary Public, State of Texas

Notary Stamp:





Smith Contracting has had two OSHA inspections/Citations in the last 5 years. The first citation was received 3/28/16 in reference to an inspection at 12400 Gregg Manor Road Manor, TX 78653.

Citation 1 Item 1-Serious

OSH ACT of 1970 Section (5)(a)(1): The Employer did not furnish employment and a place of employment which were free from recognized hazards that were casing or likely to cause death or serious physical harm to employees from being struck by materials and equipment while installing a storm drainage system. Proposed penalty \$6,300.00

Citation 1 Item 2-Serious

29 CFR 1926.251(a)(2)(i): The employer failed to ensure fringing equipment had permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load. Proposed Penalty \$4,500.00

Citation 1 Item 3-Serious

29 CFR 1926.251(c)(12): A sling was pulled from under a load while the load was resting on the sling. Proposed Penalty \$3,600.00.

Smith Contracting filed a notice of Contest and subsequently reached a settlement with OSHA on January 10, 2017. The settlement agreement reduced the penalty of item 1 to \$4,900.00, Item 2 was removed in its entirety, and the penalty on Item 3 was reduced to \$2,900.00. Smith Contracting retrained all excavation employees by a 3<sup>rd</sup> party trainer. The settlement agreement admits no fault or guilt and includes confidentiality between Smith Contracting and OSHA.

Smith Contracting received its second citation on 3/28/17 in reference to an inspection at 12206 Scribe Dr., Austin TX 79159.

Citation 1 Item 1-Serious

29 CFR 1926.652 (g)(1)(II): Shields were not installed in a manner to restrict lateral or other hazardous movement of the shield in the event of the application of sudden lateral loads Proposed Penalty \$8,963.00

OSHA Offered an informal settlement agreement which reduced the penalty amount of item 1 to \$5,377.80 and changed the citation from Serious to Other than Serious due to the fact that the trench safety was installed per the manufacturers recommendations. The abatement included additional training and contacting the manguard manufacturer to request improved methods and instructions for securing the manguard in the trench. Additionally, the agreement admits no fault or guilt and includes confidentiality between Smith Contracting and OSHA.

Respectfully,

Travis Ragland  
President  
Smith Contracting Co., Inc.

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

PROJECT	APPROX. \$	OWNER	ENGINEER	DATE COMPLETE	LOCATION	START DATE	City of Austin Job (Y or N)	TYPE OF WORK
New Hope Dr	\$7,829,323.40	CITY OF CEDAR PARK PUBLIC WORKS DEPARTMENT 2401 BRUSHY CREEK LOOP CEDAR PARK, TEXAS 78613	LJA Engineering 5316 Highway 290W Suite 150 Austin Texas 78735	Currently in Closout	Cedar Park, Tx	9/5/2017	N	Road Reconstruction
Old Town Drainage	\$215,116.00	CITY OF GEORGETOWN 300-1 INDUSTRIAL AVENUE GEORGETOWN, TEXAS 78626	Steger Bizzell 1978 S. Austin Ave. Georgetown, TX 78626		Georgetown, TX	3/16/2018	N	Drainage Improvements
2016- Curb and Gutter Project	\$1,057,387.75	City of Georgetown 300-1 Industrial Ave., Georgetown, TX 78626	City of Georgetown 300-1 Industrial Ave., Georgetown, TX 78626		Georgetown, Tx	10/1/2016	N	Curb and Gutter
City of Austin- Waters Park Relief Main	\$5,185,725.00	City of Austin 505 Barton Spring Rd Austin TX 78704	City of Austin 505 Barton Spring Rd, Austin TX 78704		Austin, Texas	9/15/2016	Y	wastewater/trail improvements
Retired Facilities Decommissioning Project	\$1,246,400.00	City of Austin 505 Barton Spring Rd Austin TX 78704	City of Austin 505 Barton Spring Rd Austin TX 78704		Austin, Texas	9/1/2016	Y	Demolition
Goodnight Ranch Wastewater Line	\$1,009,188.00	AUSTIN GOODNIGHT RANCH, L.P. 610 W 5th Street, Austin, Tx 78701	CIVILE LLC 8200 N Mopac Expressway Ste 250, Austin, Tx 78759		Austin, Texas	9/1/2016	N	Wastewater Line
FM 3177	\$2,045,353.10	Texas Department of Transportation 125 E. 11th Street Austin, TX 78701	Texas Department of Transportation 125 E. 11th Street Austin, TX 78701		Travis County Austin, TX	8/1/2016	N	Road Improvements

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

Sessom Underground Conversion Project	\$613,001.00	City of San Marcos 630 E. Hopkins St. San Marcos, TX 78666 512-78666 393-8000	City of San Marcos 630 E. Hopkins St. San Marcos, TX 78666 512-78666 Shaun Condar, PE	San Marcos, TX Hays Co.	5/20/2016	N	Underground Conversion
Bush Ranch Phase 3 Section 1 - Streets	\$74,487.00	290 East Bush Inc. 13115 Four Star Blvd. Austin, TX 78737	CMA Engineering 235 Ledge Stone Dr. Austin, TX 78737 512-432-1000	Dropping Springs, Texas	10/8/2015	N	Street Improvements
Bush Ranch Phase 3 Section 1 - Utilities	\$97,105.00	290 East Bush Inc. 13115 Four Star Blvd. Austin, TX 78737	CMA Engineering 235 Ledge Stone Dr. Austin, TX 78737 512-432-1000	Dropping Springs, Texas	10/8/2015	N	Water, Wastewater and Drainage Improvements
Paloma Lake Section 22B - Utilities & Streets	\$2,213,923.15	Williamson County and Paloma Lake MUD #2 City of Austin 505 Barton Spring Rd Austin TX 78704 Randy Harvey 512-974-1585	Randall Jones and Assoc. 2900 Jazz St, Round Rock, Tx 78664 512-836-4793	Paloma Lake	2/12/2018	N	Street, Drainage and Utility Improvement AND Street Improvements
City of Austin - 3rd Street Reconstruction Phase 4 -	\$3,895,282.50	MESS HOLDINGS, PCCP, LLC., 555 CALIFORNIA ST. SUITE 3450, San Francisco, CA 94104	City of Austin Engineering Services Department Brimal Adhikaty, P.E. MEC 1101 Capital of Tx Hwy South Building D, Suite 110 Austin, Tx 78746	Austin, Texas	6/20/2015	Y	Street Reconstruction
Hutto Crossing 1-4	\$633,935.00	CITY OF CEDAR PARK PUBLIC WORKS DEPARTMENT 2401 BRUSHY CREEK LOOP CEDAR PARK, TEXAS 78613	CITY OF CEDAR PARK PUBLIC WORKS DEPARTMENT 2401 BRUSHY CREEK LOOP CEDAR PARK, TEXAS 78613	Hutto, Tx	4/10/2017	n	Street and Drainage Improvements, Water and wastewater
Lone Star Drive Wastewater Improvements	\$2,342,08.00	Lennar Homes of Texas on behalf of Travis Co MUD 12 12401 Research Blvd Bldg1 Ste 300, Austin, Tx. 78759	Carlson, Brigrance & Doering Inc 5501 West William Cannon Dr Austin, TX 78749	Cedar Park, Tx	6/1/2017	N	wastewater improvements
The Vineyard at Rough Hollow- Utilities	\$651,689.80			Lakeway, Tx	1/1/2018	N	Water, Wastewater, Drainage and Pavement Improvements

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

The Vineyard at Rough Hollow- Street, Electrical and Gas	\$715,046.50	Lennar Homes of Texas 12401 Research Blvd Bldg1 Ste 300, Austin, Tx. 78759	Carlson, Brigrance & Doering Inc 5501 West William Cannon Dr Austin, TX 78749	7/30/2018	Lakeway, Tx	1/1/2018	N	Street Reconstruction, electrical and gas
Upper Brushy Creek Watershed Site 32	\$1,687,971.95	Lower Brushy Creek WCID 108 Trinity Lane, Georgetown, Tx 78633	Lower Brushy Creek WCID 108 Trinity Lane, Georgetown, Tx 78633 Parsons Brinckerhoff, Inc. Barton Oaks Plaza Two, 901 Mopac Expy S., Ste 595 Austin, Texas 78746 Phone:737-703-3864	7/20/2018	Copeland, Tx	1/17/2017	N	Dam Improvements
Gus Garcia Park Phase 3	\$999,035.11	City of Austin 505 Barton Springs Rd Austin, TX 78704 Fred Biggs 830-385-4002	Half-Daniel Franz 9500 Amberglen F Suite Austin, TX 78729	5/26/2018	Austin, TX	11/1/2017	N	park and trail
Taylor Drainage and Roadway Improvements	\$498,254.10	City of Taylor 400 Porter Street, Taylor, Texas 76574 CITY OF GEORGETOWN 300-1 INDUSTRIAL AVENUE GEORGETOWN, TEXAS 78626	Stegar Bizzell 1978 S. Austin Ave. Georgetown, Tx 78626	5/15/2018	Taylor, TX	2/14/2018	N	Street Reconstruction and Utilities
Citywide Sidewalk Improvements-City of Georgetown	\$1,099, 802.50	CHERRY PEAK LTD 1219 CHALLENGER LAKEWAY, TX 78734	DBR Engineering Consultants TBPE #2234 7800 Shoal Creek Blvd. Suite 131S Austin, Tx 78757	3/23/2018	Georgetown, Tx	5/1/2017	N	Sidewalk improvements
Cherry Peak Office Condos	\$2,388,552.00	City of Liberty Hill City of Belton 333 WATER STREET, BELTON, TX 76513	Steger Bizzell	3/14/2018	Lakeway, Tx	4/1/2017	N	Utilites, street and concrete
FY 17- Street Rehab	\$337,803.50	City of Liberty Hill City of Belton 333 WATER STREET, BELTON, TX 76513	Steger Bizzell	2/7/2018	Liberty Hill	10/3/2017	N	Street Rehab
Sparta Road	\$3,199,295.85	KPA South Main Temple, Tx 76501	KPA South Main Temple, Tx 76501	11/30/2017	Belton, TX	4/24/2017	N	Road Reconstruction

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

Howard Lane Parking Lot	\$287,667.00	CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY 2910 E 5TH STREET AUSTIN, TX 78702	CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY 2910 E 5TH STREET AUSTIN, TX 78702	9/13/2017	Austin, Texas	4/1/2017	N	Parking lot Improvement
City of Austin - Riverside Dr Corridor Improvements -2012 Bond (rebid)	\$774,997.00	City of Austin 505 Barton Spring Rd Austin TX 78704 Paulinda Lanham 512-974-7974	City of Austin 505 Barton Spring Rd Austin TX 78704	5/25/2017	Austin, Texas	9/1/2016	Y	Street
City of Taylor 4th St Rehabilitation	\$615,792.50	City of Taylor 400 Porter Street, Taylor, Texas 76574	BSP Engineers, Inc. 210 Hwy 79 Ste 101 Hutto, Texas 78634 Kasberg, Patrick & Associates, LP ENGINEER: 1008 South Main Street Georgetown, Texas 78626 (512) 819-9478	5/5/2017	Taylor, TX	1/16/2017	N	Street Rehab
VFW PARK RENOVATIONS	\$1,385,139.94	City Of Georgetown 300-1 Industrial Ave., Georgetown, TX 78627	City of Austin 505 Barton Spring Rd Austin TX 78704 Brenda Baker 512-974-1585 CH2M HILL 12301 Research Blvd. Austin, TX 78759 Paul Baxter 512-453-2468	3/25/2017	Georgetown, TX	3/25/2016	N	Park Improvements
City of Austin - Austin Heights Water System Upgrades	\$1,692,497.50	City of Austin 505 Barton Spring Rd Austin TX 78704 Brenda Baker 512-974-1585	City of Austin 505 Barton Spring Rd Austin TX 78704 Brenda Baker 512-974-1585	2/15/2017	Austin, Texas	2/4/2016	Y	water system upgrades
FM 969	\$5,917,618.62	TXDOT 125 E. 11th Street Austin, TX 78701	Texas Department of Transportation 125 E. 11th Street Austin, TX 78701	2/9/2017	Travis County Austin, TX	2/9/2015	N	Street Improvements
TxDot - FM 487	\$7,137,507.42	Travis County Purchasing 700 Lavaca Street Austin, TX 78701	HDR Engineering Inc. 4401 West Gate Blvd. Suite 400 Austin, TX 78745	2/7/2017	Austin, Texas	11/16/2015	N	Highway Improvements
Travis County - Flint Rock Road Widening	\$6,823,210.24			2/7/2017	Lakeway, Texas	10/12/2015	N	Street and Drainage Improvements

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

Paloma Lake Section 8 & 14 - Streets	\$960,565.50	PALOMA LAKES DEVELOPMENT, INC. 1011 N. LAMAR BLVD AUSTIN, TX 78703	Randall Jones Engineering 1212 East Braker Lane Austin, TX 78753 512-836-4793	9/1/2016	Manor, Texas	11/9/2015	N	Street Reconstruction
Paloma Lake Section 8 & 14 - Utilities	\$2,201,719.61	PALOMA LAKES DEVELOPMENT, INC. 1011 N. LAMAR BLVD AUSTIN, TX 78703	Randall Jones Engineering 1212 East Braker Lane Austin, TX 78753 512-836-4793	9/1/2016	Manor, Texas	11/9/2015	N	Utilities Reconstruction
St. Joseph Street Wastewater Project - City of Gonzales	\$422,447.50	City Of Gonzales 820 St. Joseph Street Gonzales, Texas 78629 J. Keith Schauer, P.E. (830) 672-1205	City Of Gonzales 820 St. Joseph Street Gonzales, Texas 78629 J. Keith Schauer, P.E. (830) 672-1205	8/1/2016	Gonzales, Texas	4/1/2016	N	Waterline Improvements
Lakeway Highlands - 1- 8B Utilities and Streets	\$990,546.10	Rough Hollow Development, Ltd 2101 Lakeway Blvd., Lakeway, Tx 78734	Carlson, Brigrance & Doering Inc 5501 West William Cannon Dr Austin, TX 78749 Mike Grabel 512-280- 5160	7/20/2016	Lakeway, Texas	2/4/2016	N	Subdivision Utilities/Streets
City of Austin - Nelray Evans Utility Improvements	\$3,132,658.75	City of Austin 505 Barton Spring Rd Austin TX 78704 Brenda Baker 512-974-1585	City of Austin 505 Barton Spring Rd Austin TX 78704 Brenda Baker 512-974-1585	7/1/2016	Austin, Texas	11/16/2015	Y	Utility Improvements
Las Entradas	\$919,034.25	Las Entradas Development Corporation Attention: Mr. Danny Burnett c/o AECOM TECHNICAL SERVICES, INC. 400 West 15th Street Suite 600 Austin, Tx 78701	AECOM 400 West 15th Street, Suite 500 Austin, TX 78701 512-472-4519	7/1/2016	Manor, Texas	11/15/2015	N	Water, Wastewater, Drainage and Pavement Improvements

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

LakeLine Blvd at Cypress Creek Rd Intersection Improvements	\$2,204,724.47	City Of Cedar Park 450 Cypress Creek Road Cedar Park, Texas 78613	City Of Cedar Park 450 Cypress Creek Road Cedar Park, Texas 78613 Austin Everts, PE	6/30/2016	Cedar Park, Texas	Pending	N	Intersection Improvements
Stewart Crossing & Marbella Offsite Wastewater	\$554,627.40	Georgetown/Meritage Homes 300-1 Industrial Ave Georgetown, Tx 78627	Jones & Carter Engineering 3100 Alvin Devane Blvd. #150 Austin, Tx 78741	6/26/2016	Leander, Texas	5/9/2016	N	wastewater
Shadowglen Trace Commercial	\$256,638.20	Cottonwood Holdings, LTD. 9900 Highway 290 East Manor, TX 78653 512-327-7415	AECOM 400 West 15th Street, Suite 500 Austin, TX 78701 512-472-4519	6/24/2016	Manor, Texas	12/7/2015	N	Water, Wastewater and Drainage Improvements
Forest North Drainage Improvements	\$149,180.00	Williamson County 3151 SE Inner Loop- Site B Georgetown, Tx 78626	Williamson County 3151 SE Inner Loop- Site B Georgetown, Tx 78626	5/25/2016	Austin, Texas	3/29/2016	N	Drainage Improvements
Willow Springs Creek Channel and 24" Wastewater Improvement Project	\$2,673,948.00	J. Terron Everson, PE 512-943-3849 City of San Marcos 630 E. Hopkins St. San Marcos, TX 78666 512-393-8000	Loomis Partners 3101 Bee Cave Road Suite 100 Austin, TX 78746 512-327-1180	4/25/2016	San Marcos, TX Hays Co.	4/20/2015	N	Channel Improvements and Wastewater
City of Pflugerville - Pfenning Lane	\$1,075,274.40	City of Pflugerville (C.I.P.) 100 E Main Street, Ste 500 Pflugerville, Tx 78660	DCS Engineering, LLC 1101 S. Capital of Texas Hwy Bldg G-100, Austin, Tx 78746 (512)614-6171	1/15/2016	Pflugerville, Texas	7/15/2015	N	Waterline
Deer Creek Road Improvements	\$68,047.37	Travis County Purchasing 700 Lavaca Street Austin, TX 78701	Doucet & Associates 7401 TX-71 Austin, TX 78735 512-583-2600	11/5/2015	Dripping Springs, Texas	7/27/2015	N	Roadway Improvements
Falcon Pointe 18 - Streets (private)	\$368,734.00	Terrabrook Falcon Point, L.L.C. 13809 Research Blvd, Suite 475 Austin, TX 78750	Terrabrook Falcon Point, L.L.C. 13809 Research Blvd, Suite 475 Austin, TX 78750	10/25/2015	Pflugerville, Texas	1/26/2015	N	Street Improvements

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

Falcon Pointe 18 - Utilites (Public)	\$563,649.50	Terrabrook Falcon Point, L.L.C. 13809 Research Blvd, Suite 475 Austin, TX 78750	Travis County MUD NO 15 Lavaca ste 510 Austin, Tx 78701	10/25/2015	Pflugerville, Texas	1/26/2015	n	Water, wastewater, storm
City of Bastrop - FARMSTREET	\$841,214.00	City of Bastrop 1311 Chestnut Bastrop, Texas 78602	BEFCO Engineering 485 North Jefferson La Grange, Texas 78945 979-968-6474	9/28/2015	Bastrop, Texas	5/15/2015	N	water, wastewater, paving and drainage improvements
US 183/183A Intersection Improvement Project	\$4,968,543.09	Central Texas Regional Mobility Authority 3300 N IH 35 Suite 300 Austin, TX 78705	Baker, Aicklen and Associates, Inc. 507 W. Liberty Ave Round Rock, Texas 78664	9/13/2015	Leander, Texas	11/18/2014	N	Intersection Improvements
Belterra - Street Improvements	\$798,965.00	Crescent Belterra TX, LLC c/o Crescent Communities - Chad Harkin 400 East Las Colinas Blvd Ste. 1075 Irving, Texas 75039	CMA ENGINEERING 225 Ledge Stone Drive Austin, Texas 78737 512-432-1000	9/1/2015	Austin, Tx	3/20/2015	N	Street Improvements
Belterra - Water, Wastewater and Drainage	\$2,807,700.95	Hays County WCID c/o Kelly Hart &Hallman, LLP, 301 Congress Avenue, Ste 2000, Austin, Texas 78701	CMA ENGINEERING 225 Ledge Stone Drive Austin, Texas 78737 512-432-1000	9/1/2015	Austin, Tx	3/20/2015	N	Water, Wastewater, Storm
RM 1826	\$746,842.80	Texas Department of Transportation 125 E. 11th Street Austin, TX 78701	Rogers Design Services 7108 Covered Bridge Drive Austin, TX 78736 Dan Rogers 512-554-4587	7/30/2015	Hays County Austin, TX	2/2/2015	N	Street Improvements
Mable Davis Channel Structure Reconstruction and Retrofit	\$696,690.00	City of Austin 505 Barton Springs Rd Austin, TX 78704 Dennis Crabill 512-974-1585	City of Austin Engineering PO Box 1088 Austin, TX 78767-8839 512-974-2000	7/20/2015	Austin, Texas	4/20/2015	Y	Channel Reconstruction

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

Davis/Deer from Brodie to Corran Ferry	\$5,021,740.49	City of Austin Public Works Department 505 Barton Springs Rd Austin, TX 78704	City of Austin Engineering PO Box 1088 Austin, TX 78767-8839 Bimal Adhikary P.E. 512-974-2000	6/26/2015	Austin, TX Travus Co.	8/15/2013	Y	Street/Drainage Improvements
The Overlook at Amarra	\$851,094.95	Stratus Properties Operating Co., L.P. 212 Lavaca Street, Suite 300 Austin, TX 78701	LJA Engineering, Inc. 5316 Highway 290 West Austin, TX 78735 John Clark 512-439-4700	6/25/2015	Austin, TX	2/27/2015	N	Water, Wastewater, Street, Dry Utilities
East Pflugerville Parkway	\$1,297,942.00	Terrabrook Falcon Point, L.L.C. 13809 Research Blvd, Suite 475 Austin, TX 78750	Aecom 400 W. 15th St., Suite 600 Austin, TX 78701 Allison Kenneough 512-472-7519 Chan & Partners Engineers 4319 James Casey St. Suite 300 Austin, TX 78745 John King, P.E. 512-480-8155	6/19/2015	Pflugerville, Texas	1/20/2015	N	Street and Drainage Improvements
City of Austin – 3rd Street Reconstruction Phase 3 – Congress Ave. to Guadalupe St Rebid	\$ 3,898,248.50	City of Austin 505 Barton Springs Rd Austin, TX 78704 Randy Harvey 512-974-1585	Hagood Engineering Associates One Chisolm Trail, Suite 5200 Round Rock, TX 78681 Terry Hagood 512-244-1546	6/13/2015	Austin, TX Travis Co.	6/14/2014	Y	Street Reconstruction
Chandler Oaks	\$424,045.00	Navcon Group, Inc. 2300 Greenhill Drive, Suite 260 Round Rock, TX 78664	Carlson, Brigrance & Doering Inc 5501 West William Cannon Dr Austin, TX 78749 Mike Grabel 512-280-5160	6/5/2015	Round Rock, TX	2/4/2015	N	Water, Storm, Sewerwork
Lakeway Highlands Phase 1, Section 7B - Streets	\$668,795.50	Rough Hollow Development, Ltd 2101 Lakeway Blvd., Lakeway, TX 78734	Carlson, Brigrance & Doering Inc 5501 West William Cannon Dr Austin, TX 78749 Douglas Rummel 512-280-5160	5/11/2015	Lakeway, Texas	3/5/2015	N	Streets
Lakeway Highlands Phase 1, Section 7B - Utilities	\$841,360.60	Rough Hollow Development, Ltd on behalf of Travis Country M.U.D 2101 Lakeway Blvd., Lakeway, Tx 78734	Carlson, Brigrance & Doering Inc 5501 West William Cannon Dr Austin, TX 78749 Douglas Rummel 512-280-5160	5/11/2015	Lakeway, Texas	3/5/2015	N	Water, Wastewater, Storm

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

Roy Rivers Road	\$842,456	Elgin Highway 290, LLC 1301 McKinney Street #5100 Houston, TX 77010	Malone/Wheeler, Inc 7500 Rialto Blvd., Bldg 1 Ste 240 Austin, TX 78735 512-899-0601	4/24/2015	Elgin, Texas	10/6/2014	N	Street and Drainage Improvements
Hutto Central Interceptor	\$499,455.00	City of Hutto 401 W. Front Street Hutto, TX 78634	City of Hutto Engineering Department 401 A West Front Street Hutto, TX 78634 Matthew Bushnak 512-759-4016	4/3/2015	Hutto, TX	2/2/2015	N	Wastewater Treatment Center
Hutto Central Interceptor	\$499,455.00	City of Hutto 401 W. Front Street Hutto, TX 78634	City of Hutto Engineering Department 401 A West Front Street Hutto, TX 78634 Matthew Bushnak 512-759-4016	4/3/2015	Hutto, TX	2/2/2015	N	Wastewater Treatment Center
City of Austin – STAA – Springwood Non-MUD and Kruger Wastewater Improvements	\$882,523.06	City of Austin 505 Barton Springs Rd Austin, TX 78704	Lockwood, Andrews & Newman, Inc 10801 N Mopac Expressway Bldg. 1, Suite 120 Austin, TX 78759 Graham D Moore, P.E. 512-338-4212	3/26/2015	Austin, TX Travis Co.	5/27/2014	Y	Wastewater Improvements
St. Vincent Street Waterline Project - City of Gonzales	\$464,464.00	City Of Gonzales 820 St. Joseph Street Gonzales, Texas 78629 J. Keith Schauer, P.E. (830).672-1205	City Of Gonzales 820 St. Joseph Street Gonzales, Texas 78629 J. Keith Schauer, P.E. (830) 672-1205 ATKINS	3/1/2015	Gonzales, Texas	11/17/2014	N	Waterline Improvements
North Acres -Water and Wastewater Improvements-South	\$5,542,230.50	City of Austin Public Works Department 505 Barton Springs Rd Austin, TX 78704	6504 Bridge Point Parkway Suite 200 Austin, TX 78730 Francisco C. Guerrero, P.E. 512-327-6640	2/1/2015	Austin, TX Travus Co.	7/29/2013	Y	Wastewater Improvements

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

Moore's Crossing	\$759,527.75	S.R. Development 4425 S. Mopac Expy #205 Austin, Tx 78701 (512)474-5300	Civil Land Group, LLC 206 W. Main St, Ste 101 Round Rock, Texas 78664 (512) 246-1856 Travis County	1/24/2015	Austin, Texas	11/3/2014	N	Lift Station
Circle Drive/US 290 Improvements	\$407,828.82	Travis County Purchasing Office 700 Lavaca, Ste 700 Austin, TX 78701	Transportation and Natural Resources Dept PO Box 1748 Austin, TX 78767 512-854-9383	1/12/2015	Austin, TX	9/15/2014	N	Street and Drainage Improvements
FM 967 Utility Relocation	\$107,431.50	City of Buda 121 Main Street, Buda, Texas 78610	Lockwood, Andrews and Newman 102 Wonder World, Ste 303, San Marcos, Tx 78666	12/14/2014	Buda, Tx	4/21/2014	N	Utility Reconstruction
Georgetown 2013 Street Rehab	\$ 678,394.00	City of Georgetown 300-1 Industrial Avenue Georgetown, TX 78627	Half Assoc. 4030 West Braker Lane Suite 450 Austin, TX 78759-5356	10/11/2014	Georgetown, TX Williamson Co.	8/11/2014	N	Street Rehab
Cheatham and Riverside Drainage and Pavement Improvements	\$772,891.00	City of San Marcos 630 E. Hopkins St San Marcos, TX 78666 512- 393-8000	Vickory and Associates 1209 W 5th St. Ste 200 Austin, TX 78703	10/1/2014	San Marcos, Tx	3/1/2014	N	Concrete and Roadway
Polygon 337	\$4,513,888.00	City of Austin 505 Barton Spring Rd Austin TX 78704	LOC Consultants 1000 East Cesar Chavez Suite 100 Austin, TX 78702-4208 John 512-499-0908	10/1/2014	Austin, TX Travis Co.	5/28/2013	Y	Water, Wastewater
Falcon Pointe 13C - Paving	\$ 951,615.00	Terrabrook Falcon Pointe, LLC 13809 Research Blvd, Suite 475 Austin, TX 78750	AECOM 400 West 15th St Suite 500 Austin, TX 78701	9/10/2014	Pflugerville, TX Travis Co.	4/14/2014	N	Paving
Falcon Pointe 13C - Utilities	\$ 962,232.50	Travis County M U D No. 15 1108 Lavaca Street, Suite 510 Austin, Tx 78701	AECOM 400 West 15th St Suite 500 Austin, TX 78701	9/10/2014	Pflugerville, TX Travis Co.	4/14/2014	N	Utilities

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

Davis Lane from Leo Street to Westgate Blvd	\$1,947,203.00	City of Austin 505 Barton Springs Rd Austin, TX 78704 Darryl Haba 512-974-7205	City of Austin Engineering 505 Barton Springs Rd Ste 900 Austin, TX 78704 Shirin Helmi P.E. 512-974-7133	9/1/2014	Austin, TX Travis Co.	1/1/2014	Y	Concrete, Excavation & Water
Davis Lane from Leo Street to Westgate Blvd - Wastewater Improvements	\$233,805.00	Symco Development 2300 South Lamar #107 Austin, TX 78704	Bleyl & Associates 1715 Capital of Texas Hwy S, Suite 109 Austin, TX 78746 TRC Engineers, Inc 505 E. Huntland Drive, Suite 250 Austin, TX 78752 512-454-8716	8/11/2014	Austin, TX Travis Co.	4/21/2014	N	Wastewater Improvements
Elgin Centers - 2nd St Reconstruction, 2 mile Multipurpose Path & 2 Transit Stops	\$ 2,020,305.50	City of Elgin 310 North Main Elgin, TX 78621 Williamson County 901 South Austin Avenue Georgetown, TX 78626	505 E. Huntland Drive, Suite 250 Austin, TX 78752 512-454-8716 HNTB 14 Galloping Road Round Rock, TX 78681 Clayton Weber 512-744-9082	7/10/2014	Egin, TX Bastrop Co.	12/9/2013	N	Street Reconstruction
County Road 277 Improvements	\$541,541.00	City of Georgetown 300-1 Industrial Avenue Georgetown, TX 78627	Baker-Aicklen & Associates, Inc 507 W. Liberty Avenue Round Rock, TX 78664 512-244-9620	6/30/2014	Liberty Hill, TX Williamson Co.	5/6/2014	N	Road Improvements
San Gabriel River Trail Extension Improvements	\$ 758,622.80	City of Georgetown 300-1 Industrial Avenue Georgetown, TX 78627	Baker-Aicklen & Associates, Inc 507 W. Liberty Avenue Round Rock, TX 78664 512-244-9620	6/10/2014	Georgetown, TX Williamson Co.	12/16/2013	N	Trail Extension Improvements
Creative Playscape Site Improvements	\$ 149,521.00	AISSD 1111 West 6th Street Austin, TX 78703	Raymond Chan & Assoc. 4319 James Casey St. Suite 300 Austin, TX 78745	6/6/2014	Georgetown, TX Williamson Co	4/8/2014	N	Improvements
AISSD Bus Terminal	\$ 909,876.98	JADCO c/o Travis County MUD No. 12 602 W 9th St Austin, TX 78701 Joe DiQuinzio, Jr 512-478-0017	Carlson, Brigrance & Doering Inc 5501 West William Cannon Dr Austin, TX 78749 Douglas Rummel 512-280-5160	6/1/2014	Austin, TX Travis Co.	3/4/2014	N	Bus Terminal
Travis County MUD 12 Water Interconnect - Water and Erosion Control Imp	\$377,113.00			5/1/2014	Lakeway, TX Travis Co.	1/6/2014	N	Water & Erosion Control Imp

COMPLETED PROJECTS FOR  
MA Smith Contracting Co., Inc.

City Of Cedar Park City Hall Outparcel Parking Lot	\$147,520.37	City Of Cedar Park 450 Cypress Creek Road Cedar Park, Texas 78613	City Of Cedar Park 450 Cypress Creek Road Cedar Park, Texas 78613	3/20/2014	Cedar Park, TX Williamson	1/21/2014	N	Street and Drainage Improvements
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Current jobs for  
MA Smith Contracting Co., Inc

PROJECT	APPROX. \$	OWNER	ENGINEER	Status	Location	Start Date	City of Austin Job (YorN)	Type of Job
CURRENT PROJECTS								
Travassa	\$2,919,764.00	Solidago, LLC 13500 fm. 2769 Austin, TX 78641 CITY OF CEDAR PARK PUBLIC WORKS DEPARTMENT 2401 BRUSHY CREEK LOOP CEDAR PARK, TEXAS 78613	C-A 3103 Bee Cave Rd. Suite 202 Austin, Tx 78746	Currently in Closout	Austin, Texas	5/8/2017	N	Street and Drainage Improvements, Water and wastewater
New Hope Dr	\$7,829,323.40	City of Austin 505 Barton Spring Rd, Austin TX 78704	LJA Engineering 5316 Highway 290W Suite 150 Austin, Tx 78735	Currently in Closout	Cedar Park, Tx	9/5/2017	N	Road Reconstruction
Upper Boggy Creek	\$2,668,118.00	City of Austin 505 Barton Spring Rd, Austin TX 78704	City of Austin 505 Barton Spring Rd, Austin TX 78704	Currently in Closout	Austin, Texas	1/1/2018	Y	Trail Improvement
Gonzales Lift Station Slaughter Creek Watershed Sendora & Circle C Pond Rehab	\$1,173,936.60	City of Austin 505 Barton Spring Rd, Austin TX 78704	City of Austin 505 Barton Spring Rd, Austin TX 78704	Currently in Closout	Austin, Texas	6/3/2017	Y	Lift Station
FM 812 Landfill Letdown Repair	\$1,020,352.50	City of Austin 505 Barton Spring Rd, Austin TX 78704	City of Austin 505 Barton Spring Rd, Austin TX 78704	Currently in Closout	Austin, Texas	5/11/2019	Y	Pond Rehab
Houston Street Area Drainage Improvements	\$1,110,490.00	City Of Buda 121 Main St, Buda , Tx 78610	Freese and Nichols 214- 217-2236	Currently in Closout	Buda	TBD	N	Letdown Repair  Drainage Improvements
Landside and Pedestrian Improvements Ph2	\$1,318,435.00	City of Austin 505 Barton Spring Rd Austin TX 78704 512-974-7974	City of Austin 505 Barton Spring Rd Austin TX 78704 512-974-7974	Warranty Period	Austin, Texas	TBD	Y	Sidewalk and Pedestrian Ramp Improvements
CM Allen Roadway Reconstruction	\$2,775,080.54	City of San Marcos 630 E. Hopkins St. San Marcos, TX 78666 512-393-8000	Vickery & Associates, Inc. David Neumann, PE		San Marcos	6/19/2018	N	Road Reconstruction
North Burleson Street Reconstruction and Widening	\$6,601,761.85	City of Kyle 100 West Center Street, Kyle, Texas 78640	Freese and Nichols 214- 217-2236		Kyle	9/10/2018	N	Road Reconstruction
Mill Street Roadway Reconstruction	\$2,419,619.05	City of San Marcos 630 E. Hopkins St. San Marcos, TX 78666 512-393-8000	City of San Marcos 630 E. Hopkins St. San Marcos, TX 78666		San Marcos	11/26/2018	N	Road Reconstruction Full Depth Street
Plum Creek Section 11H	\$1,145,965.55	North Hays County Municipal Utility District No.2	Land Dev Consulting LLC, 8240 North Mopac Expressway Suite 125	Currently in Closout	Kyle	12/3/2018	N	Construction with new Storm, Water, and WW.

Current jobs for  
MA Smith Contracting Co., Inc

Veterans Memorial Park Improvements	\$370,825.25	City of Cedar Park 450 Cypress Creek Rd, Bldg 1, Cedar Park, TX 78613	City of Cedar Park 450 Cypress Creek Rd, Bldg 1, Cedar Park, TX 78613	Currently in Closout	Cedar Park, Tx	11/1/2018	N	Park Improvements
10th & 11th Street Improvements	\$745,195.00	City of Georgetown 300-1 Industrial Ave Georgetown, TX 78626	Kasberg, Patrick & Associates, LP Georgetown, Texas 78626	Punchlist	Georgetown	2/13/2019	N	Sidewalk and Pedestrian Ramp Improvements
Lakeline Blvd Right Turn Lane	\$567,792.55	Williamson County 901 South Austin Ave., Georgetown, Tx 78626 512-943-3553	Williamson County 901 South Austin Ave., Georgetown, Tx 78626 512-943-3553		Austin, Texas	12/20/2018	N	Turn Lane Improvement
Old Go Forth Road	\$2,679,766.96	City Of Buda 405 E Loop St., Bldg 10, Buda, TX 78610	RPS KLOTZ ASSOC City of Pflugerville 15500 Sun Light Near Way, #B Pflugerville, Texas 78691		Buda	1/18/2019	N	Road Improvements
Reconstruction of Pfenning Lane	\$1,617,594.23	City of Pflugerville 15500 Sun Light Near Way, #B Pflugerville, Texas 78691	Land Dev Consulting LLC, 8240 North Mopac Expressway Suite, 125 Pflugerville, Texas 78691		Pflugerville	1/24/2019	N	Road Reconstruction
Plum Creek Water and Wastewater Phase 1	\$2,198,288.20	North Hays County Municipal Utility District No.2	City of Kyle Engineering Department 130W Center Street Kyle, TX 78640		Kyle	4/25/2019	N	Water and Wastewater
Kyle Crossing Road Reconstruction	\$1,326,990.90	City of Kyle 520 E. RR 150 Kyle, Texas 78640	City of Kyle Engineering Department 130W Center Street Kyle, TX 78640		City of Kyle	6/17/2019	N	Street Reconstruction Full Depth Street Construction with new Storm, Water, and WW.
McNeil Phase 2	\$3,019,974.93	City of Round Rock 221 East Main Street Round Rock, Texas 78664	Atkins 11801 Domain Blvd Suite 500 Austin Texas 78758		Round Rock	8/1/2019	N	Water
Williamson Creek - Battle Bend Water Quality Retrofit	\$940,380.50	City of Austin 505 Barton Spring Rd Austin TX 78704 512-974-7974	City of Austin 505 Barton Spring Rd Austin TX 78704 512-974-7974		Austin, Texas	11/1/2019	Y	Water
Rutherford Lane Campus Parking Lo Improvements	\$1,899,463.00	City of Austin 505 Barton Spring Rd Austin TX 78704 512-974-7974	City of Austin 505 Barton Spring Rd Austin TX 78704 512-974-7974	Pending Contracts	Austin, Texas	TBD	Y	Parking Lot
1912-Shady Lane	\$1,104,687.70	City of Belton 333 Water Street PO Box 120 Belton, TX 76513	12225 Greenville Ave. Suite 200 Dallas, Tx 75243		Belton, TX		N	Sewer Intercept
1913-CR279	\$986,624.94	Williamson County 3151 S.E. Inner Loop Georgetown, TX 78626	Kon Q. Kwan Williamson County, TX		Liberty Hill, TX		N	Roadway Impv.
1914-Alliance	\$1,069,735.51	Alliance Regional Water Authority 630 East Hopkins Street San Marcos, TX 78666	Lockwood, Andrews & Newnam, Inc. 407 S. Stagecoach Trail Suite 207 San Marcos, TX 78666		Hays County, TX San Marcos/ Kyle		N	Water Pipeline (SegB)

Current jobs for  
MA Smith Contracting Co., Inc

1915-Rock Street	\$544,879.00	City of Georgetown 300-1 INDUSTRIAL AVE. GEORGETOWN, TX - 78626	Steger Bizzell 1978 S. Austin Ave. Georgetown, TX 78626	Georgetown, TX		N	Pond Rehab
1916-Cherry Peak PH2		Cherry Peak LTD 1219 Challenger Lakeway, TX 78734	Nobel Surveying & Engineering Works, LLC. 7612- A Hwy. 71 West Austin, TX 78735	Lakeway, TX		N	
1917-Black Locust	\$1,144,297.40	City of Pflugerville Public Works Dept. 15500 Sun Light Near Way #B, Pflugerville, Texas 78660	Half 9500 Amberglen Blvd. Bldg F, Ste 125 Austin, TX 78729	Pflugerville, TX		N	Pavement Rehab
1918-Kenny Fort	\$728,995.00	City of Round Rock 221 East Main Street Round Rock, TX 78664 Cap Metro Transportation Authority 2910 East 5th Street Austin, TX 78702	Half 9500 Amberglen Blvd. Bldg F, Ste 125 Austin, TX 78729 Huit-Zollars 3701 Executive Center Dr. Austin, TX 78731	Round Rock, TX		N	Intersection Improv
1919-Cap Metro	\$7,500,000.00	City of Austin Austin Water Box 1086 Austin, TX 78767	CobbFendley 505 East Huntland Dr. Suite 100 Austin, TX 78752	Austin, TX		N	Serta Demo & Paving
1920-Howard Lane	\$1,057,821.75		MWM Design Group 305 East Huntland Dr. Suite 200 Austin, TX 78752	Austin, Tx		Y	Water Main Extension
1910-Decker/Hogeye	\$228,962.50	Travis County		Austin, TX		N	Sidewalks

Coy Lechow  
PO Box 348  
Liberty Hill, TX 78642  
(512) 963-1765  
[lechowcoy@yahoo.com](mailto:lechowcoy@yahoo.com)

**Objective:** I am seeking to contribute my extensive experience in supervising multiple projects in order to increase production and profitability within a growing and dynamic company

**Employment:**

**M.A. Smith Company Co., Inc. 2012-Present**, General Superintendent Heavy Civil, specializing in roadwork, site work and excavation

**Responsibilities:**

- Manage production from inception to completion; assuring maintenance of budget, schedule and profitability of each project
- Responsible for daily employee management and conflict resolution
- Facilitate team meetings with project managers and superintendents
- Facilitate regular meetings with equipment personnel and CEO to assess equipment requirements and upkeep
- Essential participant in competitive bidding process as related to production, scheduling and budget in order to creatively gain competitive edge
- Able to efficiently assess challenges and immediately develop solutions as to personnel, equipment and scheduling needs.
- Project oversight; assurance of accuracy, quality and safety at each site
- Monitor and manage multiple high scale private as well as municipal projects over several counties and states
- Pro-active problem solving to keep projects on schedule
- Allocate machinery and employees for major construction projects

**J.C. Evans Construction 1994-2012**, General Superintendent Heavy Civil, specializing in roadwork, site work and excavation

**Responsibilities:**

- Manage production from inception to completion; assuring maintenance of budget, schedule and profitability of each project
- Responsible for daily employee management and conflict resolution
- Facilitate team meetings with project managers and superintendents
- Facilitate regular meetings with equipment personnel and CEO to assess equipment requirements and upkeep
- Essential participant in competitive bidding process as related to production, scheduling and budget in order to creatively gain competitive edge
- Able to efficiently assess challenges and immediately develop solutions as to personnel, equipment and scheduling needs.
- Project oversight; assurance of accuracy, quality and safety at each site
- Monitor and manage multiple high scale private as well as municipal projects over several counties and states
- Pro-active problem solving to keep projects on schedule
- Allocate machinery and employees for major construction projects

**Education/certifications:** OSHA HAZCOM, OSHA Fall Protection, NUCA Excavation Training, American Red Cross CPR & First Aid

**Partnered and Coordinated with the following municipalities and organizations:**

Central Texas Regional Mobility Authority  
TxDot Austin, TX Division  
TxDot Laredo, TX Division  
TxDot Waco, TX Division  
City of Austin  
City of Georgetown  
City of Pflugerville  
City of Round Rock  
City of San Marcos  
City of Leander  
City of Cedar Park

Listing of major project completion available upon request

# Travis Ragland

102 Indian Hill Point  
Kyle, TX 78640

512-694-2552  
travisragland@ymail.com

Detail-driven and results-oriented individual who enjoys being part of a team that contributes to meet the needs of growing organizations. Efficient, self-start organized leader with success in coordinating efforts within internal and external teams to reach desired expectations. Well versed in contract negotiations, project estimating, document preparation, material purchasing and site management.

## Core Competencies

- Construction Planning and Scheduling
- Project Management
- Organization and Time Management
- Vendor and Materials Management

## Experience

### MA Smith Contracting Co, Inc.

#### President

July 2015-Present

- Responsible for all financial management and operational functions
- Negotiate contracts
- Develop and maintain professional relationships with clients, vendors and employees

#### Vice President

October 2011-July 2015

Responsible for simultaneously managing multiple projects that are at different stages in the construction lifecycle.

- Manage projects from pre-bid to close-out
- Coordinate and schedule available labor force
- Manage equipment and asset availability
- Verify and approve accounts payable invoices
- Develop construction schedules and production goals
- Sub-contract negotiations

### T R Contracting

June 2001-October 2011

#### President

Directly responsible for consulting, designing, estimating, negotiating, developing, inspecting and constructing projects.

- Performed contract inspections on civil construction projects.
- Negotiate and execute contracts.

- Performed and assisted in the installation of electrical service entrances and the electrical wiring of multiple commercial and residential structures
- Installation of multiple water mains

**City of San Marcos**  
Engineering Inspections

**August 2009-February 2011**

Perform daily inspections of infrastructure construction projects.

- Verify construction complies with plans, details, specifications and TCEQ
- Coordinate construction sequencing with owner, contractor, and property owners
- Provide project status to owner, engineers and office staff through weekly meetings
- Generate Daily Inspection Reports and Item Progress Reports

### **Education**

**Texas State University**

**August 2002-August 2009**

- Bachelor of Science in Technology with major in Industrial Technology-Construction Technology
- Graduation Date: August 2009
- Efficient with Microsoft Office and Project
- Classes: Commercial Construction Systems, Construction Materials and Processes, Construction Contract Administration, Construction Estimating

### **Internship**

**May 2009-August 2009**

City of San Marcos Capital Improvements

- Assisted inspectors in the field
- Attended construction meetings with engineers and contractors
- Performed easement acquisitions
- Verified bid tab and material take-offs

### **Certifications**

- Work Zone Traffic Control
- Water Distribution
- OSHA Construction 30 hour
- Excavation/Trenching Competent Person
- Confined Space

# C. Hardin Camp II

Phone: (512) 789-5441

Email: hardincamp@austin.rr.com

---

**Summary** Excavation company project manager with 17 years experience in all aspects of field operations and executive management is seeking a permanent, direct, full-time management or leadership position with a large, stable construction company.

**Professional Experience** [2004 - Present] Smith Contracting Co., Inc.  
Austin, TX

## **Vice President and Project Manager**

- Responsible for various day to day corporate operations including: equipment and manpower utilization, project bidding, business meetings and the generation of budgets and goals for each project.
- Management skills include assisting in bidding & negotiating government and private contracts for new construction as a general contractor or sub-contractor.

[1996-2004] Camp Excavation & Contracting Inc.  
Pflugerville, TX

## **Vice President and Project Manager**

- Co-founded business on credit with a backhoe, dump truck and no employees. Grew business to over \$5 million in annual revenue, a million dollars in equipment and 35 plus employees.
- Management skills include bidding & negotiating government and private contracts for new construction as a general contractor or sub-contractor.
- Responsible for all day to day corporate operations including: equipment and manpower utilization, project bidding, business meetings and the generation of budgets and goals for each project.
- Management of company office staff including receptionist, book keeper, and estimator.
- Began and operated a subsidiary heavy truck business responsible for the transportation of heavy equipment to job

# C. Hardin Camp II

Phone: (512) 789-5441

Email: hardincamp@gmail.com

---

**Summary** Excavation company project manager with 17 years experience in all aspects of field operations and executive management is seeking a permanent, direct, full-time management or leadership position with a large, stable construction company.

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Austin, TX

## **Vice President and Project Manager**

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Pflugerville, TX

## **Vice President and Project Manager**

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- Responsible for all day to day corporate operations including: equipment and manpower utilization, project bidding, business meetings and the generation of budgets and goals for each project.
- Management of company office staff including receptionist, book keeper, and estimator.
- Began and operated a subsidiary heavy truck business responsible for the transportation of heavy equipment to job

## C. Hardin Camp II

-Page 2-

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sites for both internal company construction work and for external contractors and equipment companies.

- Completed as general contractor, projects for the federal government, TXDOT, and various counties and cities.

### Professional Skills

- Specific personal accomplishments to company progress include: continuous business growth, institution of Safety Manuals and Procedures and official company handbook.
- Coordination of subcontractors from bid invitation to contract, and through completion of construction.
- Completed management training course "Successful Project Management" at the Construction Estimating Institute.
- Mechanic supervision regarding fueling, maintenance, and minor repairs on all company trucks and equipment.
  
- Proficient in the use of Microsoft Word, Project, and Excel.
- Completed training and obtained certifications in Primavera scheduling software.
- Completed training and obtained certifications in Quest take-off software as an advanced user.
- Company surveyor responsible for lay out and complete elevation control with laser and sight levels, including operation and set up of laser controlled equipment.
- Equipment operator and instructor of new employees on company equipment including: bulldozers, wheel loaders, track loaders, trucks, motor graders, compactors, skid loaders, excavators and scrapers.
- Professional haul truck and dump truck driver with a class A commercial license with endorsements.

**Education** [ 1994-1996 ] Temple College Temple, TX

Dean's Honor List 1994, Dean's List 1995

**Interests and Activities** Camping, motorcycle riding, and officiating high school basketball.

### SUBCONTRACTORS LIST FORM

I intend to utilize the following subcontractors on this Project:

Type/Trade	DUNS Number	Contractor Name	Address	Phone	Email	% of Work
Elec.	-	CapStar	3871 E. University Ave Crown, TX.	512.260 2400		2%
Traffic Signal	-	ATS	PO Box 180 RR, TX 78080	512.251 9951		15%
Striping	-	Flasher	75 CR 372 Jarrall, TX 76537	512.746 4444		8%

I agree that I, the Bidder, will not substitute subcontractors without the written approval of the Owner.

Bidder/Contractor:

By:   
Signature of Authorized Representative

Date: 4.1.2020

Travis Rayland  
Printed Name of Representative

Pres / Sec.  
Title of Representative

MA Smith Contracting Co Inc.  
Name of Business

**HOUSE BILL 89 VERIFICATION**

(This affidavit must be completed and submitted with bid/proposal.)

**Pursuant to Sections 2270.001, 2270.002, 808.001, Texas Government Code:**

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
2. "Company" has the meaning assigned by Section 808.001, except that the term does not include a sole proprietorship.
3. Section only applies to a contract that is between a governmental entity and a company with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

As the undersigned legal representative of MA Smith Contracting Co Inc.  
(Business Name)

after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

- a. Does not boycott Israel currently; and
- b. Will not boycott Israel during the term of the contract City of San Marcos, Texas.

[Signature]  
(Business Representative Signature)

4-1-2020  
(Date)

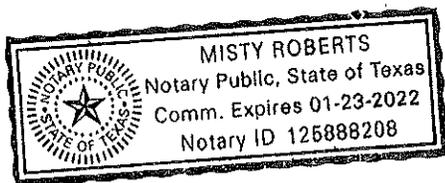
Pres./Sec.  
(Title)

STATE OF Texas §  
COUNTY OF Travis §

On this day, BEFORE ME, Travis Ryland personally appeared and 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument for purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 1 day of April, 2020.

[SEAL]



[Signature]  
NOTARY PUBLIC in and for the  
State of Texas

Insert shipping document here.

ORIGIN ID:BSMA  
MISTY ROBERTS (512) 990-7640

15308 GINGER ST

AUSTIN, TX 78728  
UNITED STATES US

SHIP DATE: 01APR20  
ACTWGT: 1.00 LB  
CAD: 106637990/INET4220

BILL SENDER

TO OFFICE OF THE PURCHASING MANAGER  
CITY OF SAN MARCOS  
630 EAST HOPKINS STREET  
BLDG 4 (BEHIND THE MUNICIPAL BLDG)  
SAN MARCOS TX 78666

(512) 393-8000  
INV.  
PO

REF:

DEPT:



56BL93C25JFE4A

FedEx Ship Manager - Print Your Label(s)

TRK# 7701 4954 3451  
0201

THU - 02 APR 8:30A  
FIRST OVERNIGHT

A1 NIRA

78666  
TX-US SAT



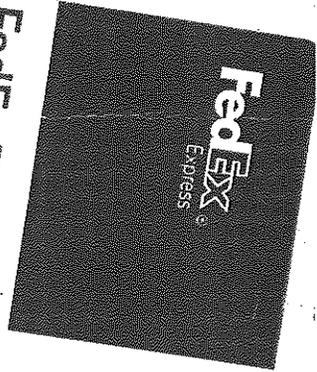
SAN MARCOS

20 APR 211:28:20 We'd love your company.

20 APR 211:28:29

FedEx First Overnight®

FO



151969 REV 7/09 RRD

4/1/2020

BS

This Bid/Proposal was received in the Office  
of the Purchasing Manager at:

RT FO 08:30 3451



# BID TABULATION

S. Guadalupe Street Improvements, IFB 220-163

April 2, 2020

Bidder Name	Total Bid Price
MA Smith Contracting Company, Inc Austin, TX	\$2,415,446.55

This is the official record of bidders and bid prices only. It is not an acknowledgement of responsiveness, responsibility, or of contract award.

Recorded by: Joseph Navarre  
Witnessed by: Lynnda Williams



**FINANCE DEPARTMENT – PURCHASING AND CONTRACTING DIVISION**

**-DRAFT -**

(Date to be determined)

MA Smith Contracting Co. Inc.  
Attn: Travis Ragland  
15308 Ginger St.  
Austin, TX 78728

(sent via email: [travisragland@sccitx.com](mailto:travisragland@sccitx.com))

Re: S. Guadalupe Street Improvements IFB #220-163 – Bid Rejection

Mr. Ragland:

Thank you for responding to the above referenced Invitation for Bid. Your bid for \$2,415,446.55 was the only bid received and is significantly higher than the estimated construction cost of \$1.2 million. For this reason, the City has decided to reject your bid, pursuant to conditions of the bidding and contract documents, Invitation for Bids, Section 8 and Instructions to Bidders, Section 8.

The City will reevaluate the scope and any necessary modifications for future bidding.

We appreciate your time and effort in preparing and submitting a bid for this project. We look forward to your continued interest in working with the City of San Marcos.

Your bid bond will be mailed to you within the next few weeks.

Thank you,

Lynda Williams  
Purchasing Manager

cc: Rohit Vij, CoSM Engineering Department



# MEMO

April 27, 2020

**To:** Tucker Ferguson, P.E.  
Austin District Engineer DS  
TF

**From:** Keith Taylor, P.E.  
Austin District – Asst. District Design Engineer DS  
KT

**Subject:** Concurrence to Reject Bids on LG Project, City of San Marcos

---

**Control:** 0016-09-040  
**Project:** CC 16-9-40  
**Highway:** SL 82  
**Hays County**

The above referenced LG project was let on March 23, 2020 by the City of San Marcos. One (1) bid was received in the amount of \$2,415,446.55, which is 101.30% over the estimated construction cost of \$1.2 million. For this reason, the City has decided to reject the bid, pursuant to conditions of the bidding and contract documents, Invitation for Bids, Section 8 and Instructions to Bidders, Section 8.

The City of San Marcos is requesting TxDOT concurrence to reject the bid. The South Travis Area Office recommends that the bid be rejected. Please note that the funding for this project is being provided in whole by the City of San Marcos.

To note, the City is proposing to re-let the original project as two (2) separate projects. The City will be submitting a project development schedule for each of the projects for scheduling of the letting dates.

We request your concurrence to reject the bid that was submitted for the project. Please do not hesitate to contact Roy at (512) 832-7137 should you have any questions regarding this request.

DocuSigned by:  
  
78974EBCB5244BE...

4/28/2020

Concur with recommendation

Date

CC: Epigmenio "Epi" Gonzalez, P.E.  
South Travis Area Engineer DS  
Eg

OUR VALUES: People • Accountability • Trust • Honesty

OUR MISSION: Through collaboration and leadership, we deliver a safe, reliable, and integrated transportation system that enables the movement of people and goods.

An Equal Opportunity Employer



Legislation Text

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**File #:** Res. 2020-107R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-107R, approving a Change Order to the construction contract with Cash Construction Company, Inc. for the Main Lift Station Force Main Replacement Project to increase the contract price by \$526,585.00 bringing the total contract price to \$6,876,093.04; authorizing the City Manager or his designee to execute the appropriate documents relating to the change order on behalf of the City; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** Engineering and CIP, Laurie Moyer, Director (by Lynda Williams, Purchasing Manager)

**Amount & Source of Funding**

**Funds Required:** \$526,585.00

**Account Number:** C111; DP20; C652

**Funds Available:** C111 - \$5,886,749.41; DP20 - \$500,000.00; C652 - \$145,000.00

**Account Name:** C111 - Main Lift Station Force Main Improv; DP20 - Woodlands Drainage; C652 - WWTP Electric Backup

**Fiscal Note:**

**Prior Council Action:** Resolution 2018-75R - Approval of construction contract to Cash Construction Company, Inc. for the Main Lift Station Force Main Replacement project. Resolution 2020-213R - Deductive Change Order #1 to Cash Construction Company, Inc. for the Main Lift Station Force Main Replacement project that removed electrical ductbank scope of work.

**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.
- Core Services
- Not Applicable

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

Wastewater Master Plan

**Background Information:**

On April 7, 2020 the Main Lift Station Force Main Replacement Project was awarded to Cash Construction Company in the amount of \$9,286,059.00. Scope of work included the replacement of two 20" concrete force mains with two 24" PVC force mains, a reclaimed water bulk filling station, an underground electric duct bank, six storm sewer crossings and a 5'x5' box culvert along River Road.

Council approved Change Order No. 1 on May 19 that lowered the cost of the contract in the amount of \$2,936,550.96 due to the removal of the electrical ductbank from the project due to a lack of electrical funds.

Change Order No. 2 will add a diversion channel originally proposed with the Blanco Gardens Drainage Improvement project. This channel will add 500 cfs capacity to convey overflows from the Blanco River. The stormwater scope of work for this project is scheduled to be complete by October 21, 2020. The remaining items including the reclaimed water bulk filling station and force mains are scheduled to be complete by early 2021.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval of this Change Order #2 revising the total contract amount to \$6,876,093.04.

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CHANGE ORDER TO THE CONSTRUCTION CONTRACT WITH CASH CONSTRUCTION COMPANY, INC. FOR THE MAIN LIFT STATION FORCE MAIN REPLACEMENT PROJECT TO INCREASE THE CONTRACT PRICE BY \$526,585.00 BRINGING THE TOTAL CONTRACT PRICE TO \$6,876,093.04; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE DOCUMENTS RELATING TO THE CHANGE ORDER 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.** Change Order No. 2 to the construction contract with Cash Construction Company, Inc. for the Main Lift Station Force Main Replacement Project to increase the amount of the contract by \$526,585.00 bringing the total contract price to \$6,876,093.04 is approved.

**PART 2.** The City Manager or his designee is authorized to execute appropriate documents related to the change order 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 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk



# CITY OF SAN MARCOS CONSTRUCTION CHANGE ORDER

(\$50,000 and higher)

PROJECT: Main Lift Station - Force Main Replacement  
 CONTRACT NO.: 220-099  
 CONTRACTOR: Cash Construction Company, Inc.  
 ADDRESS: 217 Kingston Lacy Blvd.  
 CITY/STATE/ZIP: Pflugerville, TX 78660

Date Prepared: 5/1/2020  
 Change Order #: 2

We are submitting this Change Order to the referenced contract. In consideration of the Change Order agreed to herein as complete equitable adjustments and full and final payment for the Contractor's additional work, the Contractor hereby releases the Owner from any and all liability under this contract for further equitable adjustments, including additional time for performance, attributable to such facts or circumstances giving rise to the proposal for adjustment.

This authorization provides for the following modifications or additions: Change Order #2 includes the construction of a diversion channel originally proposed in the Blanco Gardens Drainage Improvement project. All plans and specifications associated with Change Order #2 which are classified as Stormwater in scope of work shall be subject to the project schedule defined in Addendum #1 for the Main Lift Station Force Main Replacement project, Contract #220-099. All stormwater scope of work associated with Change Order #2 as well as the original bid schedule must achieve substantial completion by September 21, 2020 and final completion by October 21, 2020. Change Order #2 plans, specifications and associated bid items are independent of those and are not to be combined with the original bid schedule.

I. Diversion Channel								
ITEM NUMBER	ITEM SPEC REF.	DESCRIPTION	PREVIOUS QUANTITY	REVISED QUANTITY	CHANGE IN QUANTITY	UNIT	UNIT PRICE	TOTAL
128	102S-A	Misc Clearing and Grubbing	0	6.5	6.5	AC	\$1,730.00	\$11,245.00
129	609S-C	Revegetation	0	30,000	30,000	SY	\$1.00	\$30,000.00
130	TxDOT	Traffic Control (TxDOT TCP (1-2)-18)	0	1	1	MO	\$12,300.00	\$12,300.00
131	628S	Curb Inlet Protection	0	15	15	LF	\$12.00	\$180.00
132	120S-B	Channel Excavation	0	33,800	33,800	CY	\$7.37	\$249,106.00
133	605S-A	Soil Retention Blanket Class 1; Type A	0	20,150	20,150	SY	\$1.80	\$36,270.00
134	594S-C	Gabion Mattress, 6" Thick, w/ Geotextile Fabric	0	2,200	2,200	SY	\$60.30	\$132,660.00
135	610S-A	Tree Protection	0	300	300	LF	\$3.70	\$1,110.00
136	642S	Sill Fence	0	4,305	4,305	LF	\$3.20	\$13,776.00
137	102S-A	Tree Removal	0	4	4	EA	\$350.00	\$1,400.00
138	641S	Temporary Construction Entrance	0	1	1	EA	\$1,300.00	\$1,300.00
139	104S-A	Remove Curb and Gutter Section	0	400	400	LF	\$10.00	\$4,000.00
140	702S-G	Remove and Replace Existing Fencing, Wire	0	480	480	LF	\$9.10	\$4,368.00
141	591S-B	Prop. Rock Rip-Rap w/ Geotextile Fabric (Class III - 12")	0	230	230	CY	\$61.00	\$14,030.00
142	430S-B	Prop Curb and Gutter, w/ Curb Cuts	0	400	400	LF	\$37.10	\$14,840.00
<b>TOTAL FOR BID CATEGORY</b>						<b>SUB TOTAL :</b>		<b>\$526,585.00</b>

**TOTAL CHANGE ORDER TOTAL :** \$526,585.00

**CHANGE IN DAYS REQUESTED FOR CHANGE ORDER** 0

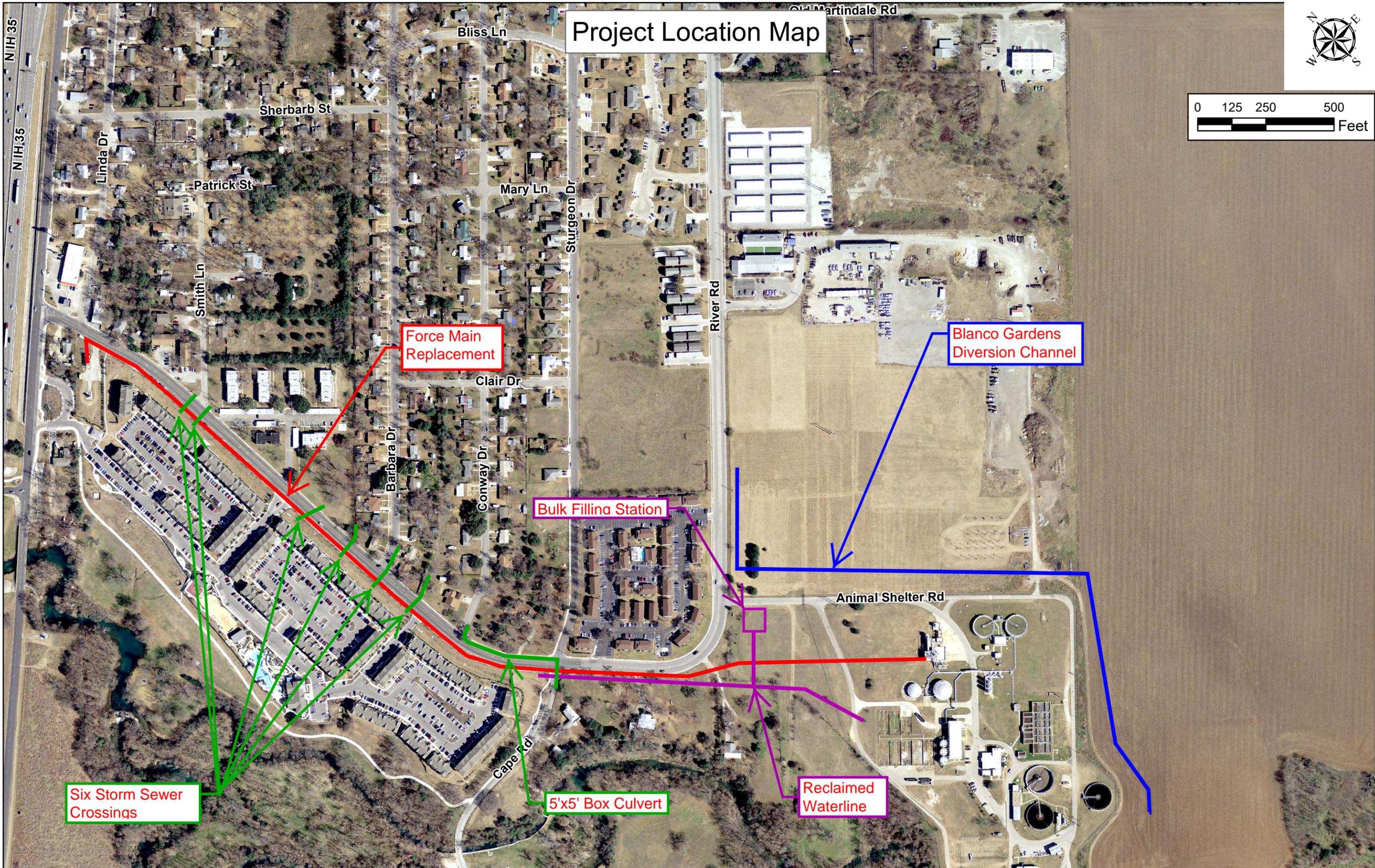
Date	Contract Document	Amount	Days	Running Sum	% Change \$
4/7/2020	ORIGINAL CONTRACT AMOUNT:	\$9,416,039.00	0	\$9,416,039.00	0.0%
4/16/2020	CHANGE ORDER 1:	(\$2,935,550.26)	0	\$6,479,488.74	-31.2%
5/1/2020	CHANGE ORDER 2:	\$526,585.00	0	\$7,006,073.74	-25.6%
	REVISED CONTRACT AMOUNT/DAYS:	\$7,006,073.74	0		

Your signature below will constitute your acceptance of this Change Order:

1. Prepared By Project Manager:  Ray Garcia, Senior Engineer Date: 5/13/2020	2. Contractor:  Trey Dickehut, Vice President Date: 5/4/20
3. Recommended by Design Consultant:  Eric Scheibel, P.E. Date: 05/13/2020	4. Recommended by Department Director: Laurie Moyer, P.E. Date:
5. Reviewed by Finance: Contractor Administrator Date: Purchasing Manager Date:	6. Approved By: City Manager Date:

Distribution List:  
 Project Manager  
 Finance Department - Contract Administration  
 Contractor  
 Inspector

# Project Location Map





Legislation Text

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**File #:** Res. 2020-108R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-108R, approving a Change in Service to the engineering services agreement with Lockwood, Andrews & Newnam, Inc. relating to the Purgatory Creek Improvements Project in the estimated amount of \$174,734.00 for a total contract price of \$2,336,948.00; authorizing the City Manager or his designee to execute the appropriate purchasing documents to implement the change in service; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** CIP / Engineering, Director, Laurie Moyer (by Lynda Williams, Purchasing Manager)

**Amount & Source of Funding**

**Funds Required:** \$174,734

**Account Number:** C679

**Funds Available:** \$319,800

**Account Name:** Purgatory Creek Improvements Phase 1

**Fiscal Note:**

**Prior Council Action:** December 3, 2019: Awarded professional engineering contract 218-307 to Lockwood, Andrews & Newnam, Inc. for an estimated amount of \$1,694,774 to prepare 30 Percent Design Phase Engineering Services for the Purgatory Creek Improvements project. On June 5, 2018, LAN, Inc. was awarded \$467,440 to conduct preliminary engineering.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Multi Modal Transportation

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.
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

The objective of the Purgatory Creek Improvement project is to reduce flooding along Purgatory from the San Marcos River to the discharge from the NRCS Flood Control Dam #5 at Wonder World Drive. Due to the extent of the work, multiple projects will be constructed beginning at the San Marcos River and working upstream. The Purgatory Creek Improvement Project Phase I project limits will be from the San Marcos River to Johnson Avenue and the Phase 2 project limits is from Johnson Avenue to Wonder World Drive.

As part of the project, a permitting pre-application meeting was held on January 22, 2020 to discuss permitting requirements for the Purgatory Creek Improvements project. The meeting was attended by representatives from the US Army Corps of Engineers (USACE), US Environmental Protection Agency (EPA), Texas Parks and Wildlife Department (TPWD), US Fish and Wildlife Services (USFWS), LAN's team and City staff. During the meeting, the USACE representative recommended the City consider the Phase 1 and Phase 2 areas as a single project and permit them together.

This change in service for USACE Permitting of the Phase 2 area includes the following:

- Expands the project area to conduct permitting related tasks to include the Phase 1 and 2 areas (San Marcos River to Wonder World Drive).
- Conduct similar services as currently authorized for the Phase 1 area including:
  - USACE Section 404 Permit Compliance
  - USACE Section 7 Consultation
  - USACE Section 106 Permit Compliance
  - Compliance with Antiquities Code of Texas

The estimated schedule to complete these USACE Permitting of the Phase 2 area will be completed with the original 30% Design phase (end of 2020).

The project team, led by Lockwood, Andrews & Newnam, Inc. (LAN), completed a Preliminary Engineering report in May 2019. On December 3, 2019, the City authorized LAN to develop 30% design plans for the Phase 1 area (San Marcos River to Jonson Avenue). The project includes channel modifications for flood control, greenway trails for transportation connectivity, water quality, natural stream stability design for erosion prevention, replacement of road crossings, utility modifications, permitting and approval requirements, and construction cost estimates.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval of this change in service for LAN, Inc. in the amount of \$174,734

**RESOLUTION NO. 2020-            R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CHANGE IN SERVICE TO THE ENGINEERING SERVICES AGREEMENT WITH LOCKWOOD, ANDREWS & NEWNAM, INC. RELATING TO THE PURGATORY CREEK IMPROVEMENTS PROJECT IN THE ESTIMATED AMOUNT OF \$174,734.00 FOR A TOTAL CONTRACT PRICE OF \$2,336,948.00; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE APPROPRIATE DOCUMENTS TO IMPLEMENT THE CHANGE IN SERVICE; AND DECLARING AN EFFECTIVE DATE.**

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

**PART 1.** A change in service to the engineering services agreement with Lockwood, Andrews & Newnam, Inc. relating to the Purgatory Creek Improvements Project in the estimated amount of \$174,734.00 is approved.

**PART 2.** The City Manager or his designee is authorized to execute the appropriate documents to implement the change in service.

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

**ADOPTED** on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

April 27, 2020

John Espinoza, PE, CFM  
City of San Marcos  
630 E Hopkins  
San Marcos, Texas 78666

**Re: USACE Permitting for Phase 2 of Purgatory Creek Improvements Project (Wonder World Drive to Johnson Avenue) - Proposal for Supplemental Professional Services (existing contract # 218-307)**

Dear Mr. Espinoza:

LAN is pleased to present this proposal to provide supplemental professional services for the USACE permitting of the Phase 2 improvements to Purgatory Creek (from Wonder World Drive to Johnson Avenue). LAN is currently underway to complete the 30% design of the Phase 1 Purgatory Creek Channel Improvements (from Johnson Avenue to the San Marcos River).

The City, LAN, and subconsultants had a pre-application meeting with the US Army Corps of Engineers (USACE) on January 22, 2020 to discuss the permitting requirements for the Purgatory Creek Improvements Project. During this meeting, the USACE confirmed that they considered the Phase 1 and Phase 2 project areas to be a single project and they recommended that they be permitted together.

The scope presented herein represents work that is necessary to include Phase 2 improvements into in the on-going USACE permitting efforts for the Phase 1 Purgatory Creek Channel Improvements Project. The Phase 2 improvements will be described at a conceptual level in the permitting documents which will allow a conditional permit for Phase 2 improvements. The conditional permit will need to be modified once the design for the Phase 2 improvements starts (expected in 2022 or later). This proposal includes the expected effort needed to obtain conditional approval of the conceptual Phase 2 improvements for the Purgatory Creek Improvements Project.

The tasks included for the current Phase 2 permitting effort include:

Task 1: Project Management

Task 2: Phase 2 Permitting

Task 2a: Right of Entry (ROE)

Task 2b: USACE Section 404 permit compliance

Task 2c: USACE Section 7 consultation

Task 2d: USACE Section 106 permit compliance

Task 2e: Compliance with the Antiquities Code of Texas

Hicks & Company will be subcontracted to LAN to perform the compliance tasks for the USACE permits and Antiquities Code of Texas. The Hicks & Company proposal is included as Attachment 1.



**Lockwood, Andrews  
& Newnam, Inc.**

A LEO A DALY COMPANY

LAN will provide project management activities, right of entry request and coordination, and task coordination including review of deliverables to the permitting agencies and the City. Project management will include performing monthly project administrative activities. For ROE coordination, LAN will provide a summary of properties necessary for ROE to the City and will coordinate ROE information with the project team as received. LAN will provide coordination of information and review of deliverables for the USACE and Antiquities Code of Texas compliance tasks.

A fee estimate is included as Attachment 2. The budgets presented in the fee sheet include all LAN and subconsultant services necessary to complete the expected USACE permitting requirements for Phase 2 of the Purgatory Creek Improvements project. The total project fee is \$174.7K.

Thank you for the continued opportunity to be part of your team on this important project.

Sincerely,

A handwritten signature in black ink that reads "Jennifer L. Miller". The signature is written in a cursive, flowing style.

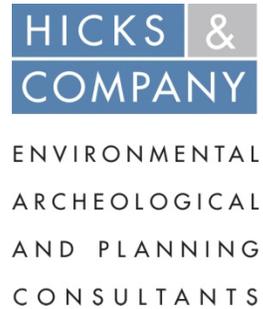
Jennifer L. Miller, PE  
*Project Manager*

Attachments

- 1 – Hicks & Company Proposal
- 2 – Fee Estimate

CC: Laurie Moyer, PE – City Director of Engineering & CIP  
Travis Michel, PE – LAN Project Principal

1504 WEST 5TH STREET AUSTIN, TEXAS 78703 TEL: 512 / 478.0858 FAX: 512 / 474.1849



April 24, 2020

Jennifer L. Miller, Technical Manager  
Lockwood, Andrews & Newnam, Inc.  
407 S. Stagecoach Trail, Ste. 207  
San Marcos, Texas 78666

RE: Scope of Services for Phase 2 of the City of San Marcos Purgatory Creek Channel Improvement Project

Dear Ms. Miller,

This transmits a proposed Scope of Services and attached fee estimate for work to be performed by Hicks & Company for Phase 2 of the City of San Marcos Purgatory Creek Channel Improvement Project in San Marcos, Texas. This Scope of Services was prepared in response to your email request on March 25, 2020, and a follow-up teleconference meeting on March 26, 2020.

If you have any questions or need further assistance, please contact me at (512) 478-0858 or [rfrye@hicksenv.com](mailto:rfrye@hicksenv.com).

Sincerely,

A handwritten signature in blue ink, which appears to read "Roy G. Frye".

Roy G. Frye  
Senior Project Manager  
Hicks & Company

Attachments

Scope of Services  
Project Location Figure  
Fee Estimate

**SCOPE OF SERVICES**  
**City of San Marcos Purgatory Creek Channel Improvement Project, Phase 2**  
**April 24, 2020**

**PROJECT UNDERSTANDING**

In an email dated March 25, 2020, and follow-up telephone conference call on March 26, 2020, Jennifer Miller of Lockwood, Andrews, and Newnam, Inc. (LAN) requested a scope of services and fee from Hicks & Company for completion of professional services to support U.S. Army Corps of Engineers (USACE) environmental compliance and permitting requirements for Phase 2 of the proposed Purgatory Creek Channel Improvement Project. Services requested will include those activities and tasks needed to allow the USACE to authorize construction of Phases 1 and 2 as a single and complete project under Section 404 of the Clean Water Act. However, it is the intention of the City of San Marcos to fund and construct Phase 2 after Phase 1 is completed. Services to be covered under this Scope of Services for Phase 2 will be additional to those services identified in the Scope of Services dated May 13, 2019, for the Phase 1 improvements.

This Scope of Services will involve the completion of Tasks and Subtasks listed below along with the inclusion of several assumptions. These Tasks and Subtasks conform to what is presently anticipated given the information that has been provided by LAN and the experience of Hicks & Company acquired with similar projects. Depending on the results of field investigations and resulting consultation with the USACE, modifications in project design, or the acquisition of presently unknown information, additional subtasks may be required or alternative approaches identified that may require modification to this Scope of Services or the need to perform supplemental services.

Services will also include project management, coordination, and communications to ensure overall project efficiency. Quality control/quality assurance reviews will take place for all deliverables prior to submitting to LAN or any of the regulating agencies.

**PROJECT DESCRIPTION**

Phase 2 of the Purgatory Creek Stream Improvements will complement Phase 1 improvements to reduce the effects of flooding in areas adjacent to the creek and in street crossings within the city limits that are overtopped during storm events (see **Figure 1** provided as an attachment to this Scope of Services). Proposed improvements for Phase 1 were described in the Scope of Services dated May 13, 2019. Proposed improvements for Phase 2 will occur within the Purgatory Creek Watershed between Wonder World Drive and Johnson Avenue and include: 1) the addition of a diversion channel within Reach 4 beginning at Wonder World Drive and extending east approximately 6,090 feet with adjacent detention grading and modification of a creek crossing of the diversion channel on Hunter Road to increase storage capacity and mitigate flood flows; 2) reconfiguration of portions of the stream channel and banks of Purgatory Creek within Reach 2; 3) abandonment and/or rerouting of utility lines to eliminate conflicts with stream function; and 4) acquisition of privately-owned property and drainage easements within designated flood prone areas. Reach 3 would remain largely undisturbed.

Proposed Phase 2 services are more fully described in the tasks listed below.

**TASK 1. SECTION 404 PERMIT COMPLIANCE**

Upon notice to proceed (NTP) from LAN, Hicks & Company will initiate a process that will lead to regulatory compliance of the proposed project under Section 404 of the Clean Water Act. This process will involve the completion of several subtasks listed below. See **Task 2** for USACE consultation with the

U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act (ESA) and **Task 3** for consultation under Section 106 of the National Historic Preservation Act (NHPA).

**1.1 Delineation of Waters of the U.S., including wetlands.** The Phase 2 project area will be evaluated, and site reconnaissance will be conducted, to identify and delineate jurisdictional waters of the U.S. (including wetlands) subject to regulation by the USACE under Section 404 of the Clean Water Act. Research will include use of National Wetland Inventory maps, topographic maps, soil survey reports, and aerial photography as needed or required. Hicks & Company will conduct field investigations of the Phase 2 project area from the Natural Resources Conservation Service (NRCS) Dam #5 downstream to the start of Reach 1: Phase 1. Field investigations will include the Purgatory Creek area between the NRCS Dam #5 and Wonder World Drive and selected areas within Reach 2 through 4 (**Figure 1**). During these investigations Hicks & Company will utilize the routine method of wetland delineation outlined in the *1987 Corps of Engineers Wetlands Delineation Manual* and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region (Version 2.0)*. Waterbodies will be delineated according to USACE *Regulatory Guidance Letter (RGL) 05-05 Ordinary High Water Mark (OHWM) Identification*. Field activities will focus on waters of the U.S. determination, delineation, and description. Fieldwork will be recorded using hand-held GPS instrumentation with sub-meter accuracy and wetland determination data forms.

**1.2 Field-verification of Waters of the U.S., including wetlands, delineation with the USACE.** After the completion of **Subtask 1.1**, Hicks & Company will contact the assigned USACE project manager to schedule a field-verification of the WOTUS delineation and receive any information the USACE may provide concerning direction and guidance in pursuit of the Section 404 compliance process. LAN will be included on all communication pertaining to this subtask.

**1.3 Stream and wetland functional assessment.** A field investigation and assessment of stream and wetland ecological functions for the Phase 2 project area will be conducted using the USACE Texas Rapid Assessment Method (TXRAM). Information collected from this assessment will be used to estimate compensatory mitigation requirements for any wetland or stream impacts based on the conceptual design of the Phase 2 improvements (see **Subtask 1.6** below). Wetland and stream TXRAM data forms for the Phase 2 project area will be completed.

**1.4 Preparation of a Preliminary Jurisdictional Determination Report.** The results of the determination in **Subtasks 1.1** and **1.2** will be compiled into a Section 404 Preliminary Jurisdictional Determination report to be submitted to LAN and the City for review and approval prior to inclusion in **Subtask 1.5** below. The report will include results of the field investigations and will be accompanied with GIS-based site maps. The general outline of the report will be as follows:

- 1. Introduction**
- 2. Methods**
  - 2.1. Data Review**
  - 2.2. Field Delineation**
- 3. Results and Discussion**
  - 3.1. General Description of the Project Area**
    - 3.1.1. Vicinity**
    - 3.1.2. Geology and Topography**
    - 3.1.3. Soils**
    - 3.1.4. Vegetation**
    - 3.1.5. Hydrography**

#### 4. Findings

##### 4.1. Description of Potential Waters of the U.S.

#### 5. Conclusion

**1.5 Preparation of a Section 404 Individual Permit.** Hicks & Company will include all information collected from **Subtasks 1.1** through **1.4** above in the permit application that is currently being prepared for Phase I. Based on consultation with the USACE for the Phase I improvements, an Individual Permit will likely be required, and Phase 1 and Phase 2 would be included together in the permit application as one single and complete project. An application will be prepared and submitted; an on-site and off-site 401(b)(1) alternatives analysis will be completed; and the completed application along with all supporting documentation will be submitted to the USACE, after review by LAN and the City of San Marcos. Based on consultation with the USACE, information pertaining to Phase 2 in this subtask will be developed according to conceptual design.

**1.6 Preparation and submittal of a Compensatory Mitigation Plan.** Compensatory mitigation requirements by the USACE to offset environmental losses from unavoidable temporary or permanent stream or wetland impacts for the Phase 2 improvements will be estimated based upon conceptual design and included as a discussion in the Compensatory Mitigation Plan that is currently being prepared for Phase 1, if warranted.

**1.7 Tier I or Tier II 401 Certification.** As required by an Individual Permit, and upon approval by the City of San Marcos, a Tier I checklist or a Tier II 401 Certification Questionnaire and water quality certification documentation will be prepared and submitted. For the purposes of this Scope of Services, hours are included in the fee estimate to incorporate the Phase 2 conceptual improvements with Phase 1 for this task.

**1.8 National Environmental Policy Act (NEPA) process and public interest Review.** A public notice for the proposed project as required by the USACE for Individual Permits will be prepared and coordinated with the agency. Written responses to public comments (and/or public hearings) will be prepared and submitted along with responses to any USACE questions and comments. For the purposes of this Scope of Services, hours are included in the fee estimate to incorporate the Phase 2 conceptual improvements with Phase 1 proposed improvements for this task.

**1.9 Record of agency coordination and consultation.** Hicks & Company will maintain an administrative record of consultation with the USACE, USFWS, Texas Parks & Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), and the Texas Historical Commission (THC). This record will be provided to LAN and the City of San Marcos. For the purposes of this Scope of Services, hours are included in the fee estimate to incorporate the Phase 2 conceptual improvements with Phase 1 for this task.

#### **TASK 2. SERVICES PROVIDED TO ASSIST USACE CONSULTATION WITH THE USFWS UNDER SECTION 7 OF THE ESA**

Issuance of a Section 404 Permit by the USACE for this project constitutes a federal action that may affect one or more endangered or threatened species listed by the ESA. Section 7 of the ESA requires that the USACE consult with the USFWS to determine potential impacts and identify associated mitigation measures for the potentially impacted species. To complete this consultation, a Biological Assessment (BA) report will be prepared for the USFWS as supporting documentation for a Biological Opinion (BO) issued by the USFWS that confirms the extent of impacts and lists required mitigation

measures. For the purposes of this Scope of Services, hours are included in the fee estimate to incorporate the Phase 2 conceptual improvements with Phase 1 for this task and the following subtasks.

**2.1 Pre-field ecological investigations and coordination.** Coordination has already been initiated with the USACE, USFWS, TPWD, and other relevant entities. Hicks & Company will continue to obtain reports and data related to all available ecological investigations pertaining to threatened and endangered species previously conducted in the Phase 1 and Phase 2 project vicinity. If agency meetings are necessary to be conducted in person, they will be scheduled for the same time that the field visit is conducted, if feasible. Shapefiles will be obtained showing existing and proposed channel features and reasonable alternatives to be assessed. A request will be made to the TPWD Texas Natural Diversity Database (TXNDD) for any recorded sensitive species element occurrences for a search area that will include the watersheds of Purgatory Creek and the San Marcos River. This information will be portrayed on GIS-produced maps.

**2.2 Field investigations.** Field assessments and investigations will be conducted to assess the impact of all project alternatives on the ecological setting, vegetation, wildlife, and threatened and endangered species. Vegetation (species and physiognomy) will be listed, described, and mapped in the field. Wildlife observed will be noted and the presence of any rare and/or listed species documented.

**2.3 Biological assessment report preparation.** Based on information obtained from **Subtask 2.1** and **Subtask 2.2** above, a BA will be prepared for the USFWS that will include the following tasks:

- a) Summarize investigations performed to date for projects in the vicinity;
- b) Incorporate data acquired from USFWS and TPWD regarding rare and listed species, known habitat on refuge lands, refuge boundary shapefiles, etc.;
- c) Acquire, describe, and map soils and geology data for ecological context;
- d) Perform regional and site-specific habitat assessment for listed plant species;
- e) Perform regional and site-specific habitat assessments for listed invertebrate, insect, and mollusk species as applicable;
- f) Perform regional and site-specific habitat assessment for listed fish species;
- g) Perform regional and site-specific habitat assessment for listed reptile and amphibian species;
- h) Perform regional and site-specific habitat assessment for endangered avian species;
- i) Perform regional and site-specific habitat assessment for endangered mammal species;
- j) Analyze data acquired; quantify direct, indirect and cumulative impacts (effects); analyze avoidance, minimization and mitigation strategies as appropriate; and include results in a BA for submission to and approval by the USFWS;
- k) Address comments, prepare comment response matrices (assume one round per agency), and submit final BA; and
- L) Assist USFWS in drafting BO, if necessary.

**TASK 3. COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**

Issuance of an individual permit by the USACE is subject to requirements of Section 106 of the NHPA. This legislation requires that federal agencies must take into account the effects of a federal undertaking (i.e., federal funding, permits, or approval) on historic resources (including archeological historic resources) listed or eligible for listing in the National Register of Historic Places (NRHP). For the purposes of this Scope of Services, hours are included in the fee estimate to incorporate the Phase 2 conceptual improvements with Phase 1 for this task and the following subtasks.

**3.1 USACE coordination.** Initial project coordination with the USACE has been conducted for Phase 1 and the area of potential effect (APE) and a scope of work for archeological and historic standing structures investigations has been developed. The APE for Phase 2 archeological and historic standing structures investigations will be developed under this task and Hicks & Company will participate in on-going coordination (i.e., additional teleconferences and letters) with the USACE and the THC as necessary (i.e., discuss new and/or unexpected findings) to facilitate the successful completion of the project. A complete record of meeting minutes will be maintained.

**3.2 Research Design/background review – standing structures.** It is anticipated that the USACE will require a historic resources survey for non-archeological standing structures within the APE to meet the requirements of Section 106 of the NHPA. Prior to initiating the field survey, Hicks & Company will prepare a research design that will include a desktop background and literature review to identify previously documented and designated historic resources within the project area and establish a historic context for the survey area. Hicks & Company will search the THC Historic Sites Atlas and TxDOT’s Historic Districts & Properties Maps for properties listed in the NRHP, or as State Antiquities Landmarks (SALs), Recorded Texas Historic Landmarks (RTHLs), Official Texas Historical Markers (OTHMs), and cemeteries. Hicks & Company will also coordinate with the City of San Marcos for information on locally designated historic landmarks and districts, as applicable. A research design report will be prepared and submitted to the USACE and THC for review and concurrence.

**3.3 Historic resources survey – standing structures.** Upon approval of the research design, Hicks & Company will conduct a reconnaissance-level field survey of historic resources within the APE determined by the USACE and THC. It is anticipated that the APE, at a minimum, will include all parcels immediately adjacent to the proposed project area. All historic-age resources (45 years of age or older) within the APE will be photo-documented from the public right of way and evaluated for potential NRHP eligibility based on integrity and significance. For parcels not visible from the public right of way, right of entry will be coordinated to the extent possible. For resources that are recommended NRHP eligible, an assessment of project effects to the resources will be provided.

A portion of the Phase 2 project area is within an area recently surveyed by Hicks & Company historians as part of a large-scale historic resources survey for the City of San Marcos Department of Planning and Development Services and the THC. The final report was submitted June 2019 with the reconnaissance field survey within this area completed between November 2018 and March 2019. Hicks & Company will coordinate the use of this previous survey data for standing structures, as applicable, in the historic resources survey for Phase 2.

**3.4 Historic Resources Survey Report – standing structures.** Hicks & Company will prepare a historic resources survey report documenting the findings of the reconnaissance field survey. The report will include background research; previously documented and designated historic resources; an historic context statement; and NRHP eligibility recommendations, assessment of effects, and photographs and

survey forms for all inventoried resources. A draft and final report will be provided to the USACE and the THC for review and concurrence.

**TASK 4. COMPLIANCE WITH THE ANTIQUITIES CODE OF TEXAS**

As the proposed construction will occur on public lands owned or administered by the City of San Marcos (a political subdivision of the State of Texas) the project is subject to the terms of the Antiquities Code of Texas (ACT). This legislation requires political subdivisions of the state to take into account the effects a proposed project will have on historical and archeological resources on public land. For the purposes of this Scope of Services, hours are included in the fee estimate to incorporate the Phase 2 conceptual improvements with Phase 1 for this task and the following subtasks.

**4.1 THC coordination.** Hicks & Company will schedule a teleconference with the THC to provide initial project coordination, discuss any specific agency concerns, and determine the appropriate level of effort required for the field investigations, in conjunction with guidance from the USACE. Information from this teleconference will also guide the development of the APE and scope of work for archeological investigations for Phase 2. Hicks & Company will participate in on-going coordination (i.e., additional teleconferences and letters) with the THC as necessary (i.e., discuss new and/or unexpected findings) to facilitate the successful completion of the project.

**4.2 Desktop background archeological literature and records review.** To conduct the background review, Hicks & Company will search site files, records, and maps from the Texas Archeological Research Laboratory (TARL) and the THC, available on the THC’s online Texas Archeological Sites Atlas and Historic Sites Atlas. The review will search the database for all previously recorded archeological surveys and prehistoric and historic sites located in or near the project area. Other resources to be reviewed in the database include properties listed in the NRHP, SALs, RTHLs, cemeteries, OTHMs, and historical maps to trace the development of the project area and help provide temporal data for historical archeological resources encountered during survey efforts.

**4.3 Scope of work and Texas Antiquities Permit Application.** Hicks & Company will prepare an appropriate scope of work and a Texas Antiquities Permit Application (which authorizes archeological investigations on public land) for submittal to THC for review. The scope of work will reflect the results of the coordination with the THC (and USACE), as well as include the results of the archeological resources background review, maps clearly depicting the project area, and any recommended areas of concern or recommendations made by previous investigations for additional work at known archeological sites. Additionally, the scope of work will discuss the environmental setting of the project, as it relates to the potential to discover intact archeological resources, and provide recommendations on the appropriate level of effort and methods for survey investigations based on the results of the background study and environmental factors.

**4.4 Field investigations.** Surface investigations will involve an examination of the ground surface and any erosional exposures for evidence of archeological materials and cultural features. Subsurface investigations will involve the excavation of shovel tests to sample shallow (less than one meter deep) soils and backhoe trenches to test deep soils for deeply buried archeological materials. All newly discovered and revisited sites will be explored as much as possible with consideration to project limits. The sites will be assessed for significance so that recommendations can be made for proper management, such as avoidance or additional work. Hicks & Company will complete a Texas Archeological Site Data Form for all newly discovered archeological sites. A detailed plan map of the sites will be produced, and their location will be plotted on U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle maps and relevant project maps. In addition, if potential historical buildings

and/or standing structures are located within or immediately adjacent to the current project, such areas will be shovel tested as if an archeological site.

**4.5 Archeological survey report.** Upon completion of the archeological survey, Hicks & Company will prepare a draft report of investigations for review by LAN and the City. The draft report will conform to the Council of Texas Archeologists and THC standards. The report will include the results of the background review and field survey. Specifically, the report will provide the methodology used in the investigations, the presence and condition of previously recorded sites located in and around the project area, a description of archeological/cultural resources encountered during the survey, recommendations for management of those cultural resources, and recommendations for additional investigations, if warranted.

Following review and comment by LAN and the City of San Marcos, Hicks & Company will address all appropriate edits and a draft report will be submitted to the THC and USACE for their review and concurrence. Once the agencies have reviewed the document and provided the results of those reviews to Hicks & Company, revisions will be included in the final report. Hicks & Company will submit copies of the final report to LAN, the City of San Marcos, the USACE, and the THC.

**4.6 Curation.** As per the requirements of the Texas Antiquities Permit, all paperwork and photographs generated during investigations must be curated at an approved facility. For this project, all materials will be curated at the Center for Archaeological Studies (CAS) in San Marcos, Texas.

**DELIVERABLES**

This Scope of Services includes the following deliverables:

- 1) **Subtask 1.3** Wetland and stream TXRAM data forms for the Phase 2 project area
- 2) **Subtask 1.4** Preliminary Jurisdictional Determination report that will incorporate information collected, compiled, and evaluated in **Subtasks 1.1–1.2**
- 3) **Subtask 1.5** Application for an Individual Section 404 Permit with supporting documentation including on-site and off-site alternatives analysis for both Phase 1 and Phase 2 project areas
- 4) **Subtask 1.6** Compensatory Mitigation Plan required for a Nationwide or Individual Section 404 Permit
- 5) **Subtask 1.7** Tier 1 or Tier 2 401 Certification
- 6) **Subtask 1.8** Public notice document and written response to public comments
- 7) **Subtask 1.9** Written record of agency coordination
- 8) **Subtask 2.3** Biological Assessment report that will incorporate information collected, compiled and evaluated in **Subtasks 2.1–2.3**
- 9) **Subtask 3.1** Meeting minutes from on-going agency coordination teleconference
- 10) **Subtask 3.2** Research Design prepared for the USACE and THC

- 11) **Subtask 3.4**     Historic Resources Survey Report
- 12) **Subtask 4.3**     Scope of work and Texas Antiquities Permit application
- 13) **Subtask 4.5**     An archeological survey report
- 14) **Subtask 4.6**     Curation of paperwork and photographs

**SCHEDULE**

Work will be completed with deliverables prepared and submitted according to a schedule mutually developed by Hicks & Company and LAN. Work schedules will also be subject to any limitations imposed by state or local governments concerning the Covid-19 virus.

**COSTS**

The proposed not-to-exceed cost to complete all tasks describe above is \$141,455.87. An itemized fee estimate based on current hourly billing rates for each activity and task is attached.

**OVERALL ASSUMPTIONS**

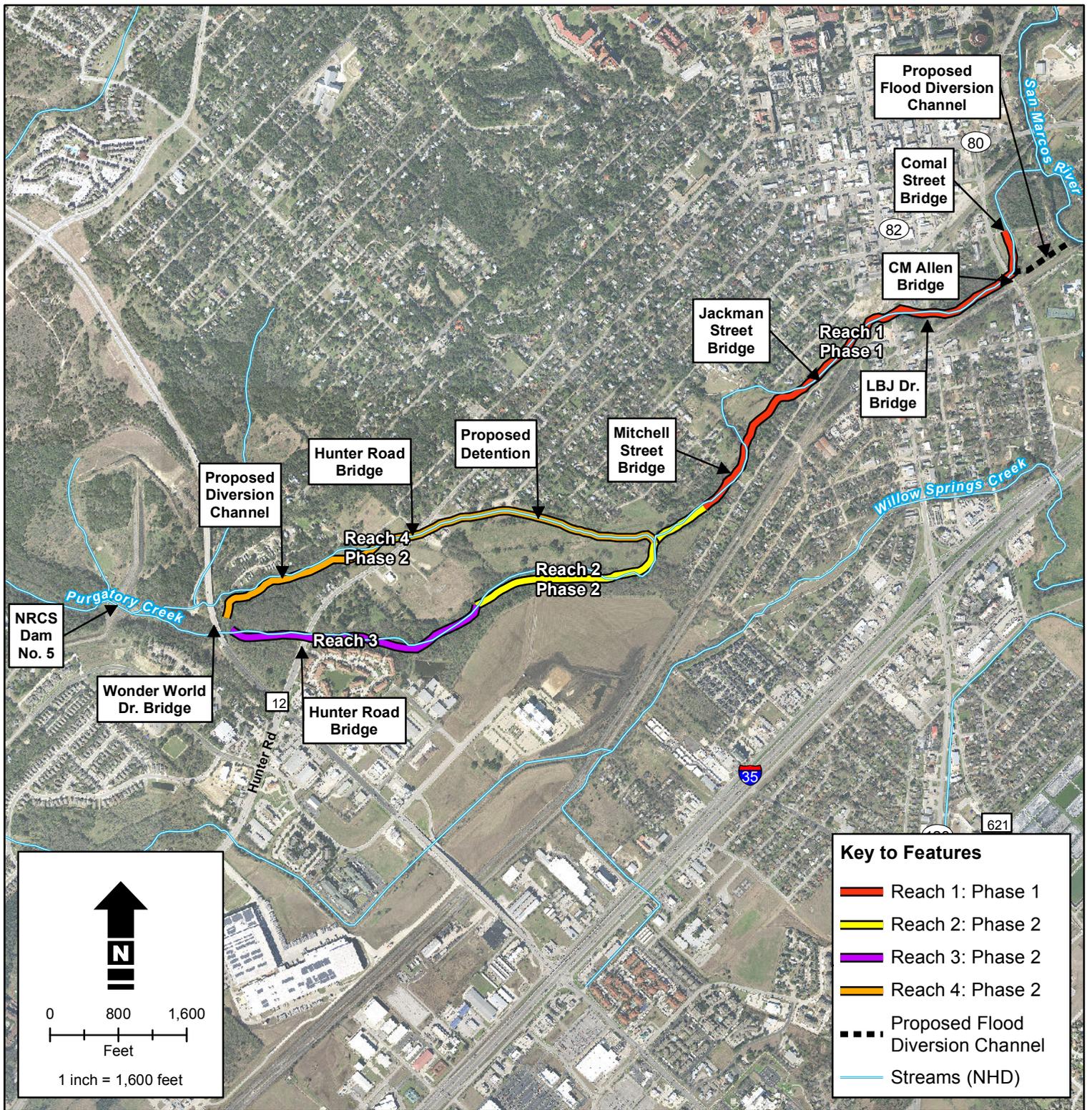
We have prepared this Scope of Services and fee estimate as accurately as possible with the current level of knowledge of the project and based on the assumptions included herein. Hicks & Company assumes relevant requested materials will be provided by LAN in a timely manner and submittals for review, comment, and/or signature will be addressed and returned as quickly as possible.

This Scopes of Services and fee estimate does not include costs associated with the assumptions listed below. If needed or required, such services would be performed under a supplemental scope of services and associated fee.

- This Scope of Services does not include tasks associated with USACE permit modifications that are to be completed once Phase 2 enters the design phase. These tasks would be provided under a separate scope of services and budget.
- Rights of entry will be provided by and coordinated with LAN. When rights of entry cannot be obtained, investigations will be performed through the use of aerial photography, existing desktop data sources, and visually, from city- or county-owned property and/or public rights of way in order to achieve task elements requiring offsite information.
- Systematic tree or vegetation survey requiring GPS coordinate information.
- Aerial photographs, design maps, and plans will be provided by LAN in a timely fashion as needed in a GIS-compatible format.
- If substantial changes occur in the project boundary or design plans to require reevaluations after field investigations have been completed, additional services will be supplemental to this Scope of Services.
- The anticipated tasks proposed by Hicks & Company for archeological services are dependent upon concurrence of the USACE and THC. Should additional archeological investigations be

necessary beyond those specified in this Scope of Services, they would proceed under a separate scope and budget.

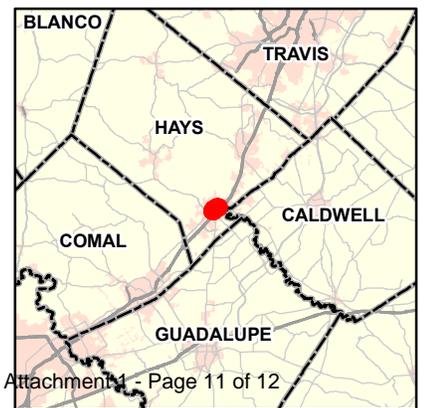
- Long-term assessment of stream and wetland ecological functions will utilize TXRAM. The USACE may require five to 10 years of monitoring through functional assessments. Such future functional assessments could be performed under a separate scope of services and budget.
- Project design may involve the services of an experienced fluvial geomorphologist familiar with the natural dynamics of streams in the southwestern U.S., including those in central Texas. Hicks & Company does not provide this service.
- This Scope of Services does not include a Phase I Environmental Site Assessment (ESA). A Phase I ESA could be performed under a separate scope of services and fee estimate, if needed or required.
- Costs are included for estimating projected fees; billing will be based on actual rates.



**Figure 1**

**Project Location**

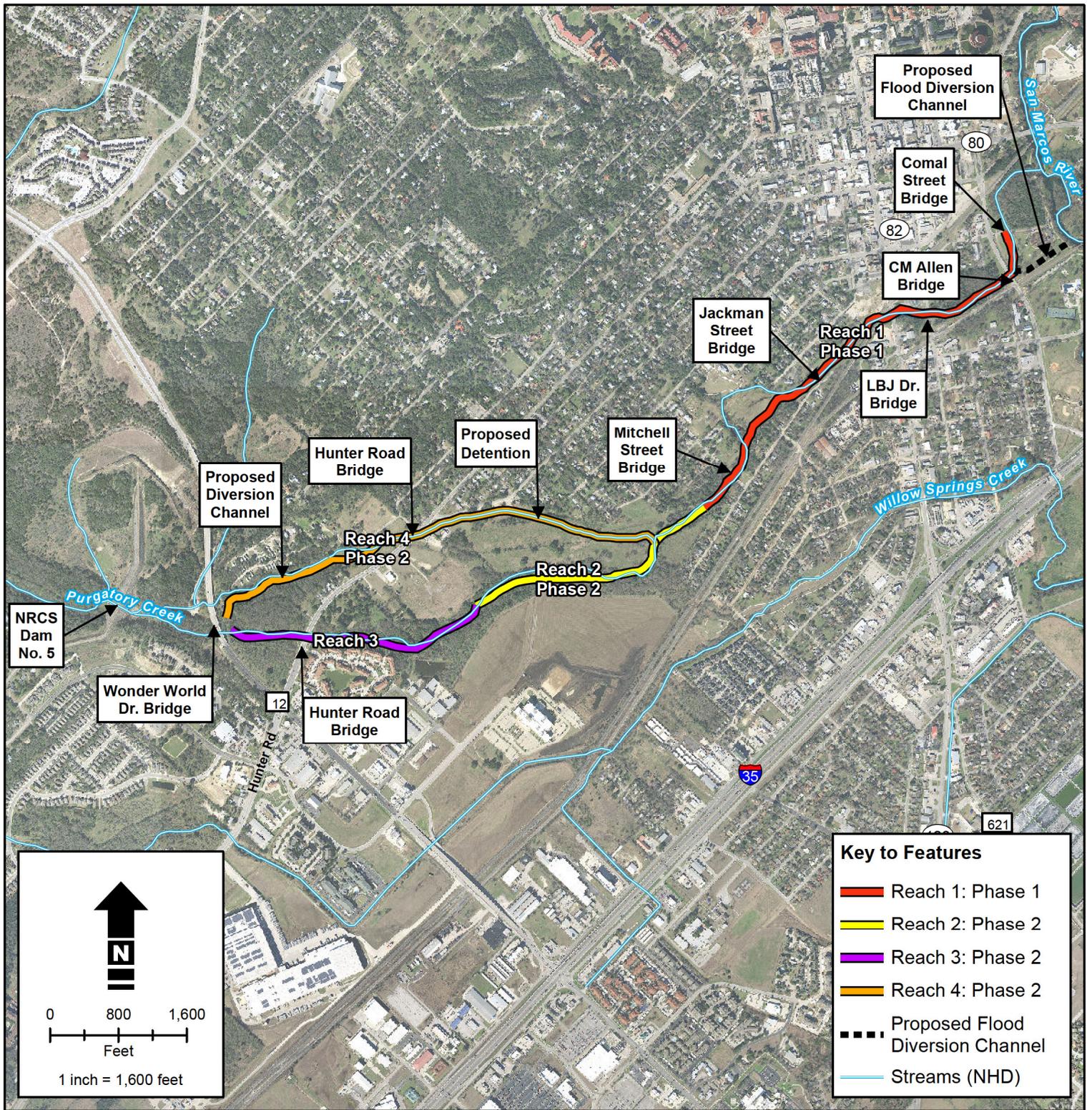
Purgatory Creek Channel Improvements Project  
Hays County, TX



**HICKS & COMPANY FEE ESTIMATE**  
**City of San Marcos Purgatory Creek Channel Improvement Project, Phase 2**  
**April 24, 2020**

Labor	Sr. Prog Mgr	Sr. Env'l Sci II	Env'l Sci II	Env'l Prof III	Env'l Prof II	Env'l Prof I	Env'l Tech I	Total
	\$181.80	\$151.50	\$121.20	\$106.05	\$96.96	\$86.36	\$53.03	
<b>Task 1 Section 404 Permit Compliance</b>								
1.1 Delineation of WOTUS, including wetlands		24	26		24			74.0
1.2 Field-verification of WOTUS with the USACE		8	10					18.0
1.3 Stream and Wetland Functional Assessment		20	8					28.0
1.4 Preliminary Jurisdictional Determination Report		4	48		24			76.0
1.5 Prepare Individual Section 404 Permit		40						40.0
1.6 Prepare Compensatory Mitigation Plan		40						40.0
1.7 Complete Tier 1 or Tier 2 401 Certification		10						10.0
1.8 Prepare Public Notice and Response to Comments		20	20					40.0
1.9 Prepare record of agency coordination and consultation		2						2.0
GIS Support				66				66.0
Project Mgmt/Coordination/Admin - QA/QC	3	18						21.0
Task 1 Labor Hours	3.0	186.0	112.0	66.0	48.0	0.0	0.0	415.0
<b>Task 1 Subtotal</b>	<b>\$ 545.40</b>	<b>\$ 28,179.00</b>	<b>\$ 13,574.40</b>	<b>\$ 6,999.30</b>	<b>\$ 4,654.08</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 53,952.18</b>
<b>Task 2 USACE Consultation with USFWS</b>								
2.1 Pre-field Investigation and Consultation		4	8					12.0
2.2 Field Investigations		12	12					24.0
2.3 Biological Assessment Report Preparation		40	52		8			100.0
GIS Support				40				40.0
Project Mgmt/Coordination/Admin - QA/QC	2	12	3					17.0
Task 2 Labor Hours	2.0	68.0	75.0	40.0	8.0	0.0	0.0	193.0
<b>Task 2 Subtotal</b>	<b>\$ 363.60</b>	<b>\$ 10,302.00</b>	<b>\$ 9,090.00</b>	<b>\$ 4,242.00</b>	<b>\$ 775.68</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 24,773.28</b>
<b>Task 3 Compliance with Section 106 of the NRHP</b>								
3.1 USACE Coordination			8	8	4			20.0
3.2 Research Design/Background Review - Standing Str.				20	2			22.0
3.3 Historic Resources Survey - Standing Structures				16	16			32.0
3.4 Historic Resources Survey Report - Draft and Final				44	8			52.0
GIS Support				8				8.0
Project Mgmt/Coordination/Admin - QA/QC	6	2						8.0
Task 3 Labor Hours	6.0	2.0	8.0	96.0	30.0	0.0	0.0	142.0
<b>Task 3 Subtotal</b>	<b>\$ 1,090.80</b>	<b>\$ 303.00</b>	<b>\$ 969.60</b>	<b>\$ 10,180.80</b>	<b>\$ 2,908.80</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 15,453.00</b>
<b>Task 4 Compliance with the Antiquities Code of Texas</b>								
4.1 Texas Historical Commission Coordination			8		2			10.0
4.2 Archeological Background Study			24					24.0
4.3 Scope of Work and Texas Antiquities Permit Application			12		3			15.0
4.4 Field Investigations			70				94	164.0
4.5 Report			80		4		40	124.0
4.6 Curation			2				20	22.0
GIS Support				16				16.0
Project Mgmt, QA/QC	2	4	4					10.0
Task 4 Labor Hours	2.0	4.0	200.0	16.0	9.0	0.0	154.0	385.0
<b>Task 4 Subtotal</b>	<b>\$ 363.60</b>	<b>\$ 606.00</b>	<b>\$ 24,240.00</b>	<b>\$ 1,696.80</b>	<b>\$ 872.64</b>	<b>\$ -</b>	<b>\$ 8,166.62</b>	<b>\$ 35,945.66</b>
<b>Total Labor Cost</b>								<b>\$ 130,124.12</b>
<b>Direct Costs</b>								
		Unit	Rate	Quantity				
Mileage		Mile	\$0.575	1,850				\$ 1,063.75
Field supplies		Each	\$25.00	4				\$ 100.00
Texas Archeological Site Data Form		Each	\$96.00	8				\$ 768.00
Curation Fee		Each	\$400.00	1				\$ 400.00
Backhoe and Operator		Day	\$1,800.00	5				\$ 9,000.00
<b>Total Direct Costs</b>								<b>\$ 11,331.75</b>
<b>TOTAL COST</b>								<b>\$ 141,455.87</b>

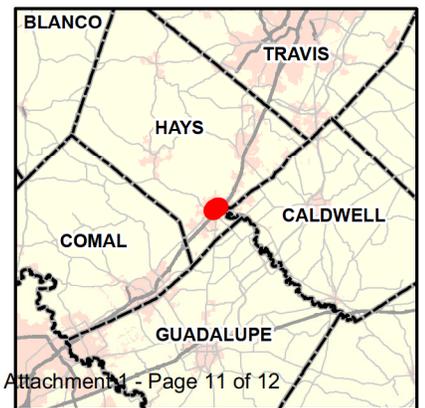
TASK ID	TASK DESCRIPTION	Project Principal	Project Manager	Technical Manager	PE V	EIT II	ADMIN II	TOTAL HRS.	TOTAL LAN COSTS	SUBCONSULTANT (at 5% mark-up)	TOTAL COSTS
<b>CONTRACT RATE PER HOUR</b>		\$ 250.00	\$ 200.00	\$ 245.00	\$ 225.00	\$ 130.00	\$ 100.00			Hcks & Company	
<b>1</b>	<b>Project Management</b>										
	Project Management		28	12			12	52	\$ 9,740.00		\$ 9,740.00
	HOURS/EXPENSES SUB-TOTALS	0	28	12	0	0	12	52			
	TOTAL LABOR COSTS	\$ -	\$ 5,600.00	\$ 2,940.00	\$ -	\$ -	\$ 1,200.00				
	% DISTRIBUTION OF STAFF HOURS	0.0%	53.8%	23.1%	0.0%	0.0%	23.1%				
	<b>SUBTOTAL</b>								<b>\$ 9,740.00</b>		<b>\$ 9,740.00</b>
<b>2</b>	<b>Phase 2 Permitting</b>										
a	Rights of Entry							0	\$ -		\$ -
i	Preparing ROE Request		2			4	2	8	\$ 1,120.00		\$ 1,120.00
ii	Coordinating ROE information		2			4	2	8	\$ 1,120.00		\$ 1,120.00
b	Section 404 Permit Compliance (9 deliverables)		8	8	8	16		40	\$ 7,440.00	\$ 56,649.79	\$ 64,089.79
c	Section 7 Consultation (1 deliverable)		4	2		4		10	\$ 1,810.00	\$ 26,011.94	\$ 27,821.94
d	Section 106 Permit Compliance (3 deliverables)		4	2		8		14	\$ 2,330.00	\$ 16,225.65	\$ 18,555.65
e	Compliance with the Antiquities Code of Texas (3 deliverables)		4	2		8		14	\$ 2,330.00	\$ 37,742.94	\$ 40,072.94
	LABOR SUB-TOTALS	0	24	14	8	44	4	94			
	TOTAL LABOR COSTS	\$ -	\$ 4,800.00	\$ 3,430.00	\$ 1,800.00	\$ 5,720.00	\$ 400.00				
	% DISTRIBUTION OF STAFF HOURS	0.0%	25.5%	14.9%	8.5%	46.8%	4.3%				
	<b>SUBTOTAL</b>								<b>\$ 16,150.00</b>	\$ 136,630.33	\$ 152,780.33
	<b>Total Expenses (at 5% mark-up)</b>								\$ 315.00	\$ 11,898.34	\$ 12,213.34
	<b>TOTAL PROJECT COST</b>								\$ 26,205.00	\$ 148,528.66	\$ 174,733.66



**Figure 1**

**Project Location**

Purgatory Creek Channel Improvements Project  
Hays County, TX



**EXHIBIT B**  
**AUTHORIZATION OF CHANGE IN SERVICE**

<b>CONTRACT NUMBER / CONTRACT NAME:</b>	<b>218-307 Purgatory Creek Improvements</b>	
<b>CITY REPRESENTATIVE:</b>	<b>John Espinoza</b>	
<b>CONTRACTOR:</b>	<b>Lockwood, Andrews &amp; Newnam, Inc</b>	
<b>CONTRACT EFFECTIVE DATE:</b>	<b>June 13, 2018</b>	
<b>THIS AUTHORIZATION DATE:</b>		<b>AUTHORIZATION NO.: 2</b>

**DESCRIPTION OF WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES:**

The work to be performed includes additional professional services for the US Army Corps of Engineers (USACE) permitting of the Phase 2 improvements to the Purgatory Creek from Wonder World Drive to Johnson Avenue. LAN is currently conducting the 30% Design of the Phase 1 area (San Marcos River to Johnson Avenue) including permitting services.

Original Contract Amount:	\$467,440	
Previous Increases/Decreases in Contact Amount:	\$1,694,774	
This Increase/Decrease in Contract Amount:	\$174,734	
Revised Contract Amount:	\$2,336,948	

**CONTRACTOR:**

*Travis Michel*

\_\_\_\_\_  
Signature  
Travis Michel, Associate, Infrastructure Manager

\_\_\_\_\_  
Date  
05/19/2020

\_\_\_\_\_  
Print Full Name / Title (if not in individual capacity)

**CITY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

***City Department Use Only Below This Line (PM, etc.).***

Account Number(s):	Amount	Date
#		
#		
#		



Legislation Text

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**File #:** Res. 2020-109R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-109R, approving contracts with Hays Energy, LLC for the sale of reclaimed water for and the treatment of Wastewater from Hays Energy's Electric Power Generation Facility South of the city; authorizing the City Manager, or his designee, to execute said contracts on behalf of the City; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** Public Services - Water/Wastewater, Tom Taggart, Director

**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:** Original contracts approved by Council in June 1999; amendments to contracts approved by Council in July 2000, July 2004, and May 2007.

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

N/A

N/A

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.

Core Services

Not Applicable

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

Choose an item.

**Background Information:**

[Click or tap here to enter text.](#)

Hays Energy LLC was the first contracted customer of the City's to purchase and use reclaimed water in their power generation process. As part of the original agreements with the City, Hays Energy built the reclaimed water pipeline from the Wastewater Treatment Plant to their facility on Francis Harris Lane. This pipeline is the backbone of the reclaimed water transmission system which provides opportunities for the continued expansion of the reclaimed water system to other customers.

The current reclaimed water supply agreement with Hays Energy LLC is due to expire in July 2020. City staff worked closely with Hays Energy LLC to develop the proposed contract to be beneficial and fair to both parties. The major changes to the proposed agreement as compared to the current contract are as follows:

- A reduction in volume of the "Base Quantity" of reclaimed water from 2,000,000 gallons per day to 750,000 gallons per day
- The "Maximum Quantity" of up to 2,600,000 million gallons per day was replaced by a "Reserve Quantity" of an additional 550,000 gallons per day
- The "Reserve Quantity" is based on a "take or pay" basis meaning regardless of the actual amount of reclaimed water used, Hays Energy will make a minimum monthly payment based on the prevailing rate of reclaimed water times the number of days in the month of usage for the volume of the "Reserve Quantity".
- A "Re-Opener" clause was also added which allows for either party to request an increase or decrease of the Base and/or Reserve quantities within the first 2 years of the agreement. The request must be mutually agreed upon by both parties.

The terms of the Wastewater Treatment Services contract, also due to expire in July 2020, remain relatively unchanged with only sections and references to Hays Energy's construction of the wastewater line to the Treatment Plant removed due to the wastewater line being completed.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval of the proposed contracts.

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING CONTRACTS WITH HAYS ENERGY, LLC FOR THE SALE OF RECLAIMED WATER FOR AND THE TREATMENT OF WASTEWATER FROM HAYS ENERGY'S ELECTRIC POWER GENERATION FACILITY SOUTH OF THE CITY; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE SAID CONTRACTS 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 Retail Reclaimed Water Supply Contract and Wastewater Treatment Services Contract with Hays Energy LLC are each approved.

**PART 2.** The City Manager, or his designee, is authorized to execute said contracts 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 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

## **RETAIL RECLAIMED WATER SUPPLY CONTRACT**

This Retail Reclaimed Water Supply Contract (the "Contract") is made and entered into on \_\_\_\_\_, 2020 (the "Effective Date") between Hays Energy LLC (the "Buyer") and the City of San Marcos, Texas (the "Seller").

### **WITNESSETH**

**WHEREAS**, the Buyer owns an electric generating facility (the "Facility") in Hays County, Texas that requires a supply of water for operating purposes; and

**WHEREAS**, the Seller owns and operates a wastewater treatment plant (the "Treatment Plant") with a capacity capable of supplying to the Buyer the amount of reclaimed water specified in this Contract; and

**WHEREAS**, the Buyer has in the preceding 20 years beneficially used water from the Treatment Plant (the "Reclaimed Water") in the Facility for operating purposes, and has satisfied itself as to this suitability; and

**WHEREAS**, the Seller desires to sell and the Buyer desires to purchase Reclaimed Water under the terms and conditions specified in this Contract; and

**WHEREAS**, the Seller and the Buyer entered into a Retail Water Supply Agreement dated June 29, 1999 (the "Original Contract"); and

**WHEREAS**, the Seller and Buyer amended the Original Contract in July of 2000; and

**WHEREAS**, the Seller and the Buyer desire to enter a new Retail Reclaimed Water Supply Contract, which new contract shall supersede the Original Contract (as amended) and the Original Contract (as amended) shall terminate simultaneously with the Effective Date and no longer be of any force and effect.

**NOW, THEREFORE**, in consideration of the foregoing and the following mutual promises, covenants, benefits and agreements contained herein, the Seller and the Buyer agree as follows:

### **Article 1. Provision of Water by the Seller.**

#### **Section 1.01. Quantity of Water to be Supplied.**

**A.** The Seller agrees to provide to the Buyer, and the Buyer agrees to purchase from the Seller, Reclaimed Water as requested by the Buyer. The Seller agrees to supply the Buyer up to 750,000 gallons per day (the "Base Quantity") of Reclaimed Water produced at the Treatment Plant for use in the Facility for operating purposes. The Seller agrees to supply the Buyer an additional 550,000 gallons per day (the "Reserve Quantity") of Reclaimed Water produced at the Treatment Plant for use in the Facility for operating purposes. The Seller agrees the Buyer may purchase Reclaimed Water above the combined Base and Reserve Quantities ("the Maximum Quantity") from the Seller at the prevailing rate for the sale of Reclaimed Water for all Reclaimed Water customers as established by the Seller's governing body (the "Prevailing Rate") to the extent available from production at the Treatment Plant and if not committed to other Reclaimed Water customers or needed by the Seller for other purposes. The Seller does not guarantee the availability of the Reclaimed Water above the Maximum Quantity of water each day. The Reclaimed Water will be delivered at the location (the "Point of Delivery") designated in 2000 by the Seller and the Buyer. The Seller's Treatment Plant operators and the Buyer will coordinate as needed to determine the quantity of Reclaimed Water required each day to maintain the Buyer's 2,200,000-gallon reclaimed water tank at 60% to 95% of the tank's capacity to meet the Buyer's operational needs subject to the limitations stated above.

**B.** The Buyer and Seller shall have until the second (2<sup>nd</sup>) anniversary of the Effective Date to request an increase or decrease of either the Base and/or Reserve Quantity (the "Re-Opener"). The Re-Opener shall be exercised by Buyer or Seller by written notice

to the other party, delivered no later than the second (2<sup>nd</sup>) anniversary of the Effective Date. In the event the Buyer or Seller delivers such notice, the parties may execute an amendment to this Contract to increase or decrease the Base and/or Reserve Quantity if mutually agreed-upon by the parties.

**Section 1.02. Metering Equipment.** The Seller owns and maintains metering equipment and devices previously conveyed from the Buyer which meet the Seller's standard specifications for measuring within a tolerance of 2% (the "Accuracy Tolerance") the quantity of Reclaimed Water delivered to the Point of Delivery, together with devices and equipment of standard type for the proposed application to limit, measure, and record the rate of flow at the Point of Delivery, to prevent the backflow of water or the contamination of water in the Seller's distribution system, and to protect and secure the metering equipment and other devices. The Seller will deliver the Reclaimed Water through this equipment.

**Section 1.03. Maintenance and Testing of Metering Equipment.**

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

**B.** The Buyer may have the metering equipment independently tested at its own cost with 48 hours notice to the Seller. The Seller may attend any such test. If a test shows an inaccuracy in the metering equipment, the Seller shall adjust the monthly billing of a period extending back to the time when the inaccuracy began if such time is ascertainable, or if such time is not ascertainable, for a period extending back to the last test of the metering equipment or 120 days, whichever is shorter, in accordance with the percentage of inaccuracy found during the test, whether above or below the correct volume. In the event the meter fails to register for any period, the Seller shall calculate the usage during the time of meter failure to be the amount of Reclaimed Water determined through use of the Seller's Supervisory Control and Data Acquisition system for the period, or as otherwise mutually agreed upon by the parties. The Seller shall recalibrate or replace any inaccurate metering equipment at its expense.

**Section 1.04. Billing.** The Seller will furnish the Buyer with an itemized monthly billing statement showing the actual volume of Reclaimed Water supplied in 1,000 gallon increments and the amounts due in accordance with the Contract Rate. In no event will the invoice amount be less than the Minimum Monthly Payment (as defined in Section 2.01) due for such month.

**Article 2. Obligations of the Buyer**

**Section 2.01. Payment.** The Buyer will pay to the Seller at the Seller's billing offices in San Marcos, Texas, within twenty-five days after receipt of the itemized statement each month: (a) payment per 1000 gallons of Reclaimed Water supplied as shown on the statement at the prevailing reclaimed water rate then in effect as established by the Seller's governing body. Notwithstanding the foregoing, the Buyer shall make a minimum monthly payment to the City (the "Minimum Monthly Payment") for the Reserve Quantity multiplied by the Prevailing Rate multiplied the number of days in the month of the water usage, regardless of the Buyer's actual water usage. In addition to any other amounts payable by Buyer, the Buyer will pay to the Seller a monthly fee of \$500 for each month the Supply Line (as defined hereafter) is not in use. In addition, the Buyer will pay to the Seller the amounts of any monthly minimum fixed charges and all federal, state, and local taxes, fees, and any charges that may be applicable to the provision of Reclaimed Water under this Contract or applicable ordinance.

**A.** Buyer will pay a minimum monthly charge at the rate identified in the then prevailing reclaimed water minimum charge as shown in the Utilities Rates and Fees Schedule.

**Section 2.02. Compliance with Seller's Regulations.** The Buyer will comply with the Seller's ordinances and regulations governing the use and supply of reclaimed water that are currently in effect and as they may be adopted or amended from time to time.

**Section 2.03. Supply.** The Buyer agrees to use the Seller as a source of water for the Facility's operating purposes, provided the Seller is not in default under this Contract.

**Section 2.04. Connections to the Supply Line.** The Seller will ensure that any connections made to the Supply Line to serve other customers are equipped in such a way that the Seller is able to comply with its supply obligations hereunder.

**Article 3. Miscellaneous Provisions.**

**Section 3.01. Regulatory Compliance.** The obligations of the Buyer and the Seller under this Contract are subject to all applicable federal, state and local laws and regulations currently in effect and as amended or modified from time to time (the "Laws and Regulations"), including but not limited to Title 30, Chapter 210 of the Texas Administrative Code, and the Seller's ordinances relating to water conservation.

**A.** The Seller is responsible for compliance with the Laws and Regulations that apply to the Treatment Plant.

**B.** The Seller is responsible for compliance with the Laws and Regulations that apply to the operation of the Supply Line.

**C.** The Buyer is responsible for compliance with the Laws and Regulations that apply to the use of the Reclaimed Water from the Treatment Plant at the Facility. This includes, but is not limited to, implementing an operation and maintenance plan (the "O&M Plan") for the Buyer's use of the Reclaimed Water. The initial O&M Plan is attached as Exhibit B. The Buyer may modify this O&M Plan or adopt a new O&M Plan, subject to regulatory approval and compliance with all Laws and Regulations.

**Section 3.02. Term; Termination.**

**A.** The term of the Contract is 10 years commencing on the Effective Date. This Contract can be renewed or extended with the mutual consent of the parties.

**B.** The Seller may suspend the supply of Reclaimed Water under this Contract, without terminating the Contract, in the following circumstances:

**1.** The Buyer fails to pay any amount billed by the Seller to the Buyer under Section 1.04 of this Contract, unless the Buyer has notified the Seller, in writing prior to the deadline in the Seller's billing notice, of a bona fide dispute concerning the bill.

**2.** The Buyer fails to comply with any of the Laws and Regulations that apply to the Buyer's use of the Reclaimed Water, including but not limited to those contained in Title 30, Chapter 210 of the Texas Administrative Code.

**3.** Any Treatment Plant condition, pipeline failure, or other mechanical or operational condition that would render the supply of Reclaimed Water unavailable during repairs or while quality or quantity do not meet the needed requirements; provided that the Seller notify the Buyer as soon as feasible of such condition or failure, and promptly commences and diligently proceeds to cure such condition or failure as quickly as possible.

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

**Section 3.03. Uncontrollable Circumstances.** In this Contract, "Uncontrollable Circumstance" means any act, event, or condition beyond the control of a party that prevents the party from performing any obligation under this Contract. Neither party will be liable to the other for any failure or delay in performance of an obligation under this Contract that results directly from an Uncontrollable Circumstance. An act, event or condition is *not* beyond the reasonable control of a party if it is a result of any willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party. The party experiencing an Uncontrollable Circumstance will notify the other party within five days of the occurrence of the Uncontrollable Circumstance and give a specific description of the Uncontrollable Circumstance, including the impact on the party's obligations under the Contract.

**Section 3.04. Independent Contractors.** Nothing in this Contract will be construed as creating any form of partnership or joint venture relationship between the parties. The parties are independent contractors with respect to each other.

**Section 3.05. Indemnity.** The Buyer will hold harmless, indemnify and defend the Seller and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of the Buyer, its officers, employees or agents relating to this Contract. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the Seller arising in favor of any party, including the amounts of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

**Section 3.06. Assignment.** This Contract will inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties. Except as provided elsewhere herein, neither party may assign any of its rights or duties under this Contract without the written consent of the other party. The Buyer may, with prior written notice to the Seller, 1) assign or otherwise transfer its rights and obligations under this Contract to an entity acquiring the Facility that will continue the operation of the Facility in the manner contemplated in this Contract, or 2) assign or otherwise transfer this Contract as collateral to secure loans providing financing or refinancing of the Facility.

**Section 3.07. Taxes.** The Seller is responsible for the payment of all taxes that may be levied or assessed on its operations and activities under this Contract.

**Section 3.08. Amendments.** This Contract may be amended only through a written amendment executed by the parties. The term "will" in this Contract is mandatory.

**Section 3.9. Governing Law and Venue.** This Contract is governed by the laws of the State of Texas. Exclusive venue for any legal action under this Contract shall be in Hays County, Texas.

**Section 3.10. Severability.** If any portion of this Contract is found by a court to be invalid or unenforceable for any reason, that portion of the Contract will be severed, and the rest of this Contract will continue in effect.

**Section 3.11. Order of Precedence.** In the event of any conflict between the terms of this Contract and the terms of any attachment, exhibit or other document attached to or referred to in this Contract, the terms of this Contract will take precedence.

**Section 3.12. Nondiscrimination.** In furnishing services and conducting activities under this Contract, and in employment practices for employees and subcontractors associated with the construction of the Supply Line, the Buyer will not discriminate on the basis of race, color, religion, sex, age, natural origin or disability.

**Section 3.13. Notice.** All notices given under this Contract will be delivered personally, by certified mail, return receipt requested, or by confirmed electronic mail transmission, by overnight mail or by courier, to the following address for the respective party:

To Seller:

City Manager  
City of San Marcos  
630 East Hopkins Street  
San Marcos, TX 78666  
E-mail:

To Buyer:

Hays Energy LLC  
6555 Sierra Drive  
Irving, TX 75039  
Attn: Gary Spicer

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

CITY OF SAN MARCOS:

HAYS ENERGY LLC:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **WASTEWATER TREATMENT SERVICES CONTRACT**

This Wastewater Treatment Services Contract (the "Contract") is made and entered into on \_\_\_\_\_, 2020 (the "Effective Date") between Hays Energy LLC ("Hays Energy") and the City of San Marcos, Texas (the "City"), a Texas municipal corporation.

### **WITNESSETH**

**WHEREAS**, Hays Energy owns an electric generating facility (the "Facility") in Hays County, Texas that requires wastewater treatment services; and

**WHEREAS**, the City owns and operates a wastewater treatment plant (the "Treatment Plant") with a capacity capable of providing to Hays Energy the wastewater treatment services described in this Contract; and

**WHEREAS**, the City desires to provide, and Hays Energy desires to obtain, the wastewater treatment services under the terms and conditions specified in this Contract;

**WHEREAS**, the City and Hays Energy entered into a Wastewater Treatment Services Contract dated June 29, 1999 (the "Original Contract") that will expire in 2020; and

**WHEREAS**, the City and Hays Energy desire to enter a new Contract for this service;

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

### **Article 1. Provision of Wastewater Treatment by the City.**

**Section 1.01. Services to be Provided.** The City agrees to provide to Hays Energy, and Hays Energy agrees to obtain from the City, wastewater treatment services for wastewater (the "Wastewater") produced at the Facility when the Facility's zero liquid discharge equipment is not in operation. The treatment services will consist of those processes (the "Routine Treatment") required at the City's River Road Wastewater Treatment Plant (the "Treatment Plant") to comply with all applicable permit requirements.

**Section 1.02. Metering Equipment.** Hays Energy will obtain, install and convey to the City metering equipment and devices which meet standard City specifications for measuring within a tolerance of 2% (the "Accuracy Tolerance") the quantity of Wastewater delivered to the point (the "Transfer Point") where the transmission pipeline for the Wastewater crosses the property line of the site of the Facility, together with devices and equipment of standard type for the proposed application to limit, measure, and record the rate of flow at the Transfer Point, to prevent the backflow of water or the contamination of water in the City's distribution system, and to protect and secure the metering equipment and other devices.

### **Section 1.03. Maintenance and Testing of Metering Equipment.**

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

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

**Section 1.05. Billing.** The City will furnish Hays Energy with an itemized monthly billing statement showing 1) the volume of Wastewater measured at the Transfer Point in 1,000-gallon increments and the amounts due for Routine Treatment of the Wastewater at the then current applicable wastewater rate; and 2) the amount of any surcharge due under the City's industrial wastewater discharge regulations.

**Article 2. Obligations of Hays Energy**

**Section 2.01. Payments.**

**A.** Hays Energy will pay to the City at the then prevailing rate per 1,000 gallons for the Routine Treatment of the Wastewater, plus any applicable surcharges due under the City's industrial wastewater discharge regulations, at the City's billing offices in San Marcos, Texas, within twenty-five days after receipt of the itemized statement each month. This rate will change proportionally as changes are made by the City in the residential retail wastewater volume charge.

**B.** Hays Energy will pay to the City the amounts of all federal, state, and local taxes, fees, and minimum monthly or other charges that may be applicable to the provision of wastewater treatment services under this Contract.

**C.** Hays Energy will pay a minimum monthly charge of \$500.00.

**Section 2.02. Operation of Wastewater Line.** Hays Energy will dispose only of process wastewater from the Facility through the Wastewater Line, and the City will not permit any connections to be made to the Wastewater Line for the disposal of untreated wastewater without the written consent of Hays Energy, except as provided in Section 2.04.

**Section 2.03. Facility Operation.**

**A.** Hays Energy will operate the Facility so that routine discharges of the Wastewater are treated and disposed of through zero liquid discharge equipment at the Facility. Hays Energy will utilize all commercially reasonable efforts to construct, maintain and operate its zero-discharge equipment in fully functional condition at all times, and to discharge the Wastewater to the Wastewater Line only during periods in which Hays Energy's zero liquid discharge equipment is not operational. Hays Energy agrees to use all reasonable means to keep the duration of such periods to a minimum. When discharge of the Wastewater by Hays Energy to the Wastewater Line is necessary, Hays Energy will provide immediate notice to the City's wastewater treatment plant personnel, and will ensure that the Wastewater discharged at the Transfer Point meets the following parameters:

<u>Characteristic</u>	<u>Parameter</u>
Volume	Not more than 900,000 gallons per day
Discharge Rate	Not more than 625 gallons per minute
Temperature	Not more than 88° F

**B.** The Wastewater discharged at the Transfer Point must meet all applicable requirements of the Laws and Regulations (as defined below) governing wastewater flows to the Treatment Plant. The parties anticipate that the Routine Treatment may not be sufficient for adequate treatment of the Wastewater, and Hays Energy agrees to have pretreatment facilities and processes in place to meet the City's industrial wastewater discharge regulations prior to initiating discharge of the Wastewater to the Wastewater Line.

**C.** To ensure the City's compliance with its state wastewater discharge permit, protect river ecosystems, and comply with applicable stream standards, the City reserves the right to limit Hays Energy's discharge volume and rate, to require Hays Energy to schedule its discharges, and to require Hays Energy to temporarily cease its discharges, when the San Marcos River flows are at or below 100 CFS at the closest USGS gauging station above the City's wastewater discharge point on the river.

**Section 2.04 Use of Wastewater Line.** Hays Energy will permit the City to make connections to the Wastewater Line for use by other City customers provided that the City agrees to reserve 900,000 gallons per day of capacity in the Wastewater Line (at a rate of 37,000 gallons per hour) for use by Hays Energy. In order to protect the right of Hays Energy to this reserved capacity, the City agrees to verify that sufficient capacity remains in the Wastewater Line to serve a request to connect to the line by a third party or such third party's usage of the Wastewater Line, while preserving Hays Energy's reserved capacity, before approving the request or usage ("Request"). To the extent that any such Request by a third party would conflict with Hays Energy's reserved capacity, the City agrees to deny the Request. The City may provide alternative means for wastewater service for persons whose service requests are denied under this paragraph.

**Article 3. Miscellaneous Provisions.**

**Section 3.01. Regulatory Compliance.** The obligations of Hays Energy and the City under this Contract are subject to all applicable federal, state and local laws and regulations currently in effect and as amended or modified from time to time (the "Laws and Regulations").

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

B. The City is responsible for compliance with the Laws and Regulations that apply to the operation of the Wastewater Line.

C. Hays Energy is responsible for compliance with the Laws and Regulations governing the use of the City's wastewater treatment services, including without limitation, those applicable to industrial wastewater discharge. Hays Energy is not responsible for discharges to the Wastewater Line made by any other City Customer.

D. Hays Energy is responsible for compliance with the Laws and Regulations that apply to the Facility's zero liquid discharge equipment.

**Section 3.03. Term; Termination.**

A. The initial term of the Contract is 10 years commencing on the Effective Date. This Contract can be renewed or extended with the mutual consent of the parties for up to two additional five-year periods.

B. The City may suspend the provision of wastewater treatment services under this Contract, without terminating the Contract, in the following circumstances:

1. Hays Energy fails to pay any amount invoiced or billed by the City to Hays Energy under this Contract, unless Hays Energy has notified the City, in writing prior to the deadline in the City's billing notice, of a bona fide dispute concerning the invoice or bill.

2. Hays Energy fails to comply with any of the Laws and Regulations for which Hays Energy is responsible for compliance.

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

**Section 3.04. Uncontrollable Circumstances.** In this Agreement, "Uncontrollable

Circumstance" means any act, event, or condition beyond the control of a party that prevents the party from performing any obligation under this Contract. Neither party will be liable to the other for any failure or delay in performance of an obligation under this Contract that results directly from an Uncontrollable Circumstance. An act, event or condition is *not* beyond the reasonable control of a party if it is a result of any willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party. The party experiencing an Uncontrollable Circumstance will notify the other party within five days of the occurrence of the Uncontrollable Circumstance and give a specific description of the Uncontrollable Circumstance, including the impact on the party's obligations under the Contract.

**Section 3.05. Independent Contractors.** Nothing in this agreement will be construed as creating any form of partnership or joint venture relationship between the parties. The parties are independent contractors with respect to each other.

**Section 3.06. Indemnity.** Hays Energy will hold harmless, indemnify and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of Hays Energy, its officers, employees or agents in connection with this Contract. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

**Section 3.07. Assignment.** This Contract will inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties. Except as provided elsewhere herein, neither party may assign any of its rights or duties under this Contract without the written consent of the other party. Hays Energy may, with prior written notice to the City, 1) assign or otherwise transfer its rights and obligations under this Contract to an entity acquiring the Facility that will continue the operation of the Facility in the manner contemplated in this Contract, or 2) assign or otherwise transfer this Contract as collateral to secure loans providing financing or refinancing of the Facility.

**Section 3.08. Taxes.** The City is responsible for the payment of all taxes that may be levied or assessed on its operations and activities under this Contract.

**Section 3.09. Entire Agreement.** This Contract, together with all attachments, exhibits and documents described in it, constitutes the entire agreement between the parties. This Contract may be amended only through a written amendment executed by the parties. The term "will" in this Contract is mandatory.

**Section 3.10. Governing Law and Venue.** This Contract is governed by the laws of the State of Texas. Exclusive venue for any legal action under this Contract shall be in Hays County, Texas.

**Section 3.11. Severability.** If any portion of this Contract is found by a court to be invalid or unenforceable for any reason, that portion of the Contract will be severed, and the rest of this Contract will continue in effect.

**Section 3.12. Order of Precedence.** In the event of any conflict between the terms of this Contract and the terms of any attachment, exhibit or other document attached to or referred to in this Contract, the terms of this Contract will take precedence.

**Section 3.13. Nondiscrimination.** In furnishing services and conducting activities under this Contract, and in employment practices for employees and subcontractors associated with the construction of the Wastewater Line, Hays Energy will not discriminate on the basis of race, color, religion, sex, age, natural origin or disability.

**Section 3.14. Notice.** All notices given under this Contract will be delivered personally, by certified mail, return receipt requested, by confirmed electronic mail, or by overnight mail or courier, to the following address for the respective party:

To Seller:

City Manager  
City of San Marcos  
630 East Hopkins Street  
San Marcos, TX 78666  
E-mail:

To Buyer:

Hays Energy LLC  
6555 Sierra Drive  
Irving, TX 75039  
Attn: Gary Spicer

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

CITY OF SAN MARCOS:

HAYS ENERGY, LLC:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

~~RESOLUTION 2020 — R~~

~~A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A RETAIL RECLAIMED WATER SUPPLY AND WASTEWATER SERVICE AGREEMENTS BETWEEN THE CITY OF SAN MARCOS AND HAYS ENERGY LLC, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS, AND DECLARING AN EFFECTIVE DATE.~~

~~RECITALS:~~

~~1. The City executed three agreements (the "Original Agreements") with Hays Energy, LP, predecessor to Hays Energy LLC ("Hays Energy") in June, 1999. One was for the supply of 3.6 million gallons per day of reclaimed water (treated wastewater) from the City's wastewater treatment plant to the power generation plant now under construction by Hays Energy. The second was an agreement for the treatment of 2.2 million gallons per day of cooling process wastewater from the power plant at the wastewater treatment plant. The third was a seven-year tax abatement for the power plant.~~

~~2. In 2000 the agreements were amended as Hays Energy revised its plans for use of the reclaimed water to use an average of 1.5 million gallons per day instead of the 3.6 mgd stated in the Original Agreements. Moreover, Hays Energy installed "zero liquid discharge" facilities, and will only need to discharge wastewater to the City's treatment plant under emergency circumstances when its own treatment facilities are not operational.~~

~~3. Since the July 2000 amended agreement, Hays Energy has used a maximum amount of reclaimed water below an average less than 650,000 gallons per day of reclaimed water, but intends to increase usage of water within the next two years.~~

~~4. The amended agreements retained language related to the original start up period, construction requirements, tax abatements, rates and other items that are no longer relevant or in effect.~~

~~5. The attached agreements restate the Original Agreements to adjust for these changed circumstances, delete archaic references and to incorporate other minor revisions negotiated by the City staff with Hays Energy.~~

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

~~PART 1. The Retail Water Supply Contract, and the Wastewater Treatment Services Contract attached to this resolution are approved.~~

~~PART 2. The City Manager of the City of San Marcos, Mr. Bert Lumbreras, is authorized to execute the Retail Water Supply Contract, and the Wastewater Treatment Services Contract attached to this resolution.~~

~~PART 3. This Resolution is in full force and effect immediately upon its passage.~~

~~ADOPTED on~~

~~Jane Hughson~~

~~Mayor~~

Attest:

  
Janis K. Womack  
City Clerk

**Commented [CJ1]:** A Resolution is required for presentation to and action by the City Council and is a separate document from the agreement. This will be re-written by the City Attorney's office.

## RETAIL RECLAIMED WATER SUPPLY CONTRACT

This Retail Water Supply Contract (the "Contract") is made and entered into on January 17, 2020 (the "Effective Date") between Hays Energy LLC (the "Buyer") and the City of San Marcos, Texas (the "Seller").

### WITNESSETH

WHEREAS, the Buyer owns an electric generating facility (the "Facility") in Hays County, Texas that requires a supply of water for operating purposes; and

WHEREAS, the Seller owns and operates a wastewater treatment plant (the "Treatment Plant") with a capacity capable of supplying to the Buyer the amount of reclaimed water specified in this Contract; and

WHEREAS, the Buyer has in the preceding 20 years beneficially used water from the Treatment Plant (the "Reclaimed Water") in the Facility for operating purposes, and has satisfied itself as to this suitability; and

WHEREAS, the Seller desires to sell and the Buyer desires to purchase Reclaimed Water under the terms and conditions specified in this Contract; and

WHEREAS, the Seller and the Buyer entered into a Retail Water Supply Agreement dated June 29, 1999 (the "Original Contract"); and

WHEREAS, the Seller and Buyer amended the Original Contract in July of 2000; and

WHEREAS, the Seller and the Buyer desire to enter a new Retail Reclaimed Water Supply Contract, which new contract shall supersede the Original Contract (as amended) and the Original Contract (as amended) shall terminate simultaneously with the Effective Date and no longer be of any force and effect; and

**NOW, THEREFORE, in consideration of the foregoing and the following mutual promises, covenants, benefits and agreements contained herein, the Seller and the Buyer agree as follows:**

### **Article 1. Provision of Water by the Seller.**

#### **Section 1.01. Quantity of Water to be Supplied.**

A. The Seller agrees to provide to the Buyer, and the Buyer agrees to purchase from the Seller, Reclaimed Water as requested by the Buyer. The Seller agrees to supply the Buyer ~~up to 800,000~~ 750,000 gallons per day (the "~~Maximum Base~~ Quantity") of Reclaimed Water produced at the Treatment Plant for use in the Facility for operating purposes. The Seller agrees to supply the Buyer an additional 500,000 550,000 gallons per day (the "Reserve Quantity") of Reclaimed Water produced at the Treatment Plant for use in the Facility for operating purposes. The Seller agrees the Buyer may purchase Reclaimed Water above the ~~Maximum Quantity~~ combined Base and Reserve Quantities ("the Maximum Quantity") from the Seller at the prevailing rate for the sale of Reclaimed Water for all Reclaimed Water customers as established by the Seller's governing body (the "Prevailing Rate") to the extent available from production at the Treatment Plant and ~~if~~ not committed to other Reclaimed Water customers or needed by the Seller for other purposes. The Seller does not guarantee the availability of the

Reclaimed Water above the Maximum Quantity of water each day. The Reclaimed Water will be delivered at the location (the "Point of Delivery") designated in 2000 by the Seller and the Buyer. The Seller's Treatment Plant operators and the Buyer will coordinate as needed to determine the quantity of Reclaimed Water required each day to maintain the Buyer's 2,200,000-gallon reclaimed water tank at 60% to 95% of the tank's capacity to meet the Buyer's operational needs subject to the limitations stated above.

B. The Buyer and Seller shall have until the second (2<sup>nd</sup>) anniversary of the Effective Date to request an increase or decrease of either the Base and/or Reserve Maximum Quantity (the "Re-Opener"). The Re-Opener shall be exercised by Buyer or Seller by written notice to the Seller or other party, delivered no later than the second (2<sup>nd</sup>) anniversary of the Effective Date. In the event the Buyer or Seller delivers such notice to the Seller, the parties may shall execute an amendment to this Contract to increase or decrease the Base and/or Reserve Maximum Quantity if mutually agreed-upon by the parties.

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**Section 1.02. Metering Equipment.** The Seller owns and maintains metering equipment and devices previously conveyed from the Buyer which meet the Seller's standard specifications for measuring within a tolerance of 2% (the "Accuracy Tolerance") the quantity of Reclaimed Water delivered to the Point of Delivery, together with devices and equipment of standard type for the proposed application to limit, measure, and record the rate of flow at the Point of Delivery, to prevent the backflow of water or the contamination of water in the Seller's distribution system, and to protect and secure the metering equipment and other devices. The Seller will deliver the Reclaimed Water through this equipment.

**Section 1.03. Maintenance and Testing of Metering Equipment.**

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

B. The Buyer may have the metering equipment independently tested at its own cost with 48 hours notice to the Seller. The Seller may attend any such test. If a test shows an inaccuracy in the metering equipment, the Seller shall adjust the monthly billing of a period extending back to the time when the inaccuracy began if such time is ascertainable, or if such time is not ascertainable, for a period extending back to the last test of the metering equipment or 120 days, whichever is shorter, in accordance with the percentage of inaccuracy found during the test, whether above or below the correct volume. In the event the meter fails to register for any period, the Seller shall calculate the usage during the time of meter failure to be the amount of Reclaimed Water determined through use of the Seller's Supervisory Control And Data Acquisition system for the period, or as otherwise mutually agreed upon by the parties. The Seller shall recalibrate or replace any inaccurate metering equipment at its expense.

**Section 1.04. Billing.** The Seller will furnish the Buyer with an itemized monthly billing statement showing the actual volume of Reclaimed Water supplied in 1,000 gallon increments and the amounts due in accordance with the Contract Rate. In no event will the invoice amount be less than the Minimum Monthly Payment (as defined in Section 2.01) due for such month.

**Article 2. Obligations of the Buyer**

**Section 2.01. Payment.** The Buyer will pay to the Seller at the Seller's billing offices in San Marcos, Texas, within twenty-five days after receipt of the itemized statement each month: (a)

payment per 1000 gallons of Reclaimed Water supplied as shown on the statement at the prevailing reclaimed water rate then in effect as established by the Seller's governing body. Notwithstanding the foregoing, the Buyer shall make a minimum monthly payment to the City (the "Minimum Monthly Payment") for the Reserve Quantity multiplied by the Contract Rate or the Prevailing Rate multiplied the number of days in the month of the water usage, regardless of the Buyer's actual water usage. In addition to any other amounts payable by Buyer, the Buyer will pay to the Seller a monthly fee of \$500 for each month the Supply Line (as defined hereafter) is not in use. In addition, the Buyer will pay to the Seller the amounts of any monthly minimum fixed charges and all federal, state, and local taxes, fees, and any charges that may be applicable to the provision of Reclaimed Water under this Contract or applicable ordinance.

(b) Buyer will pay a minimum monthly charge at the rate identified in the then prevailing reclaimed water minimum charge as shown in the Utilities Rates and Fees Schedule.

**Section 2.02. Compliance with Seller's Regulations.** The Buyer will comply with the Seller's ordinances and regulations governing the use and supply of reclaimed water that are currently in effect and as they may be adopted or amended from time to time.

**Section 2.03. Supply.** The Buyer agrees to use the Seller as a source of water for the Facility's operating purposes, provided the Seller is not in default under this Contract.

#### **Section 2.04. Connections to the Supply Line.**

A. The Seller will ensure that any connections made to the Supply Line to serve other customers are equipped in such a way that the Seller is able to comply with its supply obligations hereunder.

#### **Article 3. Miscellaneous Provisions.**

**Section 3.01. Regulatory Compliance.** The obligations of the Buyer and the Seller under this Contract are subject to all applicable federal, state and local laws and regulations currently in effect and as amended or modified from time to time (the "Laws and Regulations"), including but not limited to Title 30, Chapter 210 of the Texas Administrative Code, and the Seller's ordinances relating to water conservation.

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

B. The Seller is responsible for compliance with the Laws and Regulations that apply to the operation of the Supply Line.

C. The Buyer is responsible for compliance with the Laws and Regulations that apply to the use of the Reclaimed Water from the Treatment Plant at the Facility. This includes, but is not limited to, implementing an operation and maintenance plan (the "O&M Plan") for the Buyer's use of the Reclaimed Water. The initial O&M Plan is attached as Exhibit B. The Buyer may modify this O&M Plan or adopt a new O&M Plan, subject to regulatory approval and compliance with all Laws and Regulations.

**Section 3.02. Term; Termination.**

A. The term of the Contract is 10 years commencing on the Effective Date. This Contract can be renewed or extended with the mutual consent of the parties.

B. The Seller may suspend the supply of Reclaimed Water under this Contract, without terminating the Contract, in the following circumstances:

1. The Buyer fails to pay any amount billed by the Seller to the Buyer under Section 1.04 of this Contract, unless the Buyer has notified the Seller, in writing prior to the deadline in the Seller's billing notice, of a bona fide dispute concerning the bill.
2. The Buyer fails to comply with any of the Laws and Regulations that apply to the Buyer's use of the Reclaimed Water, including but not limited to those contained in Title 30, Chapter 210 of the Texas Administrative Code.
3. Any Treatment Plant condition, pipeline failure, or other mechanical or operational condition that would render the supply of Reclaimed Water unavailable during repairs or while quality or quantity do not meet the needed requirements; provided that the Seller notify the Buyer as soon as feasible of such condition or failure, and promptly commences and diligently proceeds to cure such condition or failure as quickly as possible.

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

**Section 3.03. Uncontrollable Circumstances.** In this Contract, "Uncontrollable Circumstance" means any act, event, or condition beyond the control of a party that prevents the party from performing any obligation under this Contract. Neither party will be liable to the other for any failure or delay in performance of an obligation under this Contract that results directly from an Uncontrollable Circumstance. An act, event or condition is *not* beyond the reasonable control of a party if it is a result of any willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party. The party experiencing an Uncontrollable Circumstance will notify the other party within five days of the occurrence of the Uncontrollable Circumstance and give a specific description of the Uncontrollable Circumstance, including the impact on the party's obligations under the Contract.

**Section 3.04. Independent Contractors.** Nothing in this Contract will be construed as creating any form of partnership or joint venture relationship between the parties. The parties are independent contractors with respect to each other.

**Section 3.05. Indemnity.** The Buyer will hold harmless, indemnify and defend the Seller and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of the Buyer, its officers, employees or agents relating to this Contract. This will include, but not be limited to,

the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the Seller arising in favor of any party, including the amounts of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

**Section 3.06. Assignment.** This Contract will inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties. Except as provided elsewhere herein, neither party may assign any of its rights or duties under this Contract without the written consent of the other party. The Buyer may, with prior written notice to the Seller, 1) assign or otherwise transfer its rights and obligations under this Contract to an entity acquiring the Facility that will continue the operation of the Facility in the manner contemplated in this Contract, or 2) assign or otherwise transfer this Contract as collateral to secure loans providing financing or refinancing of the Facility.

**Section 3.07. Taxes.** The Seller is responsible for the payment of all taxes that may be levied or assessed on its operations and activities under this Contract.

**Section 3.08. Amendments.** This Contract may be amended only through a written amendment executed by the parties. The term "will" in this Contract is mandatory.

**Section 3.9. Governing Law and Venue.** This Contract is governed by the laws of the State of Texas. Exclusive venue for any legal action under this Contract shall be in Hays County, Texas.

**Section 3.10. Severability.** If any portion of this Contract is found by a court to be invalid or unenforceable for any reason, that portion of the Contract will be severed, and the rest of this Contract will continue in effect.

**Section 3.11. Order of Precedence.** In the event of any conflict between the terms of this Contract and the terms of any attachment, exhibit or other document attached to or referred to in this Contract, the terms of this Contract will take precedence.

**Section 3.12. Nondiscrimination.** In furnishing services and conducting activities under this Contract, and in employment practices for employees and subcontractors associated with the construction of the Supply Line, the Buyer will not discriminate on the basis of race, color, religion, sex, age, natural origin or disability.

**Section 3.13. Notice.** All notices given under this Contract will be delivered personally, by certified mail, return receipt requested, or by confirmed electronic mail transmission, by overnight mail or by courier, to the following address for the respective party:

To Seller:

City Manager

City of San Marcos

630 East Hopkins Street San Marcos, TX

78666 E-mail:

To Buyer:

Hays Energy LLC

6555 Sierra Drive

Irving, TX 75039

Attn: Gary Spicer

~~City Manager~~

~~City of San Marcos~~

~~630 East Hopkins Street San Marcos, TX 78666 E-mail:~~

~~Hays Energy LLC~~

~~6555 Sierra Drive~~

~~Irving, TX 75020~~

~~Attn: Gary Spicer~~

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

City of San Marcos

Hays Energy LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Attest:





**AMENDED AND RESTATED  
WASTEWATER TREATMENT SERVICES CONTRACT**

THE STATE OF TEXAS           §  
  §  
COUNTY OF HAYS             §

This Amended and Restated Wastewater Treatment Services Contract (the "Contract") is made and entered into on \_\_\_\_\_ (the "Effective Date") between Hays Energy LLC ("Hays Energy") and the City of San Marcos, Texas (the "City"), a Texas municipal corporation.

WITNESSETH

WHEREAS, Hays Energy owns an electric generating facility (the "Facility") in Hays County, Texas that requires wastewater treatment services; and

WHEREAS, the City owns and operates a wastewater treatment plant (the "Treatment Plant") with a capacity capable of providing to Hays Energy the wastewater treatment services described in this Contract; and

WHEREAS, the City desires to provide, and Hays Energy desires to obtain, the wastewater treatment services under the terms and conditions specified in this Contract;

WHEREAS, the City and Hays Energy entered into a Wastewater Treatment Services Contract dated June 29, 1999 (the "Original Contract") that will expire in 2020; and

WHEREAS, the City and Hays Energy desire to enter a new Contract for this service;

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

**Article I. Provision of Wastewater Treatment by the City.**

**Section 1.01. Services to be Provided.** The City agrees to provide to Hays Energy, and Hays Energy agrees to obtain from the City, wastewater treatment services for wastewater (the "Wastewater") produced at the Facility when the Facility's zero liquid discharge equipment is not in operation. The treatment services will consist of those processes (the "Routine Treatment") required at the City's River Road Wastewater Treatment Plant (the "Treatment Plant") to comply with all applicable permit requirements.

**Section 1.02. Metering Equipment.** Hays Energy will obtain, install and convey to the City metering equipment and devices which meet standard City specifications for measuring within a tolerance of 2% (the "Accuracy Tolerance") the quantity of Wastewater delivered to the point (the "Transfer Point") where the transmission pipeline for the Wastewater crosses the property line of the site of the Facility, together with devices and equipment of standard type for the proposed application to limit, measure, and record the rate of flow at the Transfer Point, to prevent the backflow of water or the contamination of water in the City's distribution system, and to protect and secure the metering equipment and other devices.

**Section 1.03. Maintenance and Testing of Metering Equipment.**

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

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

**Section 1.05. Billing.** The City will furnish Hays Energy with an itemized monthly billing statement showing 1) the volume of Wastewater measured at the Transfer Point in 1,000-gallon increments and the amounts due for Routine Treatment of the Wastewater at the then current applicable wastewater rate; and 2) the amount of any surcharge due under the City's industrial wastewater discharge regulations.

**Article 2. Obligations of Hays Energy**

**Section 2.01. Payments.**

A. Hays Energy will pay to the City at the then prevailing rate per 1,000 gallons for the Routine

Treatment of the Wastewater, plus any applicable surcharges due under the City's industrial wastewater discharge regulations, at the City's billing offices in San Marcos, Texas, within twenty-five days after receipt of the itemized statement each month. This rate will change proportionally as changes are made by the City in the residential retail wastewater volume charge.

B. Hays Energy will pay to the City the amounts of all federal, state, and local taxes, fees, and minimum monthly or other charges that may be applicable to the provision of wastewater treatment services under this Contract.

C. Hays Energy will pay a minimum monthly charge of \$ 500 .

D. Section 2.02. Operation of Wastewater Line.

A. Hays Energy will dispose only of process wastewater from the Facility through the Wastewater Line, and the City will not permit any connections to be made to the Wastewater Line for the disposal of untreated wastewater without the written consent of Hays Energy, except as provided in Section 2.04.

**Section 2.03. Facility Operation.**

A. Hays Energy will operate the Facility so that routine discharges of the Wastewater are treated and disposed of through zero liquid discharge equipment at the Facility. Hays Energy will utilize all commercially reasonable efforts to construct, maintain and operate its zero-discharge equipment in fully functional condition at all times, and to discharge the Wastewater to the Wastewater Line only during periods in which Hays Energy's zero liquid discharge equipment is not operational. Hays Energy agrees to use all reasonable means to keep the duration of such periods to a minimum. When discharge of the Wastewater by Hays Energy to the Wastewater Line is necessary, Hays Energy will provide immediate notice to the City's wastewater treatment plant personnel, and will ensure that the Wastewater discharged at the Transfer Point meets the following parameters:

<u>Characteristic</u>	<u>Parameter</u>
Volume	Not more than 900,000 gallons per day
Discharge Rate	Not more than 625 gallons per minute
Temperature	Not more than 88° F

B. The Wastewater discharged at the Transfer Point must meet all applicable requirements of the Laws and Regulations (as defined below) governing wastewater flows to the Treatment Plant. The parties anticipate that the Routine Treatment may not be sufficient for adequate treatment of the Wastewater, and Hays Energy agrees to have pretreatment facilities and processes in place to meet the City's industrial wastewater discharge regulations prior to initiating discharge of the Wastewater to the Wastewater Line.

C. To ensure the City's compliance with its state wastewater discharge permit, protect river ecosystems, and comply with applicable stream standards, the City reserves the right to limit Hays Energy's discharge volume and rate, to require Hays Energy to schedule its discharges, and to require Hays Energy to temporarily cease its discharges, when the San Marcos River flows are at or below 100 CFS at the closest USGS gauging station above the City's wastewater discharge point on the river.

Section 2.04 **Use of Wastewater Line.** Hays Energy will permit the City to make connections to the Wastewater Line for use by other City customers provided that the City agrees to reserve 900,000 gallons per day of capacity in the Wastewater Line (at a rate of 37,000 gallons per hour) for use by Hays Energy. In order to protect the right of Hays Energy to this reserved capacity, the City agrees to verify that sufficient capacity remains in the Wastewater Line to serve a request to connect to the line by a third party or such third party's usage of the Wastewater Line, while preserving Hays Energy's reserved capacity, before approving the request or usage ("Request"). To the extent that any such Request by a third party would conflict with Hays Energy's reserved capacity, the City agrees to deny the Request. The City may provide alternative means for wastewater service for persons whose service requests are denied under this paragraph.

A. Article 3. Miscellaneous Provisions.

**Section 3.01. Regulatory Compliance.** The obligations of Hays Energy and the City under this Contract are subject to all applicable federal, state and local laws and regulations currently in effect and as amended or modified from time to time (the "Laws and Regulations").

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

B. The City is responsible for compliance with the Laws and Regulations that apply to the operation of the Wastewater Line.

C. Hays Energy is responsible for compliance with the Laws and Regulations governing the use of the City's wastewater treatment services, including without limitation, those applicable to industrial wastewater discharge. Hays Energy is not responsible for discharges to the Wastewater Line made by any other City Customer.

D. Hays Energy is responsible for compliance with the Laws and Regulations that apply to the Facility's zero liquid discharge equipment.

**Section 3.03. Term; Termination.**

A. The initial term of the Contract is 10 years commencing on the Effective Date. This Contract can be renewed or extended with the mutual consent of the parties for up to two additional five-year periods.

B. The City may suspend the provision of wastewater treatment services under this Contract, without terminating the Contract, in the following circumstances:

1. Hays Energy fails to pay any amount invoiced or billed by the City to Hays Energy under this Contract, unless Hays Energy has notified the City, in writing prior to the deadline in the City's billing notice, of a bona fide dispute concerning the invoice or bill.
2. Hays Energy fails to comply with any of the Laws and Regulations for which Hays Energy is responsible for compliance.

C. The failure or refusal of a party to comply with any term, provision, or covenant of this Contract will constitute a default by that party. In addition, if Hays Energy becomes insolvent, or commences, or has commenced against it, proceedings in bankruptcy, this will constitute a default by Hays Energy. This Contract may be terminated by either party upon a default by the other party. In the event of a default by a party, the other party shall give the defaulting party written notice of default, and, if the defaulting party fails to cure or remedy the default within 30 days following receipt of notice, this Contract shall terminate immediately without further notice to the defaulting

party. The City's acceptance of Hays Energy's monthly payments subsequent to the occurrence of any event of default will be as compensation for the provision of wastewater treatment services, and will in no way constitute a waiver by the City of its right to exercise any remedy provided for any event of default.

**Section 3.04. Uncontrollable Circumstances.** In this Agreement, "Uncontrollable Circumstance" means any act, event, or condition beyond the control of a party that prevents the party from performing any obligation under this Contract. Neither party will be liable to the other for any failure or delay in performance of an obligation under this Contract that results directly from an Uncontrollable Circumstance. An act, event or condition is *not* beyond the reasonable control of a party if it is a result of any willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party. The party experiencing an Uncontrollable Circumstance will notify the other party within five days of the occurrence of the Uncontrollable Circumstance and give a specific description of the Uncontrollable Circumstance, including the impact on the party's obligations under the Contract.

**Section 3.05. Independent Contractors.** Nothing in this agreement will be construed as creating any form of partnership or joint venture relationship between the parties. The parties are independent contractors with respect to each other.

**Section 3.06. Indemnity.** Hays Energy will hold harmless, indemnify and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of Hays Energy, its officers, employees or agents in connection with this Contract. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

**Section 3.07. Assignment.** This Contract will inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties. Except as provided elsewhere herein, neither party may assign any of its rights or duties under this Contract without the written consent of the other party. Hays Energy may, with prior written notice to the City, 1) assign or otherwise transfer its rights and obligations under this Contract to an entity acquiring the Facility that will continue the operation of the Facility in the manner contemplated in this Contract, or 2) assign or otherwise transfer this Contract as collateral to secure loans providing financing or refinancing of the Facility.

**Section 3.08. Taxes.** The City is responsible for the payment of all taxes that may be levied or assessed on its operations and activities under this Contract.

**Section 3.09. Entire Agreement.** This Contract, together with all attachments, exhibits and

documents described in it, constitutes the entire agreement between the parties. This Contract may be amended only through a written amendment executed by the parties. The term "will" in this Contract is mandatory.

**Section 3.10. Governing Law and Venue.** This Contract is governed by the laws of the State of Texas. Exclusive venue for any legal action under this Contract shall be in Hays County, Texas.

**Section 3.11. Severability.** If any portion of this Contract is found by a court to be invalid or unenforceable for any reason, that portion of the Contract will be severed, and the rest of this Contract will continue in effect.

**Section 3.12. Order of Precedence.** In the event of any conflict between the terms of this Contract and the terms of any attachment, exhibit or other document attached to or referred to in this Contract, the terms of this Contract will take precedence.

**Section 3.13. Nondiscrimination.** In furnishing services and conducting activities under this Contract, and in employment practices for employees and subcontractors associated with the construction of the Wastewater Line, Hays Energy will not discriminate on the basis of race, color, religion, sex, age, natural origin or disability.

**Section 3.14. Notice.** All notices given under this Contract will be delivered personally, by certified mail, return receipt requested, by confirmed electronic mail, or by overnight mail or courier, to the following address for the respective party:

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

To Hays Energy: Hays Energy LLC  
                                  6555 Sierra Drive  
                                  Irving, TX 75039  
                                  Attn: Gary Spicer

EXECUTED and effective \_\_\_\_\_

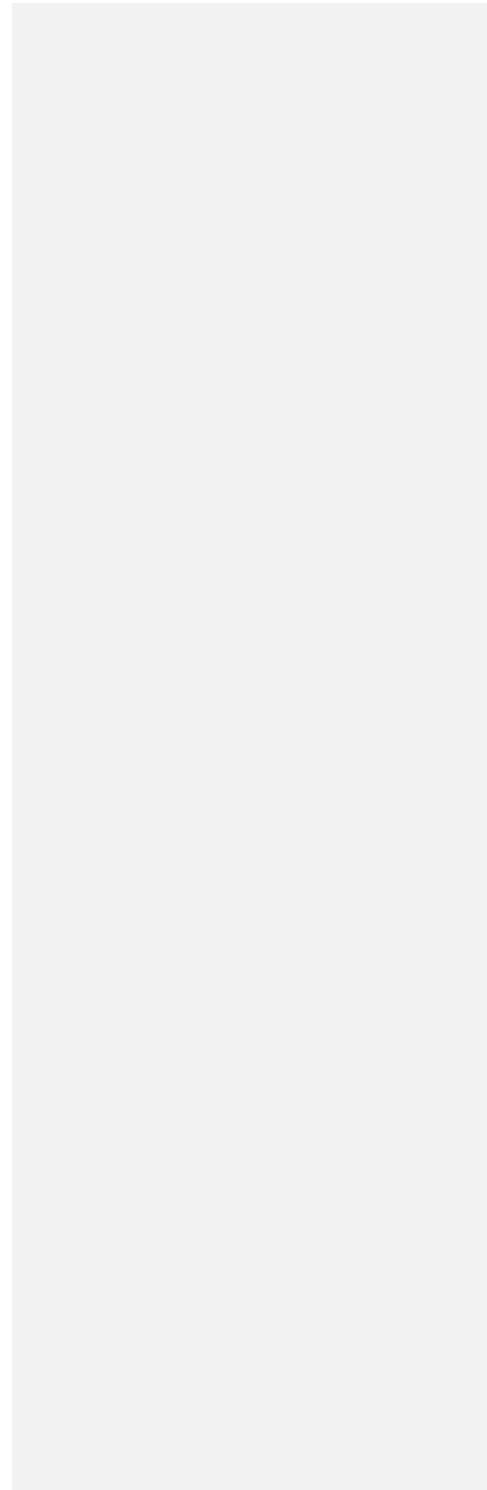
City of San Marcos

Hays Energy LLC

By:

Attest:

Attest:







Legislation Text

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**File #:** Res. 2020-110R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-110R, approving an agreement with Express Personnel for the provision of a temporary staff person to perform professional services including electrical inspections for the Development Services Department in an annual amount not to exceed \$90,000.00 for up to three years; authorizing the City Manager or his designee to execute the agreement on behalf of the City; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** Planning and Development Services Department - Shannon Mattingly, Director (By Lynda Williams, Purchasing Manager)

**Amount & Source of Funding**

**Funds Required:** \$90,000

**Account Number:** 10004129.52306

**Funds Available:** \$22,144.00

**Account Name:** CONTRACTED SERVICES-TEMP LABOR

**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.
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

The City of San Marcos added funding for an electrical inspector in the FY19 budget with costs shared by the General Fund and the Electric Utility. After recruiting for 10 months we were unable to find a qualified applicant interested in the position within the amount funded. We were contacted by a retired combination inspector, who is also a licensed Master Electrician, who was interest in the position and had the perfect qualificaitons. Due to statutory requirements of our retirement system, we are unable to rehire retirees until they have been retired for 8 years. This candidate has been retired for 5 years, so our only option was to hire him through a staffing agency.

The work performed includes electrical inspections for residential and commercial projects. In addition to his Master's Electric License, this candidate's credentials include inspection licenses held through the International Code Council (ICC) and Texas State Board of Plumbing Examiners (TSBPE), which match him perfectly to our needs and he has been a huge asset to our Inspections team.

This placement is through Express Personnel who accepts placements that require driving as a job function. Inspector duties require driving to inspection locations throughout the day, so driving is an essential function. The amount expended thus far on this placement is approximately \$48,000; however, due to the City's ongoing need, we will exceed the \$50,000 threshold which requires City Council approval. The services provided by this agreement will not exceed \$90,000 a year and will not continue for more than two (2) additional years.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

City staff recommends approving the expenditure for a temporary electrical inspector through Express Personnel.

**RESOLUTION NO. 2020-**

**R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING AN AGREEMENT WITH EXPRESS PERSONNEL FOR THE PROVISION OF A TEMPORARY STAFF PERSON TO PERFORM PROFESSIONAL SERVICES INCLUDING ELECTRICAL INSPECTIONS FOR THE DEVELOPMENT SERVICES DEPARTMENT IN AN ANNUAL AMOUNT NOT TO EXCEED \$90,000.00 FOR UP TO THREE YEARS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

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

**PART 1.** An agreement with Express Personnel for the provision of a temporary employee to perform professional services including electrical inspections for the Development Services Department in an annual amount not to exceed \$90,000.00 for up to three years 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 shall be in full force and effect immediately from and after its passage.

**ADOPTED** on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk



Legislation Text

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**File #:** Res. 2020-111R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-111R, authorizing a property tax refund of \$80.73 assessed on the property located at 705 Crystal Cove, San Marcos, Texas for Tax Year 2019 as allowed by Section 33.011(k) of the Texas Property Tax Code; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** Finance

**Amount & Source of Funding**

**Funds Required:** \$80.73

**Account Number:** 10000000.40020

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** Penalty & Interest on Delinquent Taxes

**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.](#)
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

At some point during the 2019 tax year, Ms. Clapp was no longer required to fund an escrow account through her mortgage company. However, the mortgage company had already reached out to the Tax Office to have her bill sent directly to them. They did not mail a copy of the bill to Ms. Clapp, as required by Section 31.01(j) of the Texas Property Tax Code. The taxes, penalty and interest were paid on March 30, 2020 (which is within the required 21 days from the date the taxpayer knew of the delinquency).

The county has approved their portion of the refund.

Texas Tax Code 33.011(k) reads as follows:

The governing body of a taxing unit may waive penalties and interest on a delinquent tax if:

- (1) the property for which the tax is owed is subject to a mortgage that does not require the owner of the property to fund an escrow account for the payment of the taxes on the property;
- (2) the tax bill was mailed or delivered by electronic means to the mortgagee of the property, but the mortgagee failed to mail a copy of the bill to the owner of the property as required by Section [31.01](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=TX&Value=31.01) [\(<http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=TX&Value=31.01>](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=TX&Value=31.01)); and
- (3) the taxpayer paid the tax not later than the 21st day after the date the taxpayer knew or should have known of the delinquency.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends refunding penalties and interest in the amount of \$80.73

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AUTHORIZING A PROPERTY TAX REFUND OF \$80.73 ASSESSED ON THE PROPERTY LOCATED AT 705 CRYSTAL COVE, SAN MARCOS, TEXAS FOR TAX YEAR 2019 AS ALLOWED BY SECTION 33.011(k) OF THE TEXAS PROPERTY TAX CODE; AND DECLARING AN EFFECTIVE DATE.**

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

**PART 1.** A property tax refund of \$80.73 assessed on the property located at 705 Crystal Cove, San Marcos, Texas for tax year 2019 as allowed by Section 33.011(k) of the Texas Property Tax Code is approved.

**PART 2.** This resolution shall be in full force and effect immediately from and after its passage.

**ADOPTED** on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

# Request for Waiver of Penalties and Interest

Request Date: 4/6/2020

## Account Information

Quick Ref ID: R31468  
Taxpayer name: Maria Clapp  
Mailing address: 705 Crystal Cv San Marcos, TX 78666  
Phone Number: (512) 221-5596  
Email Address: maria8nate@gmail.com

## Reason for Request

Texas Tax Code Section 33.011 allows a taxing unit to waive penalty and interest in limited, defined circumstances. PLEASE READ THE "INFORMATION REGARDING REQUESTS FOR WAIVER OF PENALTY AND INTEREST" SHEET BEFORE FILLING OUT THIS FORM. AS DESCRIPTIONS BELOW ARE SIMPLIFIED EXPLANATIONS.

Please check the appropriate scenario that applies.

- Tax Office or Appraisal District Error** [Section 33.011(a)(1)]: An act or omission of an officer, employee, or agent of the taxing unit or the appraisal district in which the taxing unit participates caused or resulted in the taxpayer's failure to pay the tax before the delinquency date.
- Tax Statement is Returned Undeliverable** [Section 33.011(b)]: A tax statement was returned undeliverable to the tax office, the tax office did not send another tax statement at least 21 days before the delinquency date, and the returned tax statement was due to an act or omission of an officer, employee, or agent of the tax office.
- Electronic Payment Error** [Section 33.011(h)]: The taxpayer submits sufficient evidence showing they attempted to pay the original tax amount electronically in the proper manner before the delinquency date, that failure to pay was caused by an error in the transmissions of the funds.
- Payment mailed to an incorrect address** [Section 33.011(a)(3)]: The taxpayer submits sufficient evidence showing payment was timely mailed to an incorrect address that would have been correct in a prior tax year AND would have been correct within one year of the date the payment was mailed.
- Mail or Private Carrier Error** [Section 33.011(j)]: The taxpayer submits sufficient evidence showing payment was timely mailed, but that an act or omission of the postal service or private carrier resulted in postmark or delivery being after the delinquency date.
- Religious Organization** [Section 33.011(a)(2)]: The property for which the tax is owed was acquired by a religious organization and before the first anniversary of the date the religious organization acquired the property, the organization paid the tax and qualified the property for the exemption.
- Property was Omitted, Erroneously Exempted, Value Added, or Added Under a Different Account Number** [Section 33.011(i)]: If the delinquency relates to a date prior to ownership of the property AND the delinquency is a result of omitted property later added the appraisal roll, the property was erroneously exempted, the property had appraised value added, or if the property was added under a different account number when the prior owner owned the property.
- Mortgage Company Error** [Section 33.011(k)]: The property for which the tax is owed is subject to a mortgage that does not require the owner of the property to fund an escrow account for payment of property taxes. The tax bill was sent to the mortgagee, who failed to mail a copy of the bill to the owner of the property, as required by Section 31.01(f).

Falsifying statements on this form is a Class A misdemeanor or a state jail felony under Penal Code Section 37.10.

**Important**

Please attach a separate page that includes all supporting documentation relating to this request for waiver of penalty and interest. The Committee will only review documentation and evidence provided **AT THE TIME OF THE REQUEST**. Any documentation or evidence not provided with the request will not be considered in your waiver determination. All requests must be received before the 181<sup>st</sup> day after the delinquency date and include sufficient evidence to substantiate the reason for waiver of penalty and interest. **The Committee WILL NOT RECONSIDER final recommendations once issued.**

Email requests to [jenifer.okane@co.hays.tx.us](mailto:jenifer.okane@co.hays.tx.us)

You may submit requests by mail or hand-deliver to:  
Hays County Tax Office  
712 S. Stagecoach Trail, Suite 1120 - San Marcos, TX 78666

  
Taxpayer Signature

4/6/2020  
Date

# TAX RECEIPT

Jenifer OKane Tax Assessor-Collector, Hays County  
712 S. Stagecoach Trail  
San Marcos, TX 78666  
Ph: 512-393-5545 Fax: 512-393-5517

Receipt Number: **SM-2020-1256652**

Payor: CLAPP MARIA (O0211651)  
705 CRYSTAL CV  
SAN MARCOS, TX 78666

Owner: CLAPP MARIA (O0211651)  
705 CRYSTAL CV  
SAN MARCOS, TX 78666

Quick Ref ID: R31468  
Owner: CLAPP MARIA (O0211651) - 100%  
Owner Address: 705 CRYSTAL CV  
SAN MARCOS, TX 78666

Property: 11-4039-0600-01100-3  
Legal Description: HILLS OF HAYS PHASE 2 LOT 11 BLK 6  
Situs Address: 705 CRYSTAL CV SAN MARCOS, TX  
78666

Tax Year/Taxing Unit	Taxable Value	Tax Rate	Levy	Tax Paid	Penalty & Interest	Amount Paid
2019						
San Marcos CISD	121,120	1.313900	1,591.40	1,591.40	143.23	1,734.63
Special Road Dist	138,120	0.033800	46.68	46.68	4.20	50.88
Hays County	141,120	0.389900	550.23	550.23	49.53	599.76
City Of San Marcos	146,120	0.613900	897.03	897.03	80.73	977.76

Total Payment Amount	<b>3,363.03</b>
Check Payment (Ref # 105) Tendered	3,363.03
Total Tendered	<b>3,363.03</b>

Remaining Balance Due, including other fees,  
as of 3/30/2020 **0.00**

Date Paid: 03/30/2020  
Effective Date: 03/30/2020  
Station/Till: ELIZABETH/Elizabeth's Till  
Cashier:



## Legislation Text

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**File #:** Res. 2020-112R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-112R, directing the Interim Director of Finance of the City of San Marcos to calculate the voter-approval tax rate of the City of San Marcos in the manner provided for a special taxing unit by using an 8% threshold for new revenue instead of 3.5% as authorized by Texas Tax Code Section 26.04(C-1) due to the Governor's State-Wide Declaration of Disaster in response to the COVID-19 Pandemic; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** Finance

**Amount & Source of Funding**

**Funds Required:** Click or tap here to enter text.

**Account Number:** Click or tap here to enter text.

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

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

**City Council 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.
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

SB2 provides disaster relief where City Council may direct the designated officer or employee to calculate the voter-approval tax rate in the manner provided for a special taxing unit (8 percent) if any part of the City is located in an area declared a disaster area during the current tax year by the Governor or by the President of the United States. TEX. TAX CODE § 26.04(c-1). The designated officer or employee shall continue calculating the voter-approval tax rate using 8 percent instead of 3.5 percent until the earlier of:

1. the second tax year in which the total taxable value of property in the city exceeds the total taxable value of property taxable by the city on January 1st of the tax year in which the disaster occurred; or
2. the third tax year after the tax year in which the disaster occurred.

The proposed resolution would allow the City to exceed the 3.5% cap, but not exceed 8%. The City's prior year tax rate of 0.6139 per \$100 of valuation is within the 8% limit. No increase to the prior tax rate is recommended.

Preliminary estimates reflect \$1.5M difference in Property Tax revenue between 3.5% cap and 8%. The annual tax bill for the average home (\$230K value) will increase approximately \$100 using the current tax rate of 0.6139.

**Tax Rate Calculation Disaster Relief\*:**

The calculation of the Voter-approval tax rate for special tax unit:  
(No-new revenue rate \* **1.08**) + Debt Service = Voter Approval Tax Rate  
Where no-new revenue rate was formerly known as the effective tax rate.

**Tax Rate Calculation 3.5% Tax Cap\*:**

The calculation of the Voter-approval tax rate:  
(No-new revenue rate \* **1.035**) + Debt Service = Voter Approval Tax Rate  
Where no-new revenue rate was formerly known as the effective tax rate.

\*Note the tax rate calculations above have been summarized. Other factors impacted tax rate calculations are: maintenance and operations, sales tax relief, TIRZ contributions.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval of the resolution to allow the city to calculate the tax rate up to 8%.

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS DIRECTING THE INTERIM DIRECTOR OF FINANCE OF THE CITY OF SAN MARCOS TO CALCULATE THE VOTER-APPROVAL TAX RATE OF THE CITY OF SAN MARCOS IN THE MANNER PROVIDED FOR A SPECIAL TAXING UNIT BY USING AN 8% THRESHOLD FOR NEW REVENUE INSTEAD OF 3.5% AS AUTHORIZED BY TEXAS TAX CODE SECTION 26.04(C-1) DUE TO THE GOVERNOR'S STATE-WIDE DECLARATION OF DISASTER IN RESPONSE TO THE COVID-19 PANDEMIC; AND DECLARING AN EFFECTIVE DATE.**

**RECITALS:**

1. On March 13, 2020, the President of the United States issued a proclamation declaring that the COVID-19 pandemic in the United States constitutes a national emergency.
2. March 13, 2020, the Governor of the State of Texas declared a disaster in every Texas county due to the COVID-19 pandemic.
3. The COVID-19 pandemic has impacted the City of San Marcos and the City Council foresees that an increased expenditure of money by the City of San Marcos will be necessary to respond to the disaster.
4. As a result of the disaster declaration, an election is not required under Section 26.07 of the Texas Tax Code to approve the tax rate adopted by the San Marcos City Council for the year following the year in which the disaster occurred.
5. The City of San Marcos imposed the "additional sales and use tax" to which Section 26.041 of the Texas Tax Code refers.
6. As a result of the foregoing, Section 26.041(c-1) of the Texas Tax Code authorizes the City Council of the City of San Marcos to direct the designated officer or employee to calculate the voter-approval tax rate of the City of San Marcos in the manner provided for a special taxing unit.
7. Section 26.04(c-1) of the Texas Tax Code provides that the officer or employee continue calculating the voter approval tax rate in the same manner until the earlier of (1) the second tax year in which the total taxable value of property taxable by the City of San Marcos as shown on the appraisal roll for the City of San Marcos submitted by the tax assessor for the City of San Marcos to the San Marcos City Council exceeds the total taxable value of property taxable by the City of San Marcos on January 1 of the tax year in which the disaster occurred, or (2) the third tax year after the tax year in which the disaster occurred.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS,**

**TEXAS:**

**PART 1.** The City Council finds that the recitals above are true and they are hereby adopted as a matter of public record. The recitals shall become a part of the legislative history pertaining to the adoption of this resolution and shall serve to document the extraordinary circumstances existing at the time of its approval.

**PART 2.** The Interim Finance Director of the City of San Marcos, as the designated officer of the City of San Marcos, is directed to calculate the voter-approval tax rate of the City of San Marcos in the manner provided for a special taxing unit as provided in Chapter 26 of the Texas Tax Code.

**PART 3.** As set forth in Texas Tax Code Section 26.04(c)(2)(A), the voter-approval rate for a special taxing unit is the city's maintenance and operations rate times 1.08 plus the current debt rate.

**PART 4.** The Interim Finance Director or her successor shall continue calculating the voter-approval tax rate in the manner provided by this resolution until the earlier of:

- (1) the second tax year in which the total taxable value of property taxable by the City of San Marcos as shown on the appraisal roll for the City of San Marcos submitted by the tax assessor for the City of San Marcos to the San Marcos City Council exceeds the total taxable value of property taxable by the City of San Marcos on January 1 of the current tax year; or
- (2) the third tax year after the current tax year.

**PART 5.** This resolution shall be in full force and effect from and after its passage.

**ADOPTED** on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

# Voter-Approval Rate Calculation

(non-special taxing units)



(special taxing units)



\*No-New-Revenue M&O Rate will be calculated after the appraisal district issues certified tax rolls

# Property Tax Rate Comparisons

	No-New Revenue (effective tax rate)	3.5% Tax Cap	8% Special Tax Unit	Tax Year 2020 Tax Rate
Tax Year 2020	0.5686	0.5885	0.6140	0.6139

The resolution to allow the tax rate to be calculated as a special taxing unit would provide the City the ability to go up to, but not exceed 8% increase over no-new revenue. The current preliminary estimates based on last years effective tax rate (no-new-revenue rate) reflect the City's current tax rate to fall below the 8% not to exceed amount. The recommendation would not change the current tax rate of 0.6139. Final tax rate calculations will be provided after certified tax rolls are distributed July 25<sup>th</sup>.

# Property Tax Rate Comparisons

Home Values	Annual Tax Bill @ 3.5% Tax Cap ~0.5885	Annual Tax Bill @ Same Tax Rate 0.6139	Annual Tax Bill @ 8% Special Taxing Unit ~0.6140	Difference in Annual Tax Bill
<b>\$100,000</b>	568.60	613.90	614.09	45.30
<b>\$200,000</b>	1,137.20	1,227.80	1,228.18	90.60
<b>\$300,000</b>	1,705.80	1,841.70	1,842.26	135.90

For tax year 2020 the average home value is \$236K. If the no-new revenue rate capped at 3.5% were adopted, the average homeowners tax bill would be reduced by ~ \$100. The impact to the General Fund would be a reduction of ~\$1.5M in revenue.



Legislation Text

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**File #:** Res. 2020-113R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-113R, approving the first amendment of the Interlocal Agreement with Texas State University for the provision of reclaimed water; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** Public Services Water / Wastewater - Tom Taggart, Director

**Amount & Source of Funding**

**Funds Required:** NA

**Account Number:** NA

**Funds Available:** NA

**Account Name:** NA

**Fiscal Note:**

**Prior Council Action:** Original agreement approved by Council July 2015; agreement amended and approved by Council in February 2020.

**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.
- Core Services

Not Applicable

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

Choose an item.

**Background Information:**

The City of San Marcos and Texas State University participated in the cost of design and construction of reuse water piping to serve primarily cooling purposes on campus and irrigation in the City Park facilities. The Interlocal Agreement approved by the City Council in 2015 provided for the exchange of surface water rights for reuse water by long term lease of a portion of Texas State University's San Marcos River surface water withdrawal rights by the City. These rights are among the most senior on the river and the water is currently withdrawn from and above the endangered species habitat area by the university for cooling purposes. The City exchanged reuse water for surface water at a defined valuation up to a maximum amount. With changes to the TCEQ permitted withdrawal point and usage class, the surface water augments the reuse supply, can be stored for future use or treated for potable use in the City system. The withdrawal point is downstream of all the endangered species habitat areas and therefore continually augments stream flows through these environmentally sensitive areas. The agreement creates a sustainable benefit to the Habitat Conservation Plan and helps preserve our river environment. The agreement also sets a rate for reuse water in excess of lease amounts or in the event TCEQ declines permit changes.

The changes to the agreement approved by Council in February of this year were due to Texas State University inadvertently identifying water right permits to be transferred in the original agreement which would not allow for the water to be used for municipal/domestic, industrial, or consumptive uses.

The changes this amendment is proposing are at the request of Texas State University.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval of the amendment to the agreement.



**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING THE FIRST AMENDMENT OF THE INTERLOCAL AGREEMENT WITH TEXAS STATE UNIVERSITY FOR THE PROVISION OF RECLAIMED WATER; AND DECLARING AN EFFECTIVE DATE.**

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

**PART 1.** The attached First Amendment to Interlocal Agreement with Texas State University for the provision of reclaimed water is hereby approved.

**PART 2.** The City Manager or his designee is authorized to execute any closing or other documents necessary to complete the conveyance of the land to the City.

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

**ADOPTED** on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

**FIRST AMENDMENT TO INTERLOCAL COOPERATION AGREEMENT  
BETWEEN THE CITY OF SAN MARCOS AND TEXAS STATE UNIVERSITY  
CONCERNING EXCHANGE OF RECLAIMED WATER FOR  
SURFACE WATER RIGHTS**

This First Amendment to the Interlocal Cooperation Agreement (the “Agreement”) is made effective as of \_\_\_\_\_ (the “Effective Date”) by and between the **CITY OF SAN MARCOS** (the “**CITY**”), 630 East Hopkins Street, San Marcos, Texas 78666 and **TEXAS STATE UNIVERSITY** (“**TEXAS STATE**”), 601 University Drive, San Marcos, Texas 78666. The **CITY** and **TEXAS STATE** are each referred to hereinafter as a “Party” and collectively as the “Parties.”

**WHEREAS**, **TEXAS STATE** and the **CITY**, entered into an Interlocal Cooperation Agreement concerning the exchange of Reclaimed Water for Surface Water Rights executed December 2, 2015 and December 3, 2015, (the “Agreement”); and

**WHEREAS**, **TEXAS STATE** and the **CITY** desire to amend the Agreement to correct TCEQ permit numbers and the stated acre feet of surface water for withdrawal;

**NOW, THEREFORE**, the Parties agree to be legally bound to this First Amendment to Interlocal Cooperation Agreement as follows:

1. **Article II AGREEMENT, Section 1 b. Allocation of Water Rights.** This section of the Agreement is revised to correctly reflect the acre feet of water permitted to be withdrawn and TCEQ permits numbers. Section 1 b is deleted in its entirety and replaced with the following:

“Concurrent with the start of the **CITY**’s delivery of reclaimed water to **TEXAS STATE**, **TEXAS STATE** will forego its rights to withdraw surface water that flows through the San Marcos River and hereby allocates its rights to the **CITY** to withdraw, 1,117 (One Thousand One Hundred Seventeen) acre feet of water from the San Marcos River under TCEQ permits numbered 3865, Seq #1, Amendment D (513 ac ft, municipal/domestic use); 3865, Seq #2, Amendment D (534 ac ft, industrial use); and 3865, Seq #4, Amendment D (70 ac ft, consumptive use).”

2. **Article II AGREEMENT, Section 1 f Texas State Credit for Unused Water.** This section of the Agreement is revised to correctly reflect the maximum acre feet of surface water rights made available to the **CITY**. Section 1 f is deleted in its entirety and replaced with the following:

“The **CITY** will provide a credit to **TEXAS STATE** for amounts of surface water rights made available to the **CITY** at a minimum of 400 (Four Hundred) acre feet, up to 1,117 (One Thousand One Hundred Seventeen) acre feet, annually, which credit will be applied against any charges for **CITY** water or wastewater utilities of any type provided to **TEXAS STATE** as explained in this paragraph. The credit will be calculated by: i) multiplying the current reclaimed water rate by the amount of surface water rights used

by the CITY at a minimum of 400 (Four Hundred) acre feet, up to 1,117 (One Thousand One Hundred Seventeen) acre feet, annually; ii) multiplying the current reclaimed water rate by the actual volume of acre feet of reclaimed water consumed by TEXAS STATE; and iii) providing a credit in the amount of the difference, if any. For example, if the current reclaimed water rate of \$439.90 per acre foot is multiplied by 1,117-acre feet of water, the value of such water is \$491,368.30 ( $\$439.90 \times 1,117 = \$491,368.30$ ). If TEXAS STATE consumes 400-acre feet of water during a one-year period at a cost of \$175,960.00, TEXAS STATE will be entitled to a credit in the amount of \$315,408.30 ( $491,368.30 - \$175,960.00 = \$315,408.30$ ).”

3. **Article II AGREEMENT, Section 5 b Current Funds.** This section of the Agreement is deleted in its entirety and is replaced with the following:

“All payments under this Agreement shall be made in accordance with the Prompt Payment Provisions of Texas Government Code 2251. Performance by either party under this Agreement may be dependent upon the appropriation and allotment of funds. If funds are not appropriated or if an allotment of the necessary funds fails to be made, then the City or TEXAS STATE will issue written notice and the parties will renegotiate this Agreement in good faith to preserve the underlying tenets. If unable to reach agreement, the parties will participate in non-binding mediation using a mutually agreeable mediator and sharing equally in the mediation expenses. The City and TEXAS STATE acknowledge that appropriation, allotment, and allocation of funds are beyond their control.

4. **Article II AGREEMENT, Section 5 Miscellaneous.** This section of the Agreement is revised with the addition of the following paragraphs after **Section 5 j**:

**“k. Sovereign Immunity.** Notwithstanding any provision of this Agreement, nothing herein shall be construed as a waiver by either party of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in this Agreement, the terms of this paragraph shall control.

**l. Public Records.** It shall be the independent responsibility of the City and Texas State to comply with the provisions of Chapter 552, Texas Government Code (the “Public Information Act”), as those provisions apply to the parties’ respective information. The City is not authorized to receive public information requests or take any action under the Public Information Act on behalf of Texas State. Likewise, Texas State is not authorized to receive public information requests or take any other action under the Public Information Act on behalf of The City.

**m. Nondiscrimination.** In their execution of this Agreement the Parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans’ status, sexual orientation, gender

identity or gender expression. Any breach of this covenant may result in termination of this Agreement.

**n. Right to Audit.** The City understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor's Office or any successor agency ("Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), Texas Education Code. The City shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all the information as requested. The City's failure to comply with this requirement shall constitute a material breach of Agreement and shall authorize TEXAS STATE and the State of Texas to assess immediately appropriate damages for such failure. The City acknowledges and understands that the acceptance of funds under Agreement shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. The City shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through the City and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

**o. Independent Audit.** The City agrees that Texas State, or any of its duly authorized representatives, at any time during the term of this Agreement, will have access to, and the right to audit and examine, any pertinent books, documents, papers, and records of the City (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, equipment charges, overtime reports, etc.), and related City's charges incurred in its performance under this Agreement. Such records will be kept by the City for a period of four years after Final Payment under this Agreement. The City agrees to refund to TEXAS STATE within thirty days of being notified by TEXAS STATE of any overpayments disclosed by any audits.

**p. Ethics Matters; No Financial Interest.** The City and its employees, agents, representatives and subcontractors have read and understand The System's Conflicts of Interest Policy and Code of Ethics at <https://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf> and applicable state ethics laws and rules, including Senate Bill 20 (84th Texas Legislature, 2015). The City represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement. Neither the City nor its employees, agents, representatives or subcontractors will assist or cause The System employees to violate The System's Conflicts of Interest Policy, The System's Ethics Code, or applicable state ethics laws or rules

Further, the City agrees to comply with §2252.908, [Texas Government Code](#) (Disclosure of Interested Parties Statute), and 1 TAC §§46.1 through 46.5 (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and The System with information required on the form promulgated by TEC. The City may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at [https://www.ethics.state.tx.us/whatsnew/FAQ\\_Form1295.html](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html).

5. This First Amendment to Interlocal Cooperation Agreement shall be effective on the Effective Date.
6. All remaining provisions of the Agreement shall remain in full force and effect as to all other terms and conditions and shall remain binding on the Parties hereto.
7. Consent from the San Marcos City Council is necessary as a condition precedent to the legal effect of this Amendment.
8. The Agreement and First Amendment contain all agreements, promises, or understandings between TEXAS STATE and the CITY. In the event any provision of the Agreement and this First Amendment is found to be invalid or unenforceable, such a finding shall not affect the validity and enforceability of the remaining provisions of the Agreement and this First Amendment.

{Signatures to follow on next page}



**RESOLUTION NO. 2015-84R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN INTERLOCAL AGREEMENT WITH TEXAS STATE UNIVERSITY THAT PROVIDES FOR THE EXTENSION OF A RECLAIMED WATERLINE AND PROVISION OF RECLAIMED WATER SERVICE TO TEXAS STATE UNIVERSITY IN EXCHANGE FOR THE TRANSFER BY TEXAS STATE UNIVERSITY OF CERTAIN RIGHTS TO WITHDRAW WATER FROM THE SAN MARCOS RIVER TO THE CITY IN FURTHERANCE OF THE HABITAT CONSERVATION PLAN; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

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

**PART 1.** An Interlocal Agreement with Texas State University for the extension of a reclaimed waterline to Texas State University in exchange for a transfer of certain rights to withdraw water from the San Marcos River is hereby approved.

**PART 2.** The City Manager is authorized to approve and execute said Interlocal Agreement on behalf of the City in substantially the form presented.

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

**ADOPTED** on July 21, 2015.



Daniel Guerrero  
Mayor

Attest:



Jamie Dee Pettijohn  
City-Clerk

**INTERLOCAL COOPERATION AGREEMENT BETWEEN  
THE CITY OF SAN MARCOS AND TEXAS STATE UNIVERSITY CONCERNING  
EXCHANGE OF RECLAIMED WATER FOR SURFACE WATER RIGHTS**

This Interlocal Cooperation Agreement (the “Agreement”) is made and effective as of \_\_\_\_\_, 2015 (the “Effective Date”) by and between the City of San Marcos, Texas (the “City”), 630 East Hopkins Street and Texas State University (“Texas State”), 601 University Drive, San Marcos, Texas 78666. The City and Texas State are each referred to hereinafter as a “Party” and collectively as the “Parties.”

**ARTICLE I  
RECITALS**

1. The Parties are participants in the Habitat Conservation Plan which was implemented to protect endangered species in the San Marcos River.
2. Enhancing stream flows through the San Marcos River will advance the purposes of the Habitat Conservation Plan.
3. The Parties recognize that one means of enhancing stream flows through the most sensitive sections of the San Marcos River is for Texas State to reduce the amount of water it withdraws from the river.
4. Texas State is willing to forego exercising its rights to withdraw surface water from the San Marcos River provided a suitable substitute quantity of reclaimed water is made available to it at a comparable cost.
5. The City operates a reclaimed water system that serves third party users and Texas State is willing to allocate a portion of its surface water rights to the City to enhance stream flows in the San Marcos River in exchange for reclaimed water from the City.
6. Texas State previously participated with the City in the cost to construct a segment of pipeline intended to connect Texas State’s main campus to the City’s reclaimed water system.

By separate agreement, the Parties will participate to complete the pipeline (the “Texas State Reclaimed Waterline Segment”) with the aid of grant funding from the Texas Water Development Board and the Edwards Aquifer Authority.

7. Pursuant to the Texas Interlocal Cooperation Act, Section 791.001, *et seq.* of the Texas Government Code which authorizes the Parties to contract with each other to perform governmental functions and services and in consideration of the mutual promises and benefits contained herein, the Parties enter into this Agreement.

## **ARTICLE II AGREEMENT**

1. **Exchange of Surface Water Rights for Reclaimed Water.** Texas State agrees to allocate its rights to withdraw surface water that flows through the San Marcos River to the City in exchange for the delivery of reclaimed water from the City under the terms set forth below.

a. **Start of Water Delivery.** Within 30 days after completion and acceptance by the City of the Texas State Reclaimed Waterline Segment, the authorized representatives of Parties will coordinate to establish appropriate connections and metering systems for Texas State to receive reclaimed water from the City and to agree upon a date upon which delivery will begin.

b. **Allocation of Surface Water Rights.** Concurrent with the start of the City’s delivery of reclaimed water to Texas State, Texas State will forego its rights to withdraw surface water that flows through the San Marcos River and hereby allocates its rights to the City to withdraw 1,164 acre feet of water from the San Marcos River under TCEQ permits numbered 18-3865-401 (534 ac-ft) and 18-3865-404 (630 ac-ft).

c. **City's Use of Allocated Surface Water.** The City agrees that the allocation of surface water rights by Texas State shall be for the purpose of preserving and enhancing stream flows through identified endangered species areas along the San Marcos River and that the water, if withdrawn by the City, may only be withdrawn downstream of IH-35. For example, the water may be withdrawn at the wastewater treatment plant to be pumped as reuse water or be allowed to flow to a withdrawal point for treatment to potable water quality and used in the water system such as the CRWA plant in Martindale. The decision as to amounts withdrawn of the allocated amount shall be at the sole discretion of the City.

d. **City to Provide Reclaimed Water.** Beginning with the first date delivery of reclaimed water to Texas State as provided above, the City shall make available and deliver to Texas State up to 400 acre feet of reclaimed water per year from the City's reclaimed water system. Delivery of reclaimed water in excess of 400 acre feet per year will be subject to the availability of unallocated reclaimed water from the City's reclaimed water supplies.

e. **Charges for Reclaimed Water.** The City shall install such meters as are reasonable and customary for measuring the volume of reclaimed water consumed by Texas State. Texas State shall be charged for reclaimed water delivered from the City at the City's then applicable reclaimed water rate. The initial current rate in effect as of the Effective Date of this Agreement is \$1.35 per 1,000 gallons of water or \$439.90 per acre foot. The City shall bill Texas State in accordance with the usual and customary utility billing practices between the City and Texas State, provided that the billing for the first cycle under this Agreement may be prorated if the delivery of reclaimed water begins during the middle of the normal billing cycle, e.g., monthly, quarterly, yearly, as applicable.

**f. Texas State Credit for Unused Water.** The City will provide a credit to Texas State for amounts of surface water rights made available to the City at a minimum of 400 acre feet, up to 1,164 acre feet, annually, which credit will be applied against any charges for City water or wastewater utilities of any type provided to Texas State as explained in this paragraph. The credit will be calculated by: **i)** multiplying the current reclaimed water rate by the amount of surface water rights used by the City at a minimum of 400 acre feet, up to 1164 acre feet, annually; **ii)** multiplying the current reclaimed water rate by the actual volume of acre feet of reclaimed water consumed by Texas State; and **iii)** providing a credit in the amount of the difference, if any. For example, if the current reclaimed water rate of \$439.90 per acre foot is multiplied by 1,164 acre feet of water, the value of such water is \$512,043.60 ( $\$439.90 \times 1164 = \$512,043.60$ ). If Texas State consumes 400 acre feet of water during a one year period at a cost of \$175,960.00, Texas State will be entitled to a credit in the amount of \$336,083.60 ( $\$512,043.60 - \$175,960.00 = \$336,083.60$ ).

**2. Term and Termination.**

**a. Term.** This Agreement shall be effective on the date first shown above and shall continue for a period of 99 years, unless renewed by mutual written agreement of the Parties.

**b. Termination.** Either party may:

**i.** request to terminate this agreement without cause with 60 days written notice to the other party, termination without cause requires the consent of both parties and is subject to establishing mutual conditions of termination; or

**ii.** terminate this contract for cause if the other party is put on notice of

the breach and given an opportunity to cure. If the breach is not cured within 60 days following the notice, or if a cure cannot be reasonably completed within 60 days and a cure is not begun and diligently pursued within 60 days, the contract can be terminated 10 days after written notice is given of the failure to cure the breach, subject to the right of either party to also pursue available remedies at law or in equity.

**3. Subject to TCEQ Approvals.** This Agreement and the obligations of the Parties under it are subject to approval by the Texas Commission on Environmental Quality of a change in the classification of the surface water allocated to the City from “Industrial” use to “Municipal” use and the change in location of the surface water withdrawal points downstream of the identified endangered habitat areas of the San Marcos River. The Parties agree to cooperate in effecting such transfers in accord with all State statutes and requirements or those of any entity having jurisdiction. In the event such approvals are not obtained, Texas State may still purchase reclaimed water from the City at the following rates:

- a. \$1.35 per 1,000 gallons of reclaimed water for a period of 10 years from the first date of delivery;
- b. \$1.35 per 1,000 gallons of reclaimed water, plus one-third of the difference between such rate and the then applicable rate in effect for year 11;
- c. \$1.35 per 1,000 gallons of reclaimed water, plus two-thirds of the difference between such rate and the then applicable rate then in effect for year 12; and
- d. the applicable rates then in effect for year 13 and all subsequent years..

**4. Notices.** All notices or other communications which are required or permitted hereunder shall be in writing and shall be deemed properly delivered if sent by U.S. Mail return

receipt requested, a nationally recognized overnight courier service, or by facsimile transmission or email to the following:

If to the City:  
City of San Marcos  
630 East Hopkins Street  
San Marcos, Texas 78666  
Attn: City Manager  
*citymanagerinfo@sanmarcostx.gov*

If to Texas State:  
Eric Algoe  
V.P. for Finance and Support Services  
Texas State University  
601 University Drive  
San Marcos, Texas 78666  
*ealgoe@txstate.edu*

Either Party may change the address for notice by providing written notice of such change to the other Party.

**5. Miscellaneous.** The following additional terms shall govern this Agreement.

**a. Amendments.** Any amendments to this Agreement shall be in writing and executed by a duly authorized representative of each of the Parties.

**b. Current Funds.** All payments under this Agreement shall be made from current revenues available to the paying Party. All obligations of either Party requiring an expenditure of funds beyond the current fiscal year shall be subject to appropriation of funds during the fiscal year in which the obligation is incurred. The City, however, may discontinue the delivery of reclaimed water to Texas State if Texas State fails to timely pay for such service in accordance with the usual and customary utility billing and payment practices between the parties, subject to resuming service upon receipt of payment.

**c. Sole Agreement.** This Agreement constitutes the entire agreement between the Parties, and there are no representations, warranties, agreements or commitments between the Parties hereto except as set forth herein.

**d. Waiver.** No delay or failure by either Party to exercise any right, power or remedy, under this Agreement, and no partial or single exercise of that right, power or

remedy, shall constitute a waiver of that or any other right, power or remedy unless otherwise expressly provided herein. No waiver shall be deemed to have been made unless it is in writing and signed by the waiving Party.

**e. Applicable Law and Venue.** This Agreement is deemed to have been made in and to be performable in the Hays County, Texas, and shall be construed in accordance with and governed by the laws of the State of Texas.

**f. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**g. Assignment.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that neither Party may assign any of their respective rights nor delegate any of their respective duties hereunder without the other Party's prior written consent.

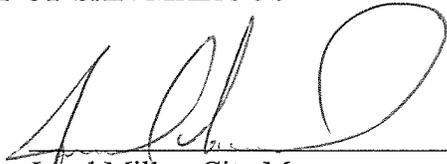
**h. Severability.** The invalidity of any provision or provisions of this Agreement shall not affect any other provision of this Agreement, which shall remain in full force and effect, nor shall the invalidity of a portion of any provision of this Agreement affect the balance of such provision.

**i. Interpretation.** This Agreement or any portion thereof shall not be interpreted by a court of law to the detriment of a Party based solely upon that Party's authorship of the Agreement or any portion thereof.

**j. Dispute Resolution.** To the extent applicable to this Agreement, the parties will use the procedures in Chapter 2260, Subchapter B of the Texas Government Code to resolve any disputes arising under this Agreement.

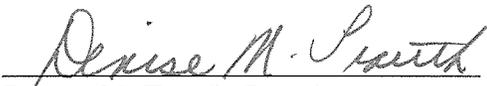
**IN WITNESS WHEREOF**, the Parties have executed this Interlocal Cooperation Agreement in duplicate counterparts, both having equal force and effect, as of the Effective Date.

**CITY OF SAN MARCOS**

By:   
Jared Miller, City Manager

12/02/2015  
Date

**TEXAS STATE UNIVERSITY**

By:   
Denise M. Trauth, President 

12/2/2015  
Date



## Legislation Text

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**File #:** Ord. 2020-40, **Version:** 1

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**AGENDA CAPTION:**

Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-40, amending Chapter 86, Article 5, Division 4 of the San Marcos City Code regarding impact fees to, among other things, change the methodology for establishing impact fees for industrial and commercial uses having peak flow rates in excess of 500 gallons per minute, and to add homes constructed with federal funds awarded to the City and City facilities as projects exempt from the assessment of impact fees; including procedural provisions; providing for the repeal of any conflicting provisions; and providing an effective date; and consider approval of Ordinance 2020-40, on the first of two readings.

**Meeting date:** June 2, 2020

**Department:** Engineering/CIP

**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:** Ord 2018-10: Providing for the methodology for calculating water and wastewater impact fees

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Sustainability

[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 - 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.
- Core Services
- Not Applicable

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

Water Master Plan

**Background Information:**

This amendment to the Impact Fee ordinance is clarifying the methodology that the City will use to calculate the Living Unit Equivalents (LUEs) for development where peak flow rates are in excess of 500 gallons per minute (gpm.) Other minor changes are also made to clarify the situations for impact fee exemptions.

A summary of the changes are:

- Sec. 86.294 - Definitions: Schedule 1 Table and Service Unit Table are updated with LUE calculation for flows above 500 gallons per minute.
- Sec. 86.295(b) Exemptions:
  - (3) changes to clarify exemption for Habitat and Housing Authority.
  - (5) adds City federal (such as CDBG) projects and City facilities.
- Sec. 86.295 (c): Removed federal reference since now have Council policy
- Sec. 86.299 (b) (1) a. & b.: Updated language for computation for industrial or commercial equipment and calculation for demands over 500 gpm.

The revision to methodology was based upon the same system data which established LUE's for flows below 500 gpm but did not address flows above.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

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**File #:** Ord. 2020-40, **Version:** 1

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**Recommendation:**

Approve changes.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 86, ARTICLE 5, DIVISION 4 OF THE SAN MARCOS CITY CODE REGARDING IMPACT FEES TO, AMONG OTHER THINGS, CHANGE THE METHODOLOGY FOR ESTABLISHING IMPACT FEES FOR INDUSTRIAL AND COMMERCIAL USES HAVING PEAK FLOW RATES IN EXCESS OF 500 GALLONS PER MINUTES, AND TO ADD HOMES CONSTRUCTED WITH FEDERAL FUNDS AWARDED TO THE CITY AND CITY FACILITIES AS PROJECTS EXEMPT FROM THE ASSESSMENT OF IMPACT FEES; INCLUDING PROCEDURAL PROVISIONS; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

## **Purpose of Impact Fee Ordinance Update:**

- Clarify methodology to calculate the Living Unit Equivalents (LUEs) in excess of 500 gallons per minute (gpm.)
- Other minor changes are also made to clarify the situations for impact fee exemptions.

## Summary of Changes:

- Sec. 86.294 – Definitions: Schedule 1 Table and Service Unit Table are updated with LUE calculation for flows above 500 gallons per minute.
- Sec. 86.295(b) Exemptions:
  - (3) clarified exemption for Habitat and Housing Authority.
  - (5) adds City federally funded projects and City facilities.
- Sec. 86.295 (c): Reference Council's affordable housing guidelines
- Sec. 86.299 (b) (1) a. & b.: Updated language for computation for industrial or commercial equipment and calculation for demands over 500 gpm.



# MEMO

ENGINEERING/CIP

**To:** Bert Lumbreras, City Manager  
Joe Pantalion, Assistant City Manager

**From:** Laurie Moyer, P.E., Director of Engineering & Capital Improvements

**Date:** May 21, 2020

**Re:** **Revision to Impact Fee Ordinance to Capture High Flow Situations**

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This memo is to provide a brief summary of the changes to the Impact Fee Ordinance (Chap 86 Division 4). The ordinance update is clarifying the methodology that the City will use to calculate the Living Unit Equivalents (LUEs) for development where peak flow rates are in excess of 500 gallons per minute (gpm.) Other minor changes are also made to clarify the situations for impact fee exemptions.

A technical analysis was conducted by Plummer, Inc to analyze the impact of higher flows on the system which were not clearly addressed in the current ordinance. The recommended methodology uses 150 LUEs for the flow up to the first 500 gpm. The LUEs for the flow above 500 gpm are determined by dividing that flow by 0.41 gpm. This provides a more balanced approach for those higher flows by correlating the first 500 gpm to the meter ranges as is provided for the lower flows.

A summary of the changes are:

- Sec. 86.294 – Definitions: Schedule 1 Table and Service Unit Table are updated with LUE calculation for flows above 500 gallons per minute.
- Sec. 86.295(b) Exemptions:
  - (3) clarified exemption for Habitat and Housing Authority.
  - (5) adds City HUD projects and City facilities.
- Sec. 86.295 (c): Reference City Council's housing affordability guidelines.
- Sec. 86.299 (b) (1) a. & b.: Updated language for computation for industrial or commercial equipment and calculation for demands over 500 gpm.

The ordinance Public Hearing and first reading of the ordinance is scheduled for June 2<sup>nd</sup>.

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 86, ARTICLE 5, DIVISION 4 OF THE SAN MARCOS CITY CODE REGARDING IMPACT FEES TO, AMONG OTHER THINGS, CHANGE THE METHODOLGY FOR ESTABLISHING IMPACT FEES FOR INDUSTRIAL AND COMMERCIAL USES HAVING PEAK FLOW RATES IN EXCESS OF 500 GALLONS PER MINUTE, AND TO ADD HOMES CONSTRUCTED WITH FEDERAL FUNDS AWARDED TO THE CITY AND CITY FACILITIES AS PROJECTS EXEMPT FROM THE ASSESSMENT OF IMPACT FEES; INCLUDING PROCEDURAL PROVISIONS; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

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

**SECTION 1.** Section 86.294 of the San Marcos City Code is hereby amended to change the definition for “Schedule 1” as set forth below. Added text is indicated by underlining and deleted text is indicated by strikethroughs.

**DIVISION 4. IMPACT FEE ORDINANCE OF THE SAN MARCOS CITY CODE**

**Sec. 86.294. Definitions.**

*Schedule 1* means the maximum impact fee per service unit for each service area shall be established by category of capital improvements calculated by peak flow as outlined in section 86.297 and as shown in the table below:

**SCHEDULE 1  
APPLICABLE WATER AND WASTEWATER IMPACT FEE AMOUNTS\*  
CITY OF SAN MARCOS, TEXAS**

Calculated Peak Water Flow (gpm)	Living Units Equivalent LUE's by Flow	Impact Fee Prior to 10/4/2002	Impact Fee after 12/31/2003**	Impact Fee after 12/31/2013	Impact Fee after 4/30/2018
<b>WATER UTILITY</b>					
1 to 10	1.0	\$363.00	\$2,466.00	\$2,285.00	\$3,801.00
>10 to 15	2.0	\$726.00	\$4,932.00	\$4,570.00	\$7,602.00
>15 to 25	4.0	\$1,452.00	\$9,864.00	\$9,140.00	\$15,204.00
>25 to 50	6.0	\$2,178.00	\$14,796.00	\$13,710.00	\$22,806.00
>50 to 80	8.5	\$3,085.50	\$20,961.00	\$19,422.50	\$32,308.50
>80 to 160	32.5	\$11,797.50	\$80,145.00	\$74,262.50	\$123,532.50
>160 to 250	64.5	\$23,413.50	\$159,057.00	\$147,382.50	\$245,164.50

>250 to 500	104.0	\$37,752.00	\$256,464.00	\$237,640.00	\$395,304.00
>500	$150.0 + (\text{Peak Flow in gpm} - 500\text{gpm})/0.41\text{gpm/LUE}$	$\frac{\# \text{ of LUEs X } \$363}{\$54,450.00}$	$\frac{\# \text{ of LUEs X } \$2,466}{\$369,900.00}$	$\frac{\# \text{ of LUEs X } \$2,285}{\$342,750.00}$	$\frac{\# \text{ of LUEs X } \$3,801}{\$570,150.00}$
WASTEWATER UTILITY					
1 to 10	1.0	\$527.00	\$2,185.00	\$3,506.00	\$2,684.00
>10 to 15	2.0	\$1,054.00	\$4,370.00	\$7,012.00	\$5,368.00
>15 to 25	4.0	\$2,108.00	\$8,740.00	\$14,024.00	\$10,736.00
>25 to 50	6.0	\$3,162.00	\$13,110.00	\$21,036.00	\$16,104.00
>50 to 80	8.5	\$4,479.50	\$18,572.50	\$29,801.00	\$22,814.00
>80 to 160	32.5	\$17,127.50	\$71,012.50	\$113,945.00	\$87,230.00
>160 to 250	64.5	\$33,991.50	\$140,932.50	\$226,137.00	\$173,118.00
>250 to 500	104.0	\$54,808.00	\$227,240.00	\$364,624.00	\$279,136.00
>500	$150.0 + (\text{Peak Flow in gpm} - 500\text{gpm})/0.41\text{gpm/LUE}$	$\frac{\# \text{ of LUEs X } \$527}{\$79,050.00}$	$\frac{\# \text{ of LUEs X } \$2,185}{\$327,750.00}$	$\frac{\# \text{ of LUEs X } \$3,506}{\$525,900.00}$	$\frac{\# \text{ of LUEs X } \$2,684}{\$402,600.00}$

Maximum fees for prior to 10/4/2002 update are:

Water \$363/LUE

Wastewater: \$527/LUE

Maximum fees for 2002 update are:

Water \$2,466/LUE

Wastewater \$2,185/LUE

Maximum fees for 2013 update are:

Water \$2,285/LUE

Wastewater \$3,506/LUE

Maximum fees for 2018 update are:

Water \$3,801/LUE

Wastewater \$2,684/LUE

\*Applicable amount may be reduced by any city-approved offsets.

\*\*Exemption rate in Ordinance 2002-81 is still in effect for remaining qualifying lots.

*Service unit* means a living unit equivalent ("LUE") based upon the relationship of the maximum design water flow to that of single family residential peak demand as served by a 5/8-inch displacement-water meter. The number of service units or LUEs is based upon the peak development flow relative to the average peak demand in the system for a 5/8-inch meter of 0.41 gpm. LUE's by peak flow ~~and~~ are contained in Schedules 1 and in the chart below:

Calculated Peak Water Flow (gpm)	LUE's by Flow
1 to 10	1.0
>10 to 15	2.0
>15 to 25	4.0
>25 to 50	6.0
>50 to 80	8.5
>80 to 160	32.5
>160 to 250	64.5
>250 to 500	104.0
>500	150.0 + $(\text{Peak Flow in gpm} - 500\text{gpm})/0.41\text{gpm/LUE}$

**SECTION 2.** Section 86.295 of the San Marcos City Code is hereby amended to read as set forth below. Added text is indicated by underlining and deleted text is indicated by strikethroughs.

**Sec. 86.295. Applicability.**

(a) This division applies to all new, non-exempt development within the city limits and its extraterritorial jurisdiction within the applicable service areas. The provisions of this division shall apply uniformly within each service area.

(b) Exemptions.

- (1) No wastewater impact fee shall be charged for an irrigation meter.
- (2) No impact fee shall be charged for a fire line meter that serves only a fire suppression system.
- (3) ~~To encourage affordable housing as defined by 42 U.S.C. § 12745, the city may refund impact fees paid for construction of a new single-family dwelling that qualifies for the refund under affordable housing guidelines approved by the city council and exempt the~~ eConstruction of new single-family dwellings by Habitat for Humanity and San Marcos Housing Authority.
- (4) Any exemptions required under applicable state laws.
- (5) Homes constructed by the City using federal funds or with federal funds administered by the City.
- (6) City facilities.

(~~c~~b) ~~The city manager is authorized to adopt and administer guidelines for applying the provisions of this section. To encourage affordable housing the~~ city may refund impact fees paid for construction of a new single-family dwelling

that qualifies for the refund under affordable housing guidelines approved by the city council.

(d) The city manager is authorized to adopt and administer guidelines for applying the provisions of this section.

**SECTION 3.** Section 86.299 of the San Marcos City Code is hereby amended to read as set forth below. Added text is indicated by underlining and deleted text is indicated by strikethroughs.

**Sec. 86.299. Computation of service units and collection of impact fees.**

(a) Impact fees shall be computed and collected for platted land at the time the city issues a building permit for land within the city limits or at the time a plumbing permit or utility application is approved for land located outside the city limits.

(b) Impact fees shall be computed and collected for unplatted land at the time the city issues a building permit, plumbing permit or utility application, whichever is applicable pursuant to section 86.299(a).

The computation of the quantity of service units required for a new development will be as follows:

(1) For new development subject to assessment under section 86,298(a)(1), and for new development subject to assessment under section 86.298(a)(2) the quantity of service units will be determined by the calculated peak water demand as listed in Schedule 1. The calculated peak water demand for a new development is to be determined initially by the applicant and is subject to review and approval by the director, using best water utility industry and engineering practices and standards. The director may require an applicant to provide building plans, plumbing layouts, flow calculations and other information.

a. In cases with industrial or commercial equipment where the plumbing fixture count methodology cannot be used, water demand can be provided based upon manufacturer data. The water demand will be added to any peak water demand calculated by fixture count and the combined flow will be used to determine the LUEs per Schedule 1.

b. The quantity of service units for demands greater than 500 gpm will be based upon the relationship to that of a single family residential peak demand as served by a 5/8-inch displacement-water meter of 0.41 gpm.

- (2) No building permit or utility connection shall be issued if the applicant cannot verify payment to staff of the appropriate impact fee and other applicable fees or if existing facilities do not have actual capacity to provide service to the new connections(s), except for those entities that are exempted from impact fees as are specifically set forth herein.
- (3) The impact fee shall attach to the property for which the impact fee was paid and shall not be transferable to other properties or service units.

(c) *Amount to be collected.* The city shall compute the impact fees for a new development in the following manner:

- (1) The amount of each impact fee shall be determined by multiplying the number of service units required for the new development by the impact fee per service unit using the applicable rate in the applicable schedule. The calculation of peak water demand development is subject to review and approval by the director, using best water utility industry and engineering practices and standards.
- (2) The amount of each impact fee shall be reduced by any allowable offsets or credits for that category of capital improvements, in the manner provided in section 86.300.
- (3) The total amount of each impact fee for the new development shall be calculated and attached to the permit or utility application as a condition of approval.
- (4) Except as otherwise provided by contracts with political subdivisions, developer's contracts, or wholesale customers, no building permit shall be issued until all impact fees due and owing have been paid to the city.

(d) *Limit on fees.* The amount of each impact fee for a new development shall not exceed an amount computed by multiplying the assessment amount per service unit under section 86.298 by the number of service units for the development determined under this section.

(e) If a building or plumbing permit or an approved utility application for which an impact fee has been paid has expired, and a new application is thereafter filed, the impact fees shall be computed using the Schedule 1 rate in effect at the time the new permit or application is filed, with credits for previously paid fees being applied against the newly determined amount.

(f) Whenever a property owner proposes to increase the number of service units for a new development, the additional impact fees collected for the new service units shall be determined by using the applicable service unit computation criteria in subsection (b) and the applicable Schedule 1 rate then in effect, and the additional fees for the increase in service units shall be collected at the times prescribed by this section.

(g) For new development to be served by the city wastewater system and by a water system other than the city's, the operator of the water system shall provide written notice to the city of each application for new water service or a change in meter size within ten days of the date the application is received. This requirement is satisfied by the submission of a legible copy of the application or other information that identifies the applicant and indicates the proposed land use, peak demand calculation and the meter size.

(h) The amount of impact fees to be collected for single purpose domestic (sanitary) or irrigation meters will be determined by calculated peak water demand as listed in Schedule 1. The amount of impact fees to be collected for a combined domestic and fire flow meter will be based upon the applicable peak flow demand delineated in Schedule 1 excluding the fire flow portion.

(i) The city council may approve an agreement with a property owner for a different time, manner of computation, or payment of impact fees for new development on the owner's property.

**SECTION 4.** In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

**SECTION 5.** 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 6.** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 7.** This ordinance shall become effective upon approval on second reading.

**PASSED AND APPROVED** on first reading on June 2, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on June 16, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney



## Legislation Text

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**File #:** Ord. 2020-41, **Version:** 1

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**AGENDA CAPTION:**

Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-41, amending Chapter 86, Article 8, Division 1 and 2 of the San Marcos City Code to, among other things, change the rate structure of the Stormwater Utility to an impervious basis for all customer classes, and to update provisions regarding the maintenance and repair of structural controls in connection with the municipal separate Storm Sewer System (MS4); including procedural provisions; providing for the repeal of any conflicting provisions; and providing an effective date and consider approval of Ordinance 2020-41, on the first of two readings.

**Meeting date:** June 2, 2020

**Department:** Engineering / CIP

**Amount & Source of Funding**

**Funds Required:** 0

**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:** Council workshop on February 4, 2020

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Sustainability

[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 - Public & Private Sector Partnership to Protect Water Quality & proper development in San Marcos and Blanco Rivers

Land Use - Choose an item.

Neighborhoods & Housing - Choose an item.

- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

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

Choose an item.

### **Background Information:**

The City of San Marcos implemented a Drainage Utility fee in 1999. The drainage (stormwater) utility fee is a funding source for drainage capital improvement projects, the operation and maintenance of the City's drainage infrastructure (pipes, channels, detention and water quality facilities) to reduce flooding, improve water quality, and maintain regulatory compliance of our municipal separate stormwater system (MS4).

In 2018 the City started a study to update and explore potential stormwater utility rate structures and requirements, with a goal to establish financial framework for more equitable and sustainable funding program. The study considered the determination of impervious cover for each parcel and an evaluation of existing billing accounts and parcel matching. Study recommendations included a revised stormwater utility rate structure and changes to the billing system. The study also included the development of a stormwater program cost analysis (rate model) and an update to the stormwater utility ordinance. Recommended stormwater rate classifications considered the following:

- New Equivalent Residential Unit (ERU) value = 2,575 square feet
- Residential Class (R1, R2 and R3)
- Non-Residential Class (NR)
- Exemptions (City and Texas State University parcels)
- Residential parcels with 1-4 units
- Residential parcels with 5+units
- Non-Residential (former Commercial and Multi-Family)

In addition, as part of the maintenance and repair of pollution prevention structure controls, an amendment is proposed regarding the inspections of structure controls from an annual basis to occurring once every three years.

To implement recommended changes regarding the stormwater utility fee and inspections of the pollution prevention structures will require amending the following Ordinance.

### **ORDINANCE; Chapter 86 - Utilities, Article 8 - Stormwater Utility**

**Division 1 - Stormwater Utility Fee.** The ordinance amends the overall rate structure of the utility to an impervious basis for all customer classes, stormwater codes, the relationship between the 3 residential tiers, the equivalent residential unit (ERU), among other minor changes.

**Division 2 - Municipal Separate Storm Sewer System (MS4).** The ordinance amends the section regarding the maintenance and repair of structural controls.

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**File #:** Ord. 2020-41, **Version:** 1

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These amendments will be effective on October 1, 2020.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends for approval

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 86, ARTICLE 8, DIVISIONS 1 AND 2 OF THE SAN MARCOS CITY CODE TO, AMONG OTHER THINGS, CHANGE THE RATE STRUCTURE OF THE STORMWATER UTILITY TO AN IMPERVIOUS BASIS FOR ALL CUSTOMER CLASSES, AND TO UPDATE PROVISIONS REGARDING THE MAINTENANCE AND REPAIR OF STRUCTURAL CONTROLS IN CONNECTION WITH THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4); INCLUDING PROCEDURAL PROVISIONS; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

## Purpose of Stormwater Utility Ordinance Update:

- Update ordinance to reflect recommendations on rate structure and billing changes presented to City Council at Feb 4<sup>th</sup> workshop
- Modify ordinance language to reflect change from Drainage Utility to Stormwater Utility.
- Update inspection requirements under City's MS4 program
- Effective date of ordinance will be October 1, 2020

## Summary of Rate Structure Changes:

- New Equivalent Residential Unit (ERU) value = 2,575 sf (median value for all SFR parcels)
- Residential Class:
  - The 3 residential tiers change from parcel area to an impervious cover area.
  - Residential parcels with 1-4 units/parcel remain in the residential class.
- Non-residential Class:
  - Residential parcels with 5+ units/parcel classified as Non-Residential
  - Commercial, Retail, Government, Religious, Non-Profit
  - Calculated by dividing total impervious cover by 2,575 to determine ERU's.
- Exemption for only City and Texas State University owned properties.

## Summary of Billing Changes:

- Bill for uninterrupted stormwater impervious cover even in the absence of other active utility service (electrical, water, wastewater.)
- Enforcement for non-payment in the absence of other utility connections.
- Parcels that contain more than 1 stormwater account will have fee apportioned between accounts based on impervious cover associated with each account.
- Bill owner of record for residential parcels with 5+ units.
- Clarifies credits for improvements.

## Summary of MS4 Changes:

- Updates definition of stormwater facility to structural control.
- Changes frequency of inspection from annual to once every 3 years following a passing inspection in 2020.

## Next Steps on Stormwater Utility:

- Finalizing rate model and funding options
- Rate model update to Finance & Audit Committee
- Discussion and direction on FY 2021 rate increase with June 30<sup>th</sup> Budget Workshop
- Public outreach on ordinance changes June - September

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 86, ARTICLE 8, DIVISIONS 1 AND 2 OF THE SAN MARCOS CITY CODE TO, AMONG OTHER THINGS, CHANGE THE RATE STRUCTURE OF THE STORMWATER UTILITY TO AN IMPERVIOUS BASIS FOR ALL CUSTOMER CLASSES, AND TO UPDATE PROVISIONS REGARDING THE MAINTENANCE AND REPAIR OF STRUCTURAL CONTROLS IN CONNECTION WITH THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4); INCLUDING PROCEDURAL PROVISIONS; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

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

**SECTION 1.** Chapter 86, Article 8, Division 1 of the San Marcos City Code is hereby amended to read as set forth below. Added text is indicated by underlining and deleted text is indicated by strikethroughs.

**ARTICLE 8. – ~~DRAINAGE~~ STORMWATER UTILITY**

**DIVISION 1. - ~~DRAINAGE~~ STORMWATER UTILITY FEE**

**Sec. 86.501. Declaration of purpose.**

(a) After a public hearing on the matter, the city council finds, determines and declares that in order to protect the citizenry from the loss of life and property caused by surface water overflows, surface water stagnation and pollution arising from nonpoint source run-off within the boundaries of the service area established in this article, it is necessary and in the best interest of the public health and safety to establish a ~~drainage~~ stormwater utility as authorized by state law.

(b) To this end, the city council will establish a schedule of ~~drainage~~ stormwater charges against all real property in the service area, subject to the limitations of state law, and the city will provide drainage for all real property in the service area on payment of the drainage charges, except as to real property exempted from the charges under section 86.509. The city will offer drainage service on nondiscriminatory, reasonable and equitable terms.

**Sec. 86.502. Definitions.**

In this article:

*Benefitted property or property* means a lot or tract of real property to which drainage service is made available under this article and which is located within the service area.

~~*Board* means the drainage advisory board established in section 2.191 of this Code.~~ *Cost of service* as applied to drainage stormwater utility system service to any benefitted property, means:

- (1) The prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in stormwater quality treatment and drainage draining the benefitted property;
- (2) The prorated cost of the acquisition, construction, repair, and maintenance of structures, equipment, and facilities used in stormwater quality treatment and drainage the benefitted property;
- (3) The prorated cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in stormwater quality treatment and drainage the benefitted property;
- (4) The prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of stormwater quality treatment and drainage the benefitted property;
- (5) The prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a ~~drainage~~ stormwater facility used in stormwater quality treatment and drainage the benefitted property;
- (6) The prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other ~~drainage~~ stormwater utility revenue-pledge securities or obligations issued by the city; and
- (7) The prorated administrative costs of a ~~drainage~~ stormwater utility system.

*Customer Class* means the land use, residential or non-residential, that the benefitted property is assigned to be based on the predominant use of the parcel.

*Director* means the ~~executive~~ director of the department of public services, the director of engineering or their designees.

~~*Drainage* means bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.~~

~~*Drainage charge* means:~~

- ~~(1) — The levy imposed to recover the cost of service to the city in furnishing drainage for any benefitted property; and~~
- ~~(2) — If specifically provided by ordinance, an amount made in contribution to funding of future drainage system construction by the city.~~

~~*Drainage system* means the drainage owned or controlled in whole or in part by the city, including the portions of the Blanco River and San Marcos River within the service area, and dedicated to the service of benefitted property, including provisions for additions to the system. The drainage system is also known as a municipal separate storm sewer system, or MS4, meaning that the storm sewers are a separate system not connected with the sanitary sewer system.~~

~~*Equivalent residential unit (ERU)* means the basic billing unit for the drainage stormwater charge.~~

~~*Facilities* means the property, either real, personal, or mixed, that is used in providing drainage stormwater service and included in the drainage stormwater system.~~

~~*Impervious cover* means roads, streets, parking areas, buildings, sidewalks and other construction covering the natural land surface that is impenetrable to stormwater. Compacted dirt or gravel used for vehicular traffic, parking, and other uses is considered impervious cover for the purposes of this section.~~

~~*Improved lot or tract* means a lot or tract that has a structure or other improvement on it that causes an impervious coverage of the soil under the structure or improvement.~~

~~*Public utility* means a drainage stormwater service that is regularly provided by the city through municipal property dedicated to that service to the users of benefitted property within the service area and that is based on:~~

- ~~(1) An established schedule of charges;~~

- (2) The use of the police power to implement the service; and
- (3) Nondiscriminatory, reasonable, and equitable terms as declared under this chapter.

*Service area* means the geographic area that will be served by the city's ~~drainage~~ stormwater utility, established in section 86.504 and conforming to the limitations of V.T.C.A., Local Government Code § 402.044.

*Stormwater charge* means:

- (1) The levy imposed to recover the cost of service to the city in furnishing ~~drainage~~ stormwater service for any benefitted property; and
- (2) If specifically provided by ordinance, an amount made in contribution to funding of future stormwater system construction by the city.

*Stormwater Code* means the specific stormwater code applied to any benefitted property within the service area. The codes are as follows; Residential (R1, R2, R3), Non-Residential (NR), and Exempt (EX).

*Stormwater facilities* means bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

*Stormwater system* means the drainage owned or controlled in whole or in part by the city, including the portions of the Blanco River and San Marcos River within the service area, and dedicated to the service of benefitted property, including provisions for additions to the system. The drainage system is also known as a municipal separate storm sewer system, or MS4, meaning that the storm sewers are a separate system not connected with the sanitary sewer system.

*User* means the person who owns or occupies a benefitted property.

*Wholly sufficient and privately owned ~~drainage~~ stormwater system* means land owned and operated by a person other than a municipal ~~drainage~~ stormwater utility system the drainage of which does not discharge into a creek, river, slough, culvert, or other channel that is part of a municipal ~~drainage~~ stormwater utility system.

**Sec. 86.503. Establishment and dedication of drainage utility assets.**

The city council establishes the city ~~drainage~~ stormwater utility as a public utility and dedicates to the utility all city-owned property, real and personal, facilities, materials and supplies constituting the city's drainage system as constituted on the effective date of this article and as may be acquired in the future, to be used for the purpose of the stormwater utility.

**Sec. 86.504. Establishment and revisions to ~~drainage~~ stormwater utility service area.**

(a) The city council establishes the ~~drainage~~ stormwater utility service area as the city limits of the city, as presently configured and as the same may be amended from time to time.

(b) Except as affected by amendments to the city limits, revisions to the service area will be made only after the publication of notice and a public hearing as required by state law.

**Sec. 86.505. Establishment and revision of ~~drainage~~ stormwater charges; credits.**

(a) The city council establishes ~~drainage~~ stormwater charges to be paid by users of benefitted property in the service area. The determination of the ~~drainage~~ stormwater charges is deemed nondiscriminatory, reasonable and equitable to provide for the creation, operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction and administration of the ~~drainage~~ stormwater utility.

(b) The ~~drainage~~ stormwater charges will be set by separate ordinance based on the following factors:

- (1) The ~~developed-use~~ amount of impervious cover on the benefitted property;
- (2) The ~~number of dwelling units on~~ predominant developed use of the benefitted property; and
- (3) The ~~amount of impervious cover~~ number of equivalent residential units (ERUs) on the benefitted property.

(c) The ~~director will determine the~~ category that applies to each benefitted property will be determined within the guidelines set forth herein and ~~will recommend~~ set the charge in accordance with the category of use and the following factors:

- (1) ~~Categories of land use~~ Customer Class. Each benefitted property will be placed ~~by the director~~ in a specific category of land use, also known as customer class, based upon the actual use of the property. These customer class categories will include ~~but not be limited to~~ residential, ~~and commercial~~ non-residential, and exempt. The stormwater codes associated with these customer classes are residential (R1, R2, or R3), non-residential (NR), and exempt (EX). The residential customer class is billed based on which of the 3 tiers of impervious cover it falls within, the non-residential customer class is billed based on calculated impervious cover on the site, and exempt customer class is a use that falls into an exempt category per Texas LGC § 552.053.
- (2) Impervious cover. The amount of impervious cover existing on each benefitted property ~~designated by the director as being in a category of land use other than residential~~.
- (3) Residential units. The number of residential units existing on a particular benefitted property. For the purposes of the drainage utility, residential structures with 1 to 4 residential units are in the residential customer class and residential structures with more than 4 units are in the non-residential customer class.
- (4) Stormwater Code. Based on the customer class and impervious cover on a benefitted property, a stormwater code is assigned to the account.
  - a. Residential class accounts are divided into three tiers based on ranges of total impervious cover on the benefitted property (R1, R2, R3)
    - i. R1 properties, or small residential, exhibit less than 1,980 square feet of impervious cover. (0.61 ERUs)
    - ii. R2 properties, or typical residential, exhibit between 1,980 – 3,363 square feet of impervious cover. (1.0 ERUs)
    - iii. R3 properties, or large residential, exhibit more than 3,363 square feet of impervious cover. (1.46 ERUs)
  - b. Non-residential properties (NR) are all remaining non-residential properties such as commercial, industrial, retail, government, multi-family with more than 4 units, religious, non-profit, and the like.

c. Exempt properties (EX) are those that are exempted from paying a drainage fee based on the criteria outlined in this ordinance.

(d) The monthly charge for each lot or parcel will be calculated equitably and proportionally using an ERU impervious-based billing system structure. One ERU is established as 2,575 square feet based on a review of all existing single-family residential properties within the service area. Each residential unit, whether single family or multi-family, account is will be billed for one ERU according to its stormwater code tier (see definitions in Section 86.505 (c)(4) above). The number of ERUs billed to a commercial non-residential property is billed will be based on the property's size and the ratio of impervious cover on the property to the average impervious cover associated with the average residential unit total amount of impervious cover associated with the non-residential use divided by the ERU value of 2,575 square feet. Calculations will be subject to credits under subsection (e) (i.e. NR bill charge = total impervious cover / 2,575 \* current stormwater utility fee).

(e) A user may apply for a credit towards the drainage stormwater charge for property upon which, or in connection with which, a structural control or practice drainage improvements have has been constructed above and beyond the minimum requirements of the city drainage code. The credit will be up to 50 percent of the drainage charge based on the deferred responsibility the improvement provides to the City of San Marcos for building and maintaining the city stormwater drainage network. The credit will be based upon the extent to which stormwater drainage flows and quality from impervious cover on the property or benefitted property upstream are mitigated by the drainage improvements, and is according to standards developed by the drainage advisory board and approved by the city council. An application for credit will be submitted to the director for determination on tThe amount of credit which can be found in the City of San Marcos Stormwater Utility Procedures Manual along with criteria for doing so will be determined by the drainage advisory board after consultation with the director. The user has the burden of proof when applying for a credit and must provide the director information reasonably required by the director to make a determination. Failure to timely provide information requested by the director is a sufficient reason to deny a requested credit.

(f) If the user receives a credit on their stormwater utility bill for a stormwater structure that does not meet compliance with Section 86.531, the user will lose the credit until it is back in compliance.

(g~~f~~) The monthly charge per ERU is established in a separate ordinance and is based on the revenue required to support the drainage stormwater utility divided by the total number of ERUs to be billed.

(hg) The city council reserves the right to adjust the drainage stormwater charges by separate ordinance from time to time.

(ih) Billing of the drainage stormwater charge against each benefitted property within the service area will be accomplished by a separate stormwater utility charge listing in the monthly city utility bill. Multi-family properties with more than 4 units on a single parcel will have a stormwater utility bill mailed to the owner of record. These bills will become due and payable, and will be subject to late payment penalties, in accordance with the rules and regulations of the city pertaining to the collection of water and wastewater fees and charges.

(ji) No utility deposit will be required as a precondition to accepting surface flow from a benefitted property in the drainage utility.

(kj) Billing of stormwater charges will occur even in when other utilities are disconnected to reflect the on-going discharge from the impervious cover of the benefitted property to the stormwater system.

#### **Sec. 86.506. Drainage Utility Fund.**

(a) A separate fund is established, known as the drainage stormwater utility fund, for the purpose of identifying and controlling all revenues and expenses attributable to the drainage stormwater utility. All drainage charges collected by the city and other monies available to the city for the purpose of drainage will be deposited in the drainage stormwater utility fund. The revenues will be used for the purposes of the creation, operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction, administration and other reasonable and customary charges associated with the operation of the drainage stormwater utility. It is not necessary that the expenses from the drainage stormwater utility fund, for any authorized purpose, specifically relate to any particular benefitted property from which the revenues were collected.

(b) All drainage charges collected under this article will be used solely for creation, operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction, administration and other reasonable and customary charges associated with the operation of the drainage stormwater utility ~~unless otherwise directed by city council for other drainage and water quality purposes.~~ In the event a portion of the drainage revenues is pledged to retire any outstanding indebtedness or obligation incurred, or as a reserve or amount in any contribution for future construction, repair or extension or maintenance of the utility assets, then the pledged portion of revenues may not be transferred to the general fund.

(c) The city manager will provide an annual report of the drainage stormwater utility's revenues, expenses and programs to the city council.

**Sec. 86.507. Delinquent drainage stormwater charges; enforcement.**

Any drainage stormwater charge which is not paid when due may be recovered in an action at law by the city. In addition to other remedies or penalties provided by this article or state law, failure of a user of any utility within the service area to pay the drainage stormwater charges when due will subject the user to discontinuance of any other utility services provided by the city. In the event that an owner does not pay the charge, a lien can be placed on the property. Furthermore, property that is developed but vacant does not qualify for an exemption and the burden of drainage utility fees ultimately lies with the property owner, whether a tenant is in place or not. In the event that a stormwater utility fee is assessed to a tenant and the tenant moves out, the stormwater utility fee will be assessed to the property owner. In the event that a property has no other utilities turned on or is presently vacant but qualifies as a benefitted property, the stormwater utility fee will be assessed to the property owner.

**Sec. 86.508. Administration; rules and regulations; appeals.**

(a) The director will be responsible for the administration of this article. The director will develop rules, regulations and procedures for the administration of drainage stormwater charges, develop maintenance programs, and establish drainage criteria and standards for operation of the drainage stormwater utility system.

(b) Any user who disagrees with the land use category assigned to a property, the residential tier that is assigned, or the total number of ERUs assigned may submit a written request to the director for a revision of the category review of the account. ~~A nonresidential user who disagrees with the determination of ERUs assigned to the user's property may submit a written request to the director for a revision of the determination.~~ Each request must include the user's mailing address for notices, a description of the revision requested, whether a revision has previously been requested for the property and the reasons for the request. The process for an appeal is further described in the City of San Marcos Stormwater Utility Procedures Manual. ~~The director will forward the request to the drainage advisory board along with supporting information on the director's determination for the property. Only nonresidential users may appeal the determination of ERUs assigned to their properties. The board will conduct a hearing on the request within 20 days of the director's receipt of the request.~~

(c) ~~The director will notify the user of the board hearing by certified mail or confirmed facsimile transmission. The board will sustain the director's determination if it finds that the determination is supported by substantial evidence. The board may modify the director's determination if the board finds no substantial evidence supporting the determination. Disputed fact issues will be determined by a preponderance of the evidence. Notice of the board's decision will be sent to the user by certified mail or confirmed facsimile transmission, unless the user is present~~

~~at the hearing. The user will be deemed to have received notice of the board's decision if the user is present at the hearing.~~

~~(c) The user may appeal the decision of the drainage advisory board director to the city council by filing a written request with the city secretary within ten thirty calendar days of receipt of the director's board's decision. The council will consider the request within 30 days of the filing of the request. If the council determines that the board's decision is supported by substantial evidence, the council will sustain the board's decision. The council may modify the board's decision if the council finds no substantial evidence supporting the decision. If the council fails to take action on the request within 45 days of its filing, the board's decision on the request will be deemed final.~~

**Sec. 86.509. Exemptions.**

(a) The following properties will be exempt from the provisions of this article:

- (1) Property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;
- (2) Property held and maintained in its natural state, until the time that the property is developed.

(b) The user has the burden of proof when claiming an exemption under this article and must provide the director information reasonably required by the director to make a determination. Failure to timely provide information requested by the director is a sufficient reason to deny a requested exemption.

**Sec. 86.510. Flood; nonpoint source pollution control; liability.**

Floods from drainage runoff may occasionally occur which exceed the capacity of the drainage system. In addition, surface water stagnation and pollution arising from nonpoint source runoff may occasionally occur which exceed the capacity of the drainage system. This article does not imply that benefitted properties will always be free from flooding or flood damage, surface water stagnation or nonpoint source pollution or that all possible flood control and water treatment projects to control the quantity and quality of runoff can be constructed cost-effectively. Nothing whatsoever in this article should be construed or be deemed to create additional duties or liability on the part of the city for any damages incurred in any flood or from adverse water quality due to drainage runoff. Nothing in this article should be deemed to waive the city's immunity under state law or affect the need for flood insurance.

**SECTION 2.** Section 86.523 of the San Marcos City Code is hereby amended to add the definition set forth below. Added text is indicated by underlining.

Structural Control (or Practice) - A pollution prevention practice that requires the construction of a device, or the use of a device, to capture runoff or prevent pollution in stormwater runoff. Structural controls and practices may include but are not limited to: detention and retention ponds, wet ponds, bioretention, infiltration basins, stormwater wetlands, silt fences, earthen dikes, drainage swales, vegetative lined ditches, vegetative filter strips, sediment traps, check dams, subsurface drains, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

**SECTION 3.** Section 86.531 of the San Marcos City Code is hereby amended to read as set forth below. Added text is indicated by underlining and deleted text is indicated by strikethroughs.

**Sec. 86.531. Maintenance and repair of ~~permanent stormwater facilities~~ structural controls.**

(a) *Control measures.* The City of San Marcos has the authority to require installation, implementation, inspection and maintenance of ~~temporary and permanent~~ structural controls ~~control measures in accordance~~ meeting or exceeding the requirement of with the TPDES Phase II MS4 Permit TXR040000.

(b) *Drainage easements.* Drainage easements shall be required for ~~permanent stormwater management facilities~~ structural controls and recorded in accordance with the city's LDC, Chapter ~~34~~, Article 17.

(c) *Maintenance covenants.* All ~~o~~ Owner(s) of ~~permanent stormwater management facility(ies)~~ structural controls shall be required to enter into a maintenance covenant with the City of San Marcos including a schedule of maintenance activities and plans for annual inspections to assess the functionality of the structural control(s) facility(ies). Maintenance covenants shall be recorded in accordance with the city's LDC, Chapter 1, Articles 6 and 8.

(d) *Requirements for annual inspections and reports.* Owner(s) of structural controls permanent stormwater management facility(ies) that discharge or connect to the City of San Marcos stormwater utility (MS4) or discharge into Waters of the United States within the City of San Marcos city limits must conduct, at a minimum, an ~~annual~~ inspection of each structural control facility every three (3) years following a passing inspection beginning in 2020. The inspection report must be prepared by a Texas-licensed engineer and the licensed engineer must be chosen from a list of precertified engineers provided by the city.

- (1) The inspection report must include requirements provided by the city, including but not limited to all of the following:

- a. An assessment of the condition of the structural control(s) stormwater management facility, current as of the date of the report.
  - b. A history of maintenance activities performed on the structural control(s) facility during the past year.
  - c. The professional opinion of the engineer regarding the current functionality of the ~~facility~~structural control(s) and its ability to provide total suspended solids removal in accordance with the original design specifications for the structural control(s) facility.
  - d. Recommendations of the engineer regarding the need for maintenance or modification of the structural control(s) facility to meet original design specifications.
- (2) The city may choose to provide a pre-formatted inspection report to be used for each annual inspections.
  - (3) The inspection report must be submitted to the City of San Marcos, Public Services — Transportation Department for review. The owner of a ~~stormwater management facility or facilities~~ structural control(s) must submit a certified inspection report for each structural control facility by ~~January~~ December 31 of each ~~year~~ certifying the facility for the previous year required year. ~~Certification of each stormwater facility will be required beginning June 1, 2018. Documentation of certified facilities will be due no later than January 31, 2019 and every year thereafter.~~
- a. Any maintenance and repair needs or other deficiencies identified in the inspection report must be adequately addressed to ensure compliance with the requirements of this division. Upon completion of all necessary maintenance, repairs or deficiencies identified in the inspection report, the ~~stormwater management facility~~ structural control(s) shall be re-inspected at the owner's expense. Following the re-inspection, the owner of the structural control(s) stormwater management facility shall submit a supplemental certified inspection report to the city confirming that all corrective measures have been completed.

(e) *Failure to maintain facilities or practices or provide certified inspection reports.*

- (1) If the owner(s) responsible for maintaining the structural control(s) ~~permanent stormwater management facility~~ fails to properly maintain the structural control(s) facility, or submit certified inspection reports, the city stormwater systems manager will send a written notice to the owner(s) to correct the problem within a ~~reasonable time, not less than five days nor more than~~ 30 days from the owner(s) receipt of the notice. If the owner(s) fails to comply with the notice, the stormwater systems manager may initiate one of the actions specified in section 86.535.
- (2) If the structural control(s) ~~permanent stormwater management facility~~ becomes a nuisance or danger to public safety or public health, the City of San Marcos shall notify the owner(s) responsible for maintenance of the structural control(s) facility in writing. Upon receipt of that notice, the owner(s) shall have 30 days to complete maintenance and repair requirements. If the owner(s) of the structural control(s) facility fails to comply with the requirements of the maintenance and/or repair notice, the City of San Marcos, after reasonable notice, may take one or more of the following actions:
  - a. Initiate enforcement action(s) as specified in section 86.535 requiring the owner(s) to comply with city ordinances.
  - b. Perform the required maintenance and/or repair, bill the owner(s) for the cost of the maintenance/repair, and record a lien against the property served by the structural control(s) ~~stormwater management facility(ies)~~.

(f) *Stormwater annual inspection precertification.*

- (1) An engineer conducting annual structural control ~~stormwater management facility~~ inspections under subsection (d) must be precertified by the public services department prior to performing structural control ~~stormwater management facility~~ inspections for private parties in the city limits.
- (2) The public services executive director will promulgate requirements for the precertification of engineers performing structural control ~~stormwater management facility~~ inspections. Eligibility for precertification of engineers will be based upon prior relevant licensing, training and work experience.

- (3) Any engineer seeking to be precertified for structural control stormwater management facility inspections must be a licensed professional engineer registered in the State of Texas.
- (4) Precertification will extend to the individual's firm.
- (5) The city shall maintain a list of engineers precertified under this subsection. The city reserves the right to add or remove engineers from the list, subject to the requirements promulgated by the public services executive director under subsection (f)(2).

**SECTION 4.** In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

**SECTION 5.** 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 6.** All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

**SECTION 7.** Following its adoption on second reading, this ordinance shall become effective on October 1, 2020.

**PASSED AND APPROVED** on first reading on June 2, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on June 16, 2020.

Jane Hughson  
Mayor

Attest:

Approved:

Tammy K. Cook  
Interim City Clerk

Michael J. Cosentino  
City Attorney



Legislation Text

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**File #:** Ord. 2020-42, **Version:** 1

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**AGENDA CAPTION:**

Receive a Staff presentation and hold a Public Hearing to receive comments for or against Ordinance 2020-42, adopting Youth Programs Standards of Care for 2020; providing a severability clause; declaring an effective date; and consider approval of Ordinance 2020-42, on the first of two readings

**Meeting date:** June 2, 2020

**Department:** Parks and Recreation

**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:** None

**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.
- Core Services
- Not Applicable

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

Youth Master Plan

**Background Information:**

The State of Texas Human Resources Code Chapter 42 exempts certain after-school and summer recreation programs from state licensing requirements as identified in Subsection 42.041(14) stating "an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;"

The City of San Marcos Parks and Recreation Department offers elementary-age day camp programs for children ages 5-13. The Texas Legislature requires municipal day camp youth programs for these ages to meet day care licensing requirements or file for an exemption (Section 42.041 (b) (14) of the Human Resources Code). To receive exempt status, a municipality must submit a copy of program standards, a notice of a public hearing for the program and a copy of the ordinance adopting the standards.

Youth Programs Standards of Care will provide basic child care regulations for day camp activities operated by the San Marcos Parks and Recreation Department. This will allow the department to qualify as exempt from requirements of the Texas Human Resources Code.

The Standards of Care include:

- Staff ratios
- Minimum staff qualifications
- Minimum facility, health, and safety standards
- Mechanisms for monitoring and enforcing the adopted local standards
- Provide notice to parents that the day camp program is not licensed by the state

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

N/A

**Alternatives:**

[Click or tap here to enter text.](#)

**Recommendation:**

Approve the Youth Standards of Care Policy.

**ORDINANCE NO. 2020 - \_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS ADOPTING YOUTH PROGRAMS STANDARDS OF CARE FOR 2020; INCLUDING PROCEDURAL PROVISIONS; AND DECLARING AN EFFECTIVE DATE**

**Recitals:**

1. The City's Parks and Recreation Department has determined that certain minimum standards of care are necessary to health, safety, and welfare of individuals participating in youth recreation programs; and

2. The State of Texas Human Resources Code Chapter 42 exempts certain after-school and summer recreation programs from state licensing requirements as identified in Subsection 42.041(14) stating "an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;" and;

3. The City Council of the City of San Marcos has determined that Youth Programs Standards of Care will be beneficial to the City of San Marcos and should be adopted as recommended by Staff; and

4. The City Council of the City of San Marcos, Texas has the authority under its Home Rule Charter and under the laws of the State of Texas to adopt regulations aimed to protect the health, safety, and general welfare of its citizens.

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

**SECTION 1.** The following Youth Programs Standards of Care are adopted:

**CITY OF SAN MARCOS YOUTH PROGRAMS  
STANDARDS OF CARE**

**I. PURPOSE**

To provide basic childcare regulations for recreation activities operated by the San Marcos Parks and Recreation Department. This will allow the department to qualify as exempt from requirements of the Texas Human Resources Code.

## II. DEFINITIONS

- A. **City** - City of San Marcos
- B. **City Council** - City Council of the City of San Marcos, Texas
- C. **Department** - Department of the City of San Marcos
- D. **Youth Program(s)** - City of San Marcos Youth Programs that last one consecutive week (five days) or longer.
- E. **Operations Manual** - Notebook of policies, procedures, required forms, organizational and programming information relevant to City of San Marcos Youth Programs.
- F. **Program Manual** – Notebook of information given to Activity Leaders which includes rosters, attendance sheets, lesson plans, disciplinary action forms, etc.
- G. **Director** - City of San Marcos Parks and Recreation Department Director or his/her designee.
- H. **Program Coordinator or Coordinator** - City of San Marcos seasonal, temporary staff who has been assigned administrative responsibility for a City of San Marcos Youth Program.
- I. **Program Assistant Coordinator or Assistant Coordinator** – City of San Marcos seasonal, temporary staff, who has been assigned responsibility to implement the City's Youth Programs under the general supervisor of the Program Coordinator.
- J. **Program Site Supervisor or Site Supervisor** - City of San Marcos seasonal, temporary staff who has been assigned responsibility to implement the City's Youth Programs.
- K. **Activity Leader** – City of San Marcos seasonal staff, temporary staff who has been assigned responsibility to implement the City's Youth Programs.
- L. **Program Site** - Area or facilities where City of San Marcos Youth Programs are held.
- M. **Participant** - A youth whose parent(s) or guardian(s) have completed all required registration procedures and are determined to be eligible for a City of San Marcos Youth Program.
- N. **Parent(s)** - This term will be used to represent one or both parent(s) or guardian(s) who have legal custody and authority to enroll their child(ren) in the City of San Marcos Youth Program.
- O. **Program Staff** - Term used to describe the person or persons who have been hired or have volunteered to work for the City of San Marcos and have been assigned responsibility for managing, administering, or implementing some or all portions of the San Marcos Youth Programs. This definition also includes Program Coordinator, Program Assistant Coordinator, Program Site Supervisor, and Activity Leader.

## III. ORGANIZATION

- A. Implementation of the San Marcos Youth Programs Standards of Care is the responsibility of the Director and Program Staff.

- B. Youth Programs to which these Standards of Care will apply are Spring Break Camp, Summer Fun, Discovery Camp, Camp Quest, Holiday Camp, and other non-school day programs that last one consecutive week (five days) or longer.
- C. Each Program Site will have a current copy of the Standards of Care available for the public and Program Staff.
- D. Parents of Participants will be given access to a current copy of the Standards of Care prior to the start of the Youth Program, preferably during the registration process.
- E. Criminal background checks will be conducted on prospective Program Staff. If results of the criminal check indicate that an applicant has been convicted of any of the following offenses, he or she will not be considered for employment:
  - 1. A felony or a misdemeanor classified as an offense against a person or family,
  - 2. A felony or a misdemeanor classified as public indecency,
  - 3. A felony or a misdemeanor violation of any law intended to control the possession or distribution of any controlled substance,
  - 4. Any offense involving moral turpitude, or
  - 5. Any offense that would potentially put the City of San Marcos or participants at risk.
  - 6. In addition, checks of the Texas Department of Public Safety database for the Texas Sex Offender Registration Program will be conducted on prospective Program Staff. If results of the check indicate that an applicant is a registered sex offender, he or she will not be considered for employment.

#### **IV. FISCAL MANAGEMENT**

- A. The program will follow the written policies and procedures of fiscal management set forth by the City of San Marcos.
- B. The program will have sound fiscal management and operational oversight of the program.
- C. The program will have a written budget.
- D. Financial statements of the program will be reviewed regularly by the Director and adjustments will be made as needed.

#### **V. STAFFING**

##### **A. Program Coordinator-Job Descriptions and Essential Job Functions**

###### Essential Job Functions:

- 1. Supervises Assistant Site Supervisor and Activity Leader positions; trains and educates workers concerning City and departmental policies and procedures; supervises and administers program activities on playground campus site for youth program participants.
- 2. Supervises and trains summer workers about City and Parks and Recreation policies and procedures; manages and administers the Youth Program.
- 3. Prepares and schedules on and off campus site activities.

4. Drives to each activity site to supervise and train employees; oversees, administers and monitors program activities. Maintains program documentation and responds to "on-call" situations.
5. On-call 24 hours for any problem or situation which may arise which involves the Youth Program and activities.
6. Other Miscellaneous Duties: Parent and child counseling.

Minimum Requirements:

1. An Associate's Degree in Education, Recreation Administration, or related field is required. Commensurate combination of education and experience may be considered.
2. Two years' supervisory experience working with children in recreation and/or education setting is required.
3. Valid Texas Driver's License with acceptable driving record.
4. CPR/First Aid Certification is required during week of training-administered by COSM.
5. Required to do Community Services.
6. Required to work a full 10 weeks with the program.

**B. Program Assistant Coordinator-Job Descriptions and Essential Job Functions**

Essential Job Functions:

1. Assists with the supervision and training of summer workers about City and Parks and Recreation policies and procedures; assists with the management and administration of the Youth Program.
2. Schedules arts and crafts classes at playground sites and orders supplies and equipment.
3. Assists in preparing and scheduling on and off campus site activities for school age children at sites.
4. Drives to each activity site to supervise and train employees; monitors program activities, and responds to on-call situations; schedule bus transportation to all off campus activities.
5. Other Miscellaneous Duties: Occasional parent and child counseling.

Minimum Qualifications:

1. Associate's Degree in Education, Recreation Administration or related field is required. Commensurate combination of education and experience may be considered.
2. One-year supervisory experience working with children in a recreation and/or educational setting is required.
3. Valid Texas Driver's License with acceptable driving record.
4. CPR/First Aid Certification is required during week of training-administered by COSM
5. Required to do Community Services.
6. Required to work a full 10 weeks with the program

### **C. Program Site Supervisor- Job Descriptions and Essential Job Functions**

#### Essential Job Functions

1. Supervises Assistant Site Supervisor and Activity Leader positions; trains and educates workers concerning City and departmental policies and procedures; supervises and administers program activities on playground campus site for participants.
2. Performs child supervision duties for both on and off campus activities; administers first aid; enforces safety rules; fills out necessary forms and paperwork; and performs safety inspections daily.
3. Encourages participation in activities, ensures children are accounted for at all times, and adheres to safety policies and procedures including pickup and drop off of children.
4. Organize and supervise recreational program activities on playground campus sites and offsite including structured activities; bowling, swimming, movies, and special field trips including transporting kids by bus.
5. Maintains program site area; cleans floors, picks up trash; cleans bathrooms and performs other janitorial work as needed.

#### Minimum Qualifications:

1. High school diploma or GED equivalent
2. Two (2) years related experience required
3. Must possess a valid Texas Driver's License with acceptable driving record.
4. Ability to learn and administer first aid
5. Required to do some community outreach
6. Required to work a full length of the program.

### **D. Activity Leader - Job Descriptions and Essential Job Functions**

#### Essential Job Functions:

1. Performs child supervision duties for both on and off campus program activities; administers first aid; enforces adherence to safety rules; fills out handwritten forms; performs safety inspections daily.
2. Administers recreation activities on a playground campus site including structured activities; bowling, skating, swimming, movies and special field trips.
3. Maintains program site area; cleans floors; picks up trash; cleans bathrooms and performs other janitorial work as needed.

#### Minimum Qualifications:

1. Must be at least 16 years of age.
2. Required to do some community outreach
3. Required to work a full length the program.

## **E. Training/Orientation**

1. The Department is responsible for providing training and orientation to Youth Program staff in working with Participants and for specific job responsibilities. Coordinators will provide each Leader with a Staff Handbook specific to each Youth Program.
2. Program Staff must be familiar with the Standards of Care for Youth Programs as adopted by the City Council.
3. Program Staff must be familiar with the Youth Program's policies, including discipline, guidance, and release of Participants as outlined in the Staff Handbook.
4. Program Staff will be trained in appropriate procedures to handle emergencies.
5. Program Staff will be trained in areas including City, Department, and Youth Program policies and procedures, recreation activities organization, safety issues, program organization, and other areas as required by assigned Youth Program.
6. Program Staff will be required to sign an acknowledgment that they received the required training.

**F. Criminal Background Checks and Drug Testing:** Criminal background checks will be conducted on prospective employees. Applicants may be disqualified if they have a job-related criminal conviction. A prospective employee will be subject to a drug test prior to hiring.

**G.** Before being hired, applicants must successfully complete a qualifying interview, clear a criminal history background check and pass a drug test.

## **H. Staffing Ratios:**

1. In a Youth Program, the standard ratio of Participants to Program Staff is 15 to 1, based on average daily attendance. In the event a Leader is unable to report to the Program Site, the Coordinator will assign a replacement.
2. Ratios may be adjusted to provide adequate supervision during higher risk activities, such as field trips, swimming, etc.
3. Each Participant will have a Program Staff who is responsible for him or her and who is aware of details of the Participant's habits, interests and any special needs as identified by the Participant's Parents during the registration process.

## **VI. PROGRAM OPERATIONS**

### **A. Enrollment**

1. Before a child can become a Youth Program Participant, a parent or guardian must register their child and provide the following information:
  - A. Name, address, cell phone, work phone, and home telephone numbers;
  - B. Contact names and telephone numbers in case of emergency;
  - C. The names and telephone numbers of people to whom the child can be released;
  - D. A statement of the child's special conditions and/or needs;
  - E. Emergency medical authorization with doctor's name and telephone number;
  - F. A signed liability waiver;
  - G. A signed release to participate in Youth Programs, including water activities, riding the bus, bowling, movies, and field trips;
  - H. Designation of need for reasonable accommodations;
  - I. Signed acknowledgement of program code of conduct; and
  - J. Proof of date of birth
  - K. Week(s) of participation
  - L. Whether or not photography of the Participant is permitted

## **B. Special Needs**

1. The parent should inform Program Staff in writing of any Participant needs that would affect their ability to participate in organized group activities.
2. The City is committed to providing children with an equal opportunity to participate in the City's programs and services in accordance with the Americans with Disabilities Act (ADA). Any requests for accommodations will be individually assessed to determine the reasonableness of the request, and if the City can meet the particular needs of the Participant without fundamentally altering the program or services involved. Every reasonable accommodation will be made to address Participants with special needs.

## **C. Field Trips & Transportation**

1. Program Staff will be attentive and considerate of the Participant's safety on field trips and during any transportation provided by the Youth Program.
2. During field trips, Program Staff will have authorization for emergency medical care and emergency contact information for each Participant.
3. Program Staff will have a written list of the Participants in their group and must check the roll frequently, specifically before departure to and from destination.
4. Program Staff will have first aid supplies.
5. Before a Participant can be transported to and from City sponsored activities, the parent must give their permission.
6. First aid supplies will be available in all Youth Program vehicles that transport Participants.
7. There will be at least one staff member in the vehicle that is certified in CPR, First Aid, and AED.

8. Before a participant may be transported to or from a city-sponsored activity, a transportation form, completed by a parent of the participant, must be filed with a coordinator.
9. Every program vehicle used for transporting youth participants must be equipped with:
  - a. First aid supplies and a first aid emergency care guide that are easily accessible to program employees in the vehicle; and
  - b. An operable fire extinguisher that is installed in the passenger compartment of the vehicle and that is easily accessible to program employees in the vehicle.

#### **D. Participant Pick Up and Drop Off**

1. A completed and signed registration form, including pick-up authorization, must be on file for each Participant.
2. These forms must be updated each year.
3. The original signer of the Pick-Up Authorization Form may contact the center by email or in person to add a new Authorized Person, with written notification.
4. Participants must only be signed out by an Authorized Person listed on the Pick-Up Authorization Form. One staff person must monitor the sign in/out duties each day.
5. Authorized Persons must present picture ID to pick up a Participant.
6. Authorized persons must be 18 or older unless the person is 16 or older and a sibling of the Participant.
7. Sign in/sign out sheets will be kept by the Parks and Recreation Department for two years after the Youth Program has ended.
8. Participants may be signed out by a custodial parent, unless court paperwork is given to Program Staff.
9. Participants must be picked up by the end of the assigned Youth Program. If a child is picked up after 5:30 PM, a late fee will be assessed at a rate of \$6 for every 15 minutes. If a child has not been picked up within thirty (30) minutes after the program has ended and a parent/legal guardian or emergency contact cannot be reached, the police will be called.
10. If an Authorized Person attempts to pick up a Participant while appearing intoxicated, staff will ask if there is another person who can pick up the Participant.
11. If any unauthorized person attempts to pick up a child, staff should:
  - a. Call the Program Coordinator.
  - b. Politely inform the person that they do not have permission to release the child to them.
  - c. Ask the person to leave.
  - d. Move the Participant at risk to another room or area.
  - e. Have another Program Staff in the pick-up area.
  - f. The Coordinator should call the original Authorized Person to inform them of the unauthorized pick up attempt.
  - g. If necessary, Program Staff should call 911.

## E. Discipline

1. Program Staff will execute discipline and guidance in a consistent manner based on the best interests of Participants.
2. There will be no cruel treatment or harsh punishment (physical or verbal abuse). Examples of discipline that IS NOT allowed include, but are not limited to:
3. Using physical punishment or any action administered to the body such as, but not limited to rough handling, or forcing child(ren) to assume an uncomfortable position,
4. Restraining movement by tying, enclosing in a confined space, shaking, or using exercise as punishment.
5. Being verbally abusive, including, but not limited to, threats, belittling remarks, humiliation, embarrassment, or frightening a child.
6. Giving any child the authority to punish another child.
7. Placing a child out of visual/hearing range, in the dark, or in an unventilated area.
8. Punishing a child for a toileting accident.
9. Taunting a child by or any other form of jeering.
10. Giving preferential attention to any child over another child.
11. To protect a child from injuring themselves, other Participants, or Program staff, the child may be removed and/or isolated if deemed necessary.
12. Program Staff will use brief, supervised, separation (time out) from the group, if necessary.
13. Discipline Guidelines:
  - a. **First intervention**
    - a. Program staff will counsel the participant concerning behavior expectations, the appropriate behavior and the possible consequences for the behavior demonstrated.
  - b. **Second intervention**
    - a. The participant will not be allowed to participate in activities for 5 to 10 minutes (length of time will vary according to the behavior).
  - c. **Third intervention**
    - a. Assistant Site and/or Site Supervisor will talk to the parent, or person designated to pick up the participant concerning behavior.

**The first three could take place in a short period of time depending on the response of the participant.**

- d. **Fourth intervention**
  - a. A one to three-day suspension could be determined by Program Coordinator and Site Supervisor, depending on the severity of the behavior or incident. A parent conference may be required.
  - b. If you received a Discipline Notice, your child will not be able to return to camp until parents have met with Program Coordinator.

e. **Fifth intervention**

Participant will be dismissed from program for the remainder of the summer.

Serious offenses include, but are not limited to:

1. Disrespectful behavior toward other participants and program staff
2. Leaving the defined boundaries of site or field trip facility
3. Refusal to follow rules, policies and staff directions
4. Physical/Verbal abuse (BULLYING) or any sort of threat **WILL NOT BE TOLERATED** and are grounds for dismissal from the program.
5. Possession of anything that can be considered a weapon.
6. Inappropriate or sexually provocative behaviors.
7. Possession of over the counter, illegal drugs or unauthorized prescription drugs, tobacco, or alcohol
8. Serious offenses will **SKIP** interventions 1 through 3 and may lead to suspension or dismissal.

**Serious offenses will NOT BE TOLERATED and are grounds for IMMEDIATE dismissal from the program.**

14. The following rules have been designed to provide a fun, safe and healthy environment for all children in the program. Parents are asked to read and share these procedures with their children.
  - a. Children will be required to follow program rules as well as any rules posted at field trip sites.
  - b. Children will not be allowed to show disrespect to staff or other children through actions or words.
  - c. Leaving the defined boundaries of any site or field trip facility will not be allowed.
  - d. Abusive language, mishandling of equipment, defacing of property and theft is not acceptable behavior.
  - e. Children will not be allowed to be physically or verbally abusive to other children.
  - f. Over the counter, illegal drugs or unauthorized prescription drugs, tobacco, or alcohol are not permitted on site.
  - g. Any weapon of any nature found in the possession of a child will be permanently confiscated and the child will be removed immediately from program and may be reported and subject to action by local law enforcement authorities.
  - h. Inappropriate or sexually provocative behaviors will not be tolerated and may be reported to and subject to action by the appropriate authorities.
  - i. Each child will help clean up after every activity.

- j. If parents would like to bring a special treat for their child's birthday or other special events, they must notify the Site Supervisor two days prior to the event.

## **VII. FACILITY STANDARDS**

### **A. Inspection/Monitoring/Enforcement**

1. Program staff will perform an inspection of the facility prior to the start of the Youth Program to maintain compliance with the Standards of Care.
2. Forms will be available to program staff to use for reporting any issues within the facility.

### **B. Program Area**

1. The Youth Program's indoor space (when applicable) meets the physical, social, emotional, and cognitive needs of Participants.
2. The Youth Program's outdoor space (when applicable) is large enough, appropriately equipped, and safe to allow Participants to be active and independent.
3. The Youth Program's space meets the needs related to planning, activities, and storage.
4. Buildings, grounds, and equipment on the Program Site are regularly inspected, cleaned, repaired, and maintained to protect Participants' health.

## **VIII. HEALTH & SAFETY**

### **I. Health**

#### **A. Illness or Injury**

1. A Participant who is considered to be a health or safety concern to other Participants or Program Staff will not be admitted to the Youth Program.
2. Illnesses and injuries will be handled in a manner to protect the health of all Participants and Program Staff. Participants having a temporal fever over 100.4 degrees will not be allowed back into the Youth Program for 24 hours.
3. Program Staff will follow emergency procedures for injured Participants or for Participants with symptoms of an acute illness.
4. In the event of an emergency and/or serious accident, Parents will be notified immediately. If necessary, the local ambulance service will transport the Participant to the nearest hospital.
5. In the case of a minor accident or injury (bumps and bruises), the Program Staff will administer first aid, monitor the Participant, and notify the Parents at pick-up.
6. Parents will be notified if a child is injured in a way that necessitates emergency care.

7. Program Staff will follow the recommendations of the Texas Department of State Health Services concerning the admission or readmission of any Participant after a communicable disease, and a doctor's note will be required allowing Participant's readmission to the program.
8. Parents should notify Program staff if a child has lice. Lice checks will be administered randomly and when needed. Any child found with lice will discreetly be sent home and letter will be sent out to camp parents. Child will be unable to return to camp until lice and nits have been removed. They will be checked by staff upon return.
9. If a Participant becomes sick while in the program, the Parent or Authorized Person(s) must contact staff within one hour to arrange pick up. If no contact is made within one hour after initial contact by staff, the police will be notified.

## **II. Safety**

- A. Program Staff will supervise Participants to ensure their safety.
- B. Program Staff will inspect Program Sites daily checking for sanitation and safety concerns that might affect the health and safety of Participants.
- C. Program Site equipment and supplies will be safe for Participants use.
- D. Program Staff will have first aid supplies available at each Program Site in a designated location, during transportation, and for the duration of any off-site activity.
- E. The Youth Program will ensure that all Program Staff working with participants are trained in CPR, First, and AED.
- F. Participants will have access to clean drinking water at all times.
- G. Program Site air conditioners, electric fans, and heaters will be mounted out of Participant's reach or have safeguards that keep Participants from being injured.

## **III. Emergencies**

### **Fire/Required Evacuation**

If there is a fire at on campus during camp hours follow the following steps:

- Have the children line up silently at nearest exit.
- Exit building to a secure location a safe distance away from the school.
- Call 911.
- Call Program Coordinator.
- In the event that the facility must be evacuated parents will be notified by phone of the pick-up location.

### **Finding a Participant with a Weapon**

If you find a participant with a weapon (i.e. knife, gun, stun gun, fire crackers) in their bag or on them, seclude the child immediately. Call 911, wait for police to arrive and follow their instructions. Notify your Program Coordinator immediately.

### **Missing Child**

If any staff suspects a child is missing, notify the Site Supervisor immediately.

Site Supervisor will:

- Have all children sit down and call roll.
- Notify Activity Leaders of situation and have them check the restrooms and all surrounding facilities.
- Notify Program Coordinator.
- If unable to locate child after trying all of the above, contact child's parents.
- Upon permission from parents, call 911.

### **Outside Influenced Dangers**

- Intoxicated persons should be asked to leave the area by the site supervisor. Because of the unpredictability of the behavior of an intoxicated person, the police should be called to help with the situation no matter what its severity is.
- Disturbances: Disturbances originating outside the jurisdiction of the program and affecting patrons of the facility or program should be referred to the proper authorities
  - SMPD Non-Emergency Phone: 512-753-2101, #1
- Animals: Wild or stray animals on site grounds, call SM Animal Control at 512-805-2655
- Theft: All thefts should be reported to the Site Supervisor and Program Coordinator. The proper action will be taken in response to the level of theft determined by the Program Coordinator.

### **Severe Weather Procedures**

- **Thunderstorm/Lightning**  
In the event of lightning or a thunderstorm, take all participants inside. Do not allow children go outside until the storm has passed.
- **Tornado**  
If a tornado watch is in effect for Hays County, all participants are to stay indoors. If a tornado warning is issued for Hays County, the Program Coordinator will call each site. When you receive this call, immediately have the children follow the tornado procedures:
  - Children line up silently and walk to the nearest restroom or inner most room of the building.
  - If you are in a restroom, have children line up against the wall(s), face the wall, duck down sitting on their knees and place their head as far in their lap as possible. Have all children place their hands over their heads covering their ears and neck.
  - When the tornado warning expires, you will receive a call from one of the Program Coordinator to let you know it is okay to return to camp activities.

## **IV. Communication**

- A. Each remote Program Site will have a cell phone to allow the Program Site to be contacted by Program Staff. Each Program Site will have access to a telephone for

use in contacting Program Staff or making emergency telephone calls. At each Program Site the Coordinator will post the following telephone numbers adjacent to a telephone accessible to all Program Staff:

1. City of San Marcos ambulance or emergency medical services
2. City of San Marcos Police Department
3. City of San Marcos Fire Department
4. Parks and Community Services Department Administrative Office
5. Telephone numbers and address for the Program Site itself
6. Telephone number of Coordinator's office
7. Program participants' emergency contact information
8. Poison Control

## **V. Nutrition**

- A. The program will follow the Texas Department of Agriculture Food and Nutrition Guidelines when meals are provided by the City of San Marcos Nutrition Program. Additionally, in keeping with Healthy Eating and Physical Activity (HEPA) Standards, the program will:
  1. Serve whole grain-rich products.
  2. Provide plain potable water at all times at no cost to youth and staff.
  3. Serve plain low-fat milk, plain or flavored nonfat milk or milk alternative limited to 8 fluid ounces per day for elementary school students and 12 fluid ounces per day for middle and high school students.
  4. Serve only 100% fruit or vegetable juice with no added sweeteners or 100% juice diluted with water with no added sweeteners.
  5. Serve only non-caffeinated beverages.
- B. Breakfast and lunch will be provided through San Marcos CISD Child Nutrition Services.
- C. Special snacks may be provided during the program. Parents must note any food allergies on Participant's registration form.
  1. Food brought from home may only be shared between siblings.

## **VI. Suspected Abuse**

- A. Program Staff will receive basic training related to child abuse prevention and how to report suspected abuse.
- B. Concerns about a child should be brought to the attention of the Program Coordinator. The Program Coordinator will then collect all relevant information by:
  1. Talking to staff involved with the child for input and information
  2. Talking to parents/guardians (if appropriate)
  3. Contacting the Youth Services Manager to discuss if a report needs to be filed
- C. If deemed necessary, the Youth Services Coordinator will report suspected child abuse to the Texas Department of Family and Protective Services, in accordance

with the Texas Family Code, telephone number, 1-800-252-5400 or filing a report at [https://www.txabusehotline.org/Login/WebSite\\_UI/Report-anon.aspx](https://www.txabusehotline.org/Login/WebSite_UI/Report-anon.aspx).

## **VII. Toilet Facilities**

- A. The Program Site will have toilets located and equipped so Participants can use them independently and Program Staff can monitor as needed.
- B. An adequate number of lavatories will be provided.

## **VIII. Sanitation**

- A. The indoor Program Sites must have adequate light, ventilation, air conditioning and heat.
- B. The Program Site will have an adequate supply of water meeting the Texas Department of State Health standards for drinking water. Water will be supplied to the Participants in a safe and sanitary manner.
- C. All waste matters will be kept in a leak-proof container.

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

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

**SECTION 4.** This ordinance will take effect after its passage, approval and adoption on second reading.

**PASSED AND APPROVED** on first reading on June 2, 2020.

**PASSED, APPROVED, ADOPTED** on second reading on June 16, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney



## Legislation Text

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**File #:** ID#20-292, **Version:** 1

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**AGENDA CAPTION:**

Receive a Staff presentation and hold a Public Hearing to receive comments for or against amending the Community Development Block Grant (CDBG) 2019-2020 Action Plan to add the Community Development Block Grant - Coronavirus Response (CDBG-CV) allocation of \$425,261, and proposed programs and projects.

**Meeting date:** June 2, 2020

**Department:** Planning and 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:** On June 18, 2019, the City Council approved by Resolution 2019-121R the Community Development Block Grant - Entitlement - Action Plan ("CDBG Action Plan") that provides for the allocation of \$680,998 awarded to the City of San Marcos by the Department of Housing and Urban Development (HUD) for the Program Year beginning October 1, 2019 and ending September 30, 2020 (Program Year 2019). On March 3, 2020, the City Council approved Resolution 2020-54R, amending the Community Development Block Grant (CDBG) Action Plan for program year 2019 to reallocate \$67,142.00 from the Unsafe Structures Program to the amount allocated for the Southside Community Center Rehab Program.

**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.
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

Proposed amendments to the 2019-2020 Community Development Block Grant (CDBG) Entitlement Action Plan include adding the CDBG-CV allocation of \$425,261 and budgeting the funding for specific programs and projects.

A public application process for the funding was held May 1-20. The purpose of this public hearing is to present all the applications to City Council as well as staff's recommendation for funding, and receive comments from the public.

Programs and projects must be used to prevent, prepare for, or respond to impacts of the Coronavirus, and they must fulfill one of the following national objectives of the CDBG program:

- Serving low-to-moderate income people
- Clearing slums or blight
- Urgent Need

The City received four applications for funding as shown on the table below. Staff recommends funding administration and items 1, 3, and 4 because these programs provide services to address needs that are directly related to the COVID-19 pandemic. They will also meet the CDBG national objective by:

- 1 - retaining jobs for low-to-moderate income people
- 3 - serving abused children (presumed to be in a low-income status since they have been removed from their families)
- 4 - tracking the percentage of low income, elderly, and disabled people served

The request from the Office of Emergency Management does not meet a national objective because it is not serving a specific clientele who can be tracked. The "Urgent Need" category refers to the response needed immediately after a natural or man-made disaster with physical impact, such as clearing debris after a tornado. In addition, it is not clear that a full-time position can be justified as having a direct connection to response to the COVID-19 pandemic.

A public comment period will be held June 7-13, 2020, after which staff will bring the final slate of programs and projects, along with the amended action plan to the City Council for a vote on June 16, 2020.

**PROGRAM**

**REQUESTED**

**RECOMMENDED**

**1. CITY ECONOMIC DEVELOPMENT & MAIN STREET, CHAMBER OF COMMERCE**

PROGRAM: COVID-19 Small Business Recovery: **\$200,000** **\$200,000**

- grant funding and technical assistance to very small businesses and micro-enterprises in the city limits of San Marcos
- providing technical assistance, working capital and best practices for how to safely recover and reopen

**2. CITY OFFICE OF EMERGENCY MANAGEMENT** **\$180,000**

PROGRAM: COVID-19 Community Recovery Specialist Position

- to ensure that our community reopens safely, to facilitate sustainable economic recovery, to assist the school districts in the safe reopening of their campuses, and to provide outreach and communicate preparedness strategies within the community's vulnerable populations
- one full-time position for two years

**3. COURT APPOINTED SPECIAL ADVOCATES** **\$55,600** **\$55,600**

PROGRAM: Advocacy Services for Abused and Neglected Children:

- providing trained community volunteers who represent children in the courts, schools, and child welfare system
- COMMENT: Need is increasing due to COVID-19 school and business closures

**4. TEXAS STATE UNIVERSITY** **\$105,530** **\$105,530**

PROGRAM: COVID-19 Collection Station

portable sample collecting station and staffing for the COVID-19 pandemic to be utilized for the entire community without barriers in accessibility due to age, gender, physical, economic or any other barrier

**ADMINISTRATION** **\$65,000** **\$64,131**

**TOTAL** **\$606,130** **\$425,261**

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends funding administration and items 1, 3, and 4 because these programs provide services to address needs that are directly related to the COVID-19 pandemic. They will also meet the CDBG national objective by:

- 1 - retaining jobs for low-to-moderate income people
- 3 - serving abused children (presumed to be in a low-income status since they have been removed from their families)
- 4 - tracking the percentage of low income, elderly, and disabled people served

# CITY COUNCIL MEETING

Tuesday, June 2, 2020

## CDBG 2019-2020 Action Plan Amendments

Staff Presentation  
Public Hearing

## Amendments to add CDBG-CV and related programs

- Add funding: \$425,261
- Add proposed programs and projects

## Four applications for CDBG-CV funding received:

Applicant	Project Title	Amount Requested
City Economic Development, Main Street, Chamber of Commerce	COVID-19 Small Business Recovery	\$200,000
City Office of Emergency Management	COVID-19 Community Recovery Specialist Position	\$180,000
Court Appointed Special Advocates	Advocacy Services for Abused and Neglected Children	\$55,600
Texas State University	COVID-19 Collection Station	\$105,530
Administration		\$65,000
		\$606,130

## Threshold Criteria:

- Must meet CDBG National Objective
- Must provide requested documentation

## Evaluation Criteria:

- Direct service to beneficiaries preferred
- Costs are reasonable
- Services are cost-effective

## 1. COVID-19 Small Business Recovery

- Technical Assistance and Funding for small businesses and microenterprises
- Up to \$5,000 per business for:
  - i. Operational Safety - Redesign physical space in order to ensure safety and social distancing.
  - ii. Sanitation Training and PPE
  - iii. Digital Redesign for Social Distancing
- Mandatory workshop on best practices for recovery
- By: City ED, Main Street, and Chamber of Commerce

Amount Requested: \$200,000

## 2. COVID-19 Community Recovery Specialist Position

- One full-time position for two years to:
  - i. Assist the community in developing long term recovery planning strategies
  - ii. Provide educational workshops and materials for all businesses and residents on community and economic preparedness, disaster recovery, and hazard planning
  - iii. Work with state agencies and federal partners
- By: City Office of Emergency Management  
Amount Requested: \$180,000

### 3. Advocacy Services for Abused and Neglected Children

- Partial funding for additional Case Supervisor, Team Lead, Technology
- Recruit and train volunteer caseworkers to advocate for children removed from their homes
- Advocating for mental health, medical, education, housing, and permanency in safe, stable homes
- Scalable program model depending on need
- Increased need due to family stress due to economic impact and stay-at-home orders
- By: Court Appointed Special Advocates

Amount Requested: \$55,600

## 4. COVID-19 Collection Station

- Portable COVID-19 sample collecting station and staffing from September 2020 – May 2021
- Creation of a prototype and then conversion to a working flexible-use health station
- Creates two part-time positions at \$18/hour
- Samples will be sent to a lab for testing
- Implementing research done in partnership with Katerra
- By: Texas State University multi-disciplinary team

Amount Requested: \$105,530

## 5. Administration

- Provide technical assistance to funded programs
- Ensure the appropriate use and documentation of funds
- Monitor and report progress to HUD

Amount Requested: \$65,000 (15%)

## Evaluation

Programs 1, 3, and 4

- Meet the CDBG national objective of service to low-to-moderate income people
- Provide direct services to beneficiaries
- Services are cost-effective and directly related to impacts from the COVID-19 pandemic

Program 2

- Does not meet a CDBG national objective
- Partially provides direct service to beneficiaries

## Staff Recommendation

Program	Requested	Recommended
1. COVID-19 Small Business Recovery	\$200,000	\$200,000
2. COVID-19 Community Recovery Specialist Position	\$180,000	
3. Advocacy Services for Abused and Neglected Children	\$55,600	\$55,600
4. COVID-19 Collection Station	\$105,530	\$105,530
5. Administration	\$65,000	\$64,131
<b>TOTAL</b>	<b>\$606,130</b>	<b>\$425,261</b>

## NEXT STEPS – CDBG-CV Grant

June 2	Public hearing on proposed programs and projects
June 7-13	Public comment period on draft action plan
June 16	Request City Council approval of action plan



**New Braunfels**  
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1619 E. Connor, Suite 301  
New Braunfels, Texas 78130

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May 19, 2020

City of San Marcos  
Attn: Carol Griffith  
Community Initiatives Program Administrator  
San Marcos, TX 78666

by email: [cgriffith@sanmarcostx.gov](mailto:cgriffith@sanmarcostx.gov)

Dear Ms. Griffith:

CASA of Central Texas appreciates the opportunity to submit a 2020 CDBG-CV Public Services Application to the City of San Marcos. With your support, we will expand services to help an additional 30 children as incidents of child abuse and neglect are increasing due to the COVID-19 pandemic.

Per the application instructions, please find attached one copy of the following:

- 2020 CDBG-CV Application
- Board of Directors list, including contact info
- Board Resolution, signed
- Organization Charts
- Articles of Incorporation
- Bylaws
- Tax Exempt Determination Letter
- Organization Budget, current & proposed FY
- Financial Audit, FYE 6/30/19
- Project Employees
- Non-discrimination Policy Statement
- Analysis of Service Expansion, including Logic Model
- Job Descriptions
- Supplemental Answers Attachment

Thank you again. If you have questions or require additional information, please contact me at (512) 392-3578 x100. I look forward to hearing from you soon.

Kindly,

*Norma C Blackwell*

Norma Castilla-Blackwell  
Executive Director

NB:ts  
Enc.

SUPPLEMENTAL ITEM CHECKLIST

CDBG-CV PROGRAM

DUE DATE: MAY 20, 2020

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Submit one copy of the following items:

**Required:**

- Board of Directors list including position/title on board.
- Contact numbers for Board Chair or President and Treasurer.
- Resolution or Board Minutes showing approval to submit an application and designation of person who will sign documents on behalf of the organization.
- Organization Chart
- Articles of Incorporation
- Bylaws
- Tax Exempt Determination Letter (for non-profit organizations)
- Organization's Current Budget (2019-2020) and Proposed Budget for next fiscal year
- Most Recent audit or CPA prepared review.
- Description of employees, board members, volunteers who will work with the project
- Non-discrimination Policy Statement

**If applicable:**

- n/a Fee schedule or structure for the project proposed for funding
- n/a Copy of program application if one is used to select beneficiaries
- Analysis of program or service expansion if this is not a new service.
- n/a Description of how beneficiaries will be selected (if not by application form)
- n/a Description of how applicant income will be determined if there are direct beneficiaries
- n/a Detailed explanation of any lawsuits, judgments, or bankruptcy proceedings
- Job description for new positions expected to be filled using CDBG-CV funding

CITY OF SAN MARCOS  
2020 CDBG-CV PUBLIC SERVICES APPLICATION



Due Date: May 20, 2020

I. APPLICANT CONTACT INFORMATION

CASA of Central Texas, Inc. (Court Appointed Special Advocates)

Applicant Organization: \_\_\_\_\_  
Norma Castilla-Blackwell, Executive Director 512-392-3578 x100

Contact Name: \_\_\_\_\_ Telephone: \_\_\_\_\_  
P.O. Box 1267, San Marcos, Texas 78667-1267

Mailing Address: \_\_\_\_\_  
2725 Hunter Road, San Marcos, TX 78666

Physical Address, if different from mailing address: \_\_\_\_\_  
nblackwell@casacentex.org casacentex.org

Contact E-Mail Address: \_\_\_\_\_ Web Address: \_\_\_\_\_  
Norma C. Blackwell

Who is authorized to execute program documents? \_\_\_\_\_

II. APPLICATION SUMMARY INFORMATION

Advocacy Services for Abused & Neglected Children (Mental Health, Housing, & Other), 30 New Clients beginning March 15, 2020

Project Name: \_\_\_\_\_  
\$55,600

Amount of CDBG-CV Funds Requested: \_\_\_\_\_

\_\_\_\_\_ 2725 Hunter Road, San Marcos, Texas 78666

Project Location: \_\_\_\_\_

Will all CDBG-CV funds for this project be expended by July 15, 2021? \_\_\_ Yes \_\_\_ No <sup>X</sup>

If "No", what percent is expected to be completed by that date? 75% \_\_\_\_\_

### III. PROJECT DESCRIPTION

#### PROGRAM SUMMARY

Briefly summarize the program for which CDBG-CV funding has been requested.

CASA of Central Texas (Court Appointed Special Advocates, CASACenTex) envisions a world where every child thrives in a safe, stable and loving home. We advocate for abused and neglected children in the courts, schools and child welfare system by training and supporting community volunteers who serve as Guardians Ad Litem (GAL). CASACenTex follows a scalable program model to serve more children who are in need of our advocacy for their mental health, medical, education, housing and permanency needs. CASACenTex helps children who are placed in protective care of the Texas Department of Family and Protective Services (TDFPS). Texas Family Code 107.002 and 107.031 provide children representation by CASA with the sole focus on the best interests of the children and finding safe, stable homes for them. A screened and trained CASA volunteer is a child's "voice." We partner with judges, caseworkers, care providers, social services, community agencies, schools, attorneys, and others who are involved in the care and well being of each child. Child abuse and neglect is one form of an adverse childhood experience; the trauma of removal from parents and home (The Meadows Mental Health Policy Institute for Texas). Other forms are domestic violence, growing up with a parent who has mental health illness or drug addiction, and household dysfunction; all found in child abuse cases. Through individualized advocacy, a CASA volunteer is often the only constant and reliable person in a chaotic and very traumatic period in a child's life.

#### USE OF FUNDS

How will the funds be used?

CASA answers top priority needs identified in the 2020-2024 Consolidated Plan: youth programs (#1), homelessness (#2), abuse victims (#3). CASA fills a need for abused and neglected children, including unaccompanied youth, with the goal of securing safe, stable homes. CASACenTex will provide direct client services for children and youth in conservatorship of TDFPS, Child Protective Services (CPS). This funding will provide an expansion of services with an addition to staff for the increasing number of cases due to the COVID19 health and economic crises since 3/15/2020.

\$39,000 Case Supervisor, addition to staff, 80% allocation to COSM-CDBG-CV

\$11,000 Casework Team Lead, 20% allocation to COSM-CDBG-CV

\$1,000 2 Laptop computers (\$1,000 x 80%, \$1,000 x 20%)

\$4,500 Technology ex. VPN, Security, Support (\$300/mo x 15 mos x 80%; \$300/mo x 15 mos x 20%)

\$100 Mileage @ \$0.575/mi

TOTAL REQUEST: \$55,600

Reference Attachments: Program Model/

Theory, Organization Chart (current), Organization Chart (proposed expansion with funding), Job Descriptions

#### COVID-19 PANDEMIC IMPACT:

Summarize how this project directly addresses an impact from the current COVID-19 pandemic:

Anticipating the impact of COVID19, we know that home is not safe for some children. The Child Protection Court judge in Hays County is currently appointing CASACenTex to almost all incoming cases and experts predict a significant rise in child abuse in the months to come. Already, data supports our concerns. By the end of March, there was a 22% increase in monthly calls from people younger than 18 to the National Sexual Assault Hotline. It is clear abuse is escalating in both frequency and severity. Kids are quarantined with their abusers. ("Child Sexual Abuse Reports Are On The Rise Amid Lockdown Orders," RAINN 4/28/20). Given the new and complex challenges presented by the COVID19 crisis, CASACenTex is poised to be nimble and innovative in meeting the needs of our community's children who come into the child welfare system having already experienced trauma. The pandemic further amplifies stress, fear and uncertainty which leads to more mental health issues. We promote more frequent virtual check-ins with children, sibling groups and families to ensure physical safety and protection as well as to address mental wellbeing. During this time, we are also concerned about older youth who are about to exit foster care and young adults in extended foster care. Many lack relationships, resources and connections needed to get through the pandemic. Homelessness is common among youth existing foster care.

**ACCOMPLISHMENTS**

Once the project is completed, how can its success be measured?

A. Advocate in court, in schools and in the community for 30 San Marcos children newly removed from their homes. Trained and sworn in advocates will each provide 100+ donated casework service hours including monthly (or more) visits with the children, submission of written case recommendations and court testimony; phone calls and meetings with TDFPS caseworkers, school professionals, medical and mental health professionals.

B. Recruit, train and support volunteer advocates. Review new volunteer applications, complete background and reference checks, and offer timely and relevant training classes (42 hours class or online instruction, court observation, and homework on the child welfare system). Trained advocates will be assigned to casework supervisors and matched with incoming cases.

Casework: 12+ visits to child, in person or by videoconference; 2-3 hours of TDFPS file review; 12+ phone calls to TDFPS social worker; 4-6 phone calls to child's attorney; 2-3 meetings with CPS social worker; 4 written reports to judge; 2-4 hrs court testimony; 1 application for crime victims compensation; Additional service provided: 40+ hrs Permanency Outcomes Advocacy, 20+ hrs Mental Health and Medical Advocacy, 10+ hrs Education Advocacy. Cases are opened upon judicial appointment (judiciary discretion) and closed upon a child being safely reunified with parents, permanent placement with safe relatives, legal adoption with new families, and emancipation. Minimum case duration is one year, however, many cases continue 2-3 years or longer.

**TYPE OF PUBLIC SERVICE (choose all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> 05A Senior Services                      | <input type="checkbox"/> 05B Handicapped Services                              |
| <input type="checkbox"/> 05C Legal Services                       | <input type="checkbox"/> 05D Youth Services                                    |
| <input type="checkbox"/> 05E Transportation Services              | <input type="checkbox"/> 05F Substance Abuse Services                          |
| <input type="checkbox"/> 05G Battered and Abused Spouses Services | <input type="checkbox"/> 05H Employment Training                               |
| <input type="checkbox"/> 05I Crime Awareness                      | <input type="checkbox"/> 05J Fair Housing Activities                           |
| <input type="checkbox"/> 05K Tenant/Landlord Counseling           | <input type="checkbox"/> 05L Child Care Services                               |
| <input type="checkbox"/> 05M Health Services                      | <input checked="" type="checkbox"/> 05N Abused and Neglected Children Services |
| <input type="checkbox"/> 05O Mental Health Services               | <input type="checkbox"/> 05P Screening for Lead Paint/Lead Hazards             |
| <input type="checkbox"/> 05Q Subsistence Payments                 | <input type="checkbox"/> 05R Homeownership Assistance (Not Direct)             |
| <input type="checkbox"/> Other: _____                             |  |

**PROGRAM INFORMATION**

1. Program eligibility (please select one):

a.  This is a new program.

b.  This is an existing program that: (select one of the following)

Has previously received CDBG funding and the amount requested for this year is the same or less than previous funding; or

will expand to serve more beneficiaries or to provide more services if the CDBG-CV funding as requested is approved. *Please attach an analysis that details how the program or service will be expanded, how many new beneficiaries will be served by the expansion, and how this number was determined.*

2. Programs receiving funding from the City at this time (during the current program year):

a. How much CDBG funding was awarded? \$50,000

b. Is this program receiving any other City of San Marcos sources? yes

c. If yes, how much was received and from what source? \$17,500 Human Services, for Older Youth/PMC

3. Is there a fee to clients to participate in the program?  Yes  No

*If yes, please provide fee structure.*

4. Describe the days and hours of operation of the program: Generally, the office in San Marcos is open Monday-Friday 9:00AM to 5:00PM

**IV. PROGRAM BENEFICIARIES**

*Applicant must be able to document that at least 51% of the beneficiaries have an annual income that is at or below 80% of the Area Median Income and are San Marcos residents.*

**A. PRESUMED BENEFIT:** See definition above of "Presumed Benefit".

1. Will all of the program's beneficiaries in a Presumed Benefit Category?  Yes or  No  
Abused Children

If "yes", list the categories: \_\_\_\_\_

2. How many persons in each presumed category are proposed to be assisted if funding is received?

Abused Children	Elderly Persons	Battered Spouses	Homeless Persons	Severely Disabled Adults	Illiterate Adults	Persons living with AIDS
30						

3. If this program was carried out the previous full program year (10/1 – 9/30), how many persons were served in each presumed category:

Abused Children	Elderly Persons	Battered Spouses	Homeless Persons	Severely Disabled Adults	Illiterate Adults	Persons living with AIDS
109						

**B. BENEFICIARIES WHO ARE NOT CONSIDERED "PRESUMED"**

1. How many persons are proposed to be assisted if funding is received? n/a

If this program was carried out the previous program year (10/1 – 9/30), how many persons were served?  
 \_\_\_\_\_

2. What percentage of persons proposed to be assisted are expected to be low/mod? \_\_\_\_\_

3. What percentage of persons proposed to be assisted are expected to be San Marcos residents? \_\_\_\_\_

4. How do you propose to document the income of the beneficiaries? (check all that apply)

- Evidence that the child is approved for free or reduced lunch
- Evidence that the family lives in housing sponsored by the Housing Authority
- Evidence that the family is WIC approved
- Income documentation using one of the 3 HUD approved methods
- Self-certification, with income verification required of 20% of certifications
- Other, describe: \_\_\_\_\_

## VI. LINE ITEM BUDGET

Please use the following format to present your proposed line item budget. Secured funds are funds on-hand, pledged, or awarded. Following the Line Item Budget, please complete the Supplemental Budget Form – Use of Other Resources. Funds and costs, as outlined on the Sources and Uses of Funds form, may not be spent or incurred prior to a contract award date from the CDBG-CV Program. Supporting documentation may be attached as an Appendix.

Expense Category	Total Program Budget	CDBG-CV Portion	Other Funding Source	Other Funds Amount
<b>Personnel Services</b>				
Salaries	\$58,749	\$50,000	Unsecured - VOCA, CVC, private foundation, unrestricted	\$8,749
Fringe Benefits	\$11,750	-	Unsecured - unrestricted	\$11,750
<b>Supplies</b>				
Office Supplies				
Program Supplies				
Client Materials				
<b>Operating</b>				
Training				
Insurance				
Utilities/Rent/Mortgage				
<b>Other (please specify)</b>				
Laptop Computers (2) (80%x1, 20%x1)	\$2,000	\$1,000	Unsecured - VOCA, CVC, private foundation, unrestricted	\$1,000
Technology, ex. VPN, Security Support (80%x1, 20%x1)	\$9,000	\$4,500	Unsecured - VOCA, CVC, private foundation, unrestricted	\$4,500
Mileage @ \$0.575/mi	\$10,000	\$100	Unsecured - VOCA, CVC, private foundation, unrestricted	\$9,900
<b>Total</b>	<b>\$91,499</b>	<b>\$55,600</b>		<b>\$35,899</b>

Please provide an explanation for any unusual budget expenditures listed in the line item budget above.

**VII. PROJECTED IMPLEMENTATION SCHEDULE WITH PERFORMANCE GOALS**

**Projected Start Date:**  
June 2020

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**Projected Completion Date:**  
September 2021

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<b>Activity Description</b>	<b>Start Month/Year</b>	<b>End Month/Year</b>	<b>Performance Measurement Goal</b>
<i>Example: Hiring New Staff Member</i>	<i>October 2019</i>	<i>December 2019</i>	<i>Employment process complete</i>
Hire or promote Casework Team Lead (new position)	June 2020	July 2020	1 position filled
Hire Case Supervisor (addition to staff )	June 2020	July 2020	1 position filled
Recruitment of community volunteers	June 2020	September 2021	15 volunteers, new and retained
Pre-Service Volunteer Training	June 2020	September 2021	15 volunteers, new and retained
Advocacy (case supervision)	June 2020	September 2021	30 San Marcos children, new clients



7/1/18 - 6/30/19

- 7. What period was covered by your most recent financial review? \_\_\_\_\_
- 8. Has your organization received City of San Marcos funding in the past two years?  Yes  No  
If yes, please attach a short summary of the purpose and amount of City funding.

**PERSONNEL AND POLICIES**

- 1. Name and Title of your chief administrator Norma Castilla-Blackwell  
Number of years in this position? 17
- 2. Total number of current employees at all locations 25
- 3. Total number of current employees who will be involved in this project 1
- 4. Total number of new employees expected to be hired for the project 1
- 5. Does your organization have a personnel policy manual?  Yes  No  
Does it include a procedure for filing grievances?  Yes  No  
Does it include a non-discrimination clause?  Yes  No
- 6. Does your organization maintain a written code or standards of conduct that governs the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds?  
 Yes  No
- 7. Separation of duties for financial transactions regarding this project (respond with job title):  
a. Who will approve payment of incurred expenses? Executive Director and one Board Member  
b. Who will actually prepare the payment check? Finance Director  
c. Who will sign checks paying project expenses? Two Board Members  
d. Who posts the transaction to your financial records? Finance Director  
e. Who reconciles monthly bank statements? Finance Director and Board Treasurer

**ACCESSIBILITY OF PROGRAMS AND SERVICES**

- 1. Are all facilities to be served by the program ADA Accessible?  Yes  No
- 2. Do you have a Section 504 (ADA) Self-Evaluation on file?  Yes  No
- 3. How will you provide services to persons with Limited English proficiency? We have volunteers and employees who speak other languages.

**INSURANCE, BONDING, AND WORKER'S COMPENSATION**

- 1. Does your organization have liability insurance coverage?  Yes  No
- 2. If yes, in what amount? \$2,000,000
- 3. Does your organization pay worker's compensation in accordance with Federal and state laws?  
 Yes  No  N/A
- 4. Does your organization have fidelity bond coverage for principal staff members who handle the organization's accounts?  Yes  No
- 5. Will vehicles owned by the organization be used in conjunction with the proposed project?  
 Yes  No
- 6. If yes, what level of liability insurance is maintained on the vehicles? n/a

## IX. CONFLICTS OF INTEREST (24 CFR 570.611; 24 CFR 85.36; AND 24 CFR 84.42)

Two sets of conflict of interest provisions apply to activities carried out with CDBG-CV funding. The first set, applicable to the procurement of goods and services by subrecipients (*funded applicants*), is the procurement regulation found in the *Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards as codified in Title 2, Part 200 of the Code of Federal Regulations*. The second set of provisions is located at 24 CFR 570.611(a)(2).

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

1. Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:
  - An employee, officer, or agent of the subrecipient;
  - Any member of an employee's, officer's, or agent's immediate family;
  - An employee's, agent's, or officer's partner; or
  - An organization which employs or is about to employ any of the persons listed in the preceding sections.
2. Require that employees, agents, and officers of the subrecipient neither solicit nor accept gratuities, favors, or anything of value from contractors or parties to sub-agreements. However, subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
3. Provide for disciplinary actions to be applied for any violation of such standards by employees, agents or officers of the subrecipient.

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

- The requirement applies to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, a designated public agency, or a subrecipient, and to their immediate family members and business partners.
- The requirement applies to such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.
- Upon written request, exceptions may be granted by HUD on a case-by-case basis.

**CONFLICT OF INTEREST QUESTIONNAIRE**

*NOTE: For the purpose of this form, a "covered person" includes any person who is an employee, agent, consultant, officer or elected or appointed official of the City of San Marcos, your organization, or any designated public agency.*  
CASA of Central Texas, Inc.

Name of Organization: \_\_\_\_\_

1. Does your organization maintain a written code or standards of conduct that governs the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds?  
Yes  No \_\_\_\_\_ If "No" is checked, please explain how you will comply with this requirement:  
\_\_\_\_\_

2. Are any of your Board Members or employees that are responsible for carrying out this project or members of their immediate families or their business associates also:

- a. Employed by the City of San Marcos? Yes \_\_\_\_\_ No
- b. Members of or closely related to members of the San Marcos City Council? Yes \_\_\_\_\_ No
- c. Members of or closely related to an employee of the City of San Marcos? Yes \_\_\_\_\_ No
- d. Current beneficiaries or related to beneficiaries of the project for which funds are requested?  
Yes \_\_\_\_\_ No

- e. Paid providers of goods or services to the program or having other financial interest in the program or related to such individuals? Yes \_\_\_\_\_ No

3. For each relationship described above, please answer the following questions: (attach additional page if necessary)

a. Name of employee or official: \_\_\_\_\_  
*n/a*

- b. Is this person receiving or likely to receive taxable income from your organization?

Yes \_\_\_\_\_ No \_\_\_\_\_

- c. Is your organization receiving or likely to receive taxable income from or at the direction of the employee or official AND the taxable income is not from the City of San Marcos?

Yes \_\_\_\_\_ No \_\_\_\_\_

- d. Is your organization affiliated with a corporation or other business entity in which the employee or official serves as an officer or director, or holds an ownership interest of 10% or more?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Describe any other affiliation or business relationship that might cause a conflict of interest with respect to CDBG-CV funds and activities.  
None.

5. Will any of your organization's employees, officers, board members, or members of their immediate family or business partners have a financial interest in any contract, subcontract, or agreement regarding CDBG-CV funded activities?

Yes \_\_\_\_\_ No . If yes, please attach an explanation.

## X. APPLICANT ASSURANCES AND CERTIFICATIONS

The applicant hereby assures and certifies with respect to this project or program, by the submission of this application, that the following are true statements:

1. It possesses legal authority to apply for the grant and to finance the proposed request; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards as codified in Title 2, Part 200 of the Code of Federal Regulations (UAR) and agrees to adhere to the accounting principles and procedures required therein, utilizing adequate internal controls and maintaining necessary source documentation for all costs incurred.
3. If it expends \$750,000 or more of federal funds in a fiscal year, it will comply with the Single Audit Act of 1984.
4. It will comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards, and Executive Order 11990, relating to protection of wetlands. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, and approved December 31, 1976. Section 102(a).
5. It will have sufficient funds available or the ability to obtain the non-federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
6. It will give the City and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
7. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the City that funds have been approved and that the project will be performed to completion with reasonable diligence.
8. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
9. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646), which provides for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs.
10. It will comply with the provisions of the Hatch Act, which limit the political activity of employees.
11. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act as they apply.
12. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the city/federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.
13. It will assist the city/federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.).

14. It will comply with Texas Civil Statutes, Article 5996a, by insuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
15. It will insure that all information collected, assembled or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Texas Civil Statutes, Article 6252-17a, unless otherwise expressly provided by law.
16. It will conduct and administer the program in conformity with the Fair Housing Act (42 USC Section 3901 et. Seq.) and that it will affirmatively further fair housing.
17. It will minimize displacement of persons as a result of activities assisted with CDBG-CV funds. In the event that displacement of residential dwellings will occur in connection with a grant-assisted project, it will follow a residential anti-displacement and relocation assistance plan as specified by the City of San Marcos.
18. It certifies that it is not now, nor has it ever been, on the Federal List of Debarred Contractors.
19. It will not attempt to recover any capital costs of public improvements assisted in whole or in part with such funds by assessing any amount against properties owned and occupied by persons of LMI, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless (a) such funds are used to pay the proportion of such fee or assessment that related to the capital costs of such public improvements that are financed from revenue sources other than such funds; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, applicant certifies that it lacks sufficient funds under this contract to comply with the requirements of clause (a).
20. It agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart J and subpart K of these regulations, except that (1) the Agency does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) Agency does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. Agency also agrees to comply with all other applicable Federal, State, and local laws, regulations, and policies governing the funds provided. Agency further agrees to utilize funds available to supplement rather than supplant funds otherwise available. Agency shall comply with all applicable Federal laws, regulations, and requirements, which include compliance with the provisions of the HCD Act and all rules, regulations, guidelines, and circulars promulgated by the various Federal departments, agencies, administrations, and commissions relating to the CDBG-CV Program. The applicable laws and regulations include, but are not limited to:
  - 24 CFR Part 570;
  - 24 CFR Parts 84 and 85;
  - The Davis-Bacon Fair Labor Standards Act;
  - The Contract Work Hours and Safety Standards Act of 1962;
  - Copeland "Anti-Kickback" Act of 1934;
  - Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
  - Section 3 of the Housing and Urban Development Act of 1968;
  - Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
  - Non-discrimination in employment, established by Executive Order 11246 (as amended by Executive Orders 11375 and 12086);
  - Section 504 of the Rehabilitation Act of 1973 Uniform Federal Accessibility Standards;
  - The Architectural Barriers Act of 1968;
  - The Americans with Disabilities Act (ADA) of 1990;
  - The Age Discrimination Act of 1975, as amended;

- National Environmental Policy of 1969 (42 USC 4321 et seq.) as amended;
- Lead Based paint regulations established in 24 CFR Parts 35, 570.608, and 24 CFR 982.401;
- Asbestos guidelines established in CPD Notice 90-44;
- HUD Environmental Criteria and Standards (24 CFR Part 51);
- The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39
- Flood Disaster Protection Act of 1973;
- Colorado House Bill 06-1023 and 06-1043;
- Procurement Standards (2 CFR 200.322);
- Rights to Inventions Made Under a Contract or Agreement (37 CFR 401.2 (a));
- Energy Efficiency (2 CRF Part 200 Appendix II); and
- Recycling (2 CFR Part 200 Appendix II).

**CERTIFICATIONS REGARDING LOBBYING:**

21. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.
22. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form – “Disclosure Form to Report Lobbying”, in accordance with its instructions.
23. The undersigned 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 that all subrecipients shall certify and disclose accordingly.
24. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

**GENERAL CERTIFICATIONS:**

25. The information, exhibits, and schedules contained in this application are true and accurate statements and represent fairly the financial condition of our organization;
26. Our organization is eligible to receive federal funding and has not been placed in a debarred or otherwise ineligible status under the provisions of CFR Part 24;
27. Our organization prohibits discrimination in accordance with Title VI of the Civil Rights Act of 1964; and,
28. Our governing body has duly authorized submission of this document. If funded, we agree to comply with the procedures outlined in the “Playing by the Rules” handbook that will be supplied by the City of San Marcos.

I, the duly authorized representative of the applicant organization, certify that the foregoing statements are true to the best of my knowledge and belief:

**CERTIFIED BY:**

Signature: Norma C Blackwell Date Signed: 5/18/2020  
 Printed Name: Norma Castilla-Blackwell Title: Executive Director  
 Organization Name: CASA of Central Texas, Inc.

CASA of Central Texas, Inc.  
 Supplementary Answers & Attachments to  
 City of San Marcos  
 CDBG-CV Application  
 May 18, 2020

VI. Line Item Budget / Supplemental Budget Form - Use of Other Resources, p. 15

<b>Funding Source</b>	<b>Amount of Award</b>	<b>Applied for (Date)</b>	<b>Awarded (Date)</b>
Crime Victims Compensation (Texas CASA)	unknown	will apply June 2020	expected 8/1/20
Victim of Crime Act (Texas CASA)	unknown	will apply July 2020	expected 9/1/20
Fundraising Events (ex. CASA Golf Classic)	unknown	ongoing (October 2020)	ongoing (October 2020)
Unrestricted Funds	various	ongoing	ongoing

VIII. Organization Information / Financial Information

Answer to Question #8, p. 18:

PY19-20

COSM-CDBG Public Services, \$50,000: Advocacy Services for Abused Children  
 COSM-Human Services, \$17,500: Advocacy Services for Older Youth/PMC

PY18-19

COSM-CDBG Public Services, \$29,810: Advocacy Services for Abused Children  
 COSM-Human Services, \$15,000: Advocacy Services for Older Youth/PMC

CASA of Central Texas, Inc.  
 Board of Directors

JoAnne C. Germer, President, 512.557.0366  
 Frank Pereira, Treasurer, 512.417.4370  
 David Pfeiffer, Vice President  
 Susie Russell, Past President  
 Becky Lake, Secretary  
 Hollis Burklund  
 Jeffrey Hargis  
 Keith Kebodeaux  
 A.J. Panebianco  
 Whitney Vaughn  
 Seth Worley

## Description of Employees for COSM-CDBG-CV Services

*Robert Edwards, Case Supervisor / Casework Team Lead*, was hired by CASA of Central Texas in June 2012 as a Case Supervisor of volunteers serving children from Comal and Hays Counties. He earned a Bachelor of Science degree in Sociology. Prior to joining CASA, he worked as a Program Director for a youth sports league and as a youth counselor and case manager. He has 14 years of field experience.

*NEW/VACANT, Case Supervisor* - to be hired upon funding award.

Job Descriptions attached.

## Analysis of Service Expansion

Please also refer to CASA Program Model/Theory, chart attached.

Program Year	Number of abused and neglected children and youth served by CASA, San Marcos
2009	35
2010	50
2011	42
2012	57
2013	64
2014	81
2015	94
2016	94
2017	105
2018	109
2019	97 (Quarter 2 10/1/19 - 3/31/20)
2020	136 (goal)
<b>CV</b>	<b>+30 (additional increase)</b>

**CASA of Central Texas, Inc.  
Logic Model / Program Theory**

Assumptions	Resources/Inputs	Activities	Outputs	Outcomes	Impact
<p>Child abuse and neglect is a community issue and communities will form partnerships to end child abuse.</p> <p>Communities can influence child abuse issues through advocacy in civil proceedings in the child protection court system.</p> <p>Community volunteers can serve as Guardians Ad Litem to represent the children's best interests and advocate for children to be placed in safe and permanent homes.</p>	<p><b>PEOPLE</b></p> <ul style="list-style-type: none"> <li>• Volunteer Advocates</li> <li>• Board Members</li> <li>• Professional Staff</li> <li>• Judges</li> <li>• Community Leaders</li> <li>• Social Service Agency Partners</li> </ul> <p><b>FINANCIAL</b></p> <ul style="list-style-type: none"> <li>• Grants (public, private)</li> <li>• Donations (corporate, individual)</li> <li>• Fundraising (in-house, third party)</li> </ul> <p><b>OPERATIONAL</b></p> <ul style="list-style-type: none"> <li>• Office building</li> <li>• Equipment/supplies</li> <li>• Insurance</li> <li>• Texas Family Code</li> </ul>	<p><b>SUPPORTING</b></p> <ul style="list-style-type: none"> <li>• Advocate supervision (case management, court reports, court/case accompaniment, case research, child welfare system guidance)</li> <li>• Advocate appreciation and recognition (birthday cards, media articles, closed case lunch, annual party)</li> <li>• Fundraising (grant writing, events)</li> <li>• Raise community awareness (media, PR, events, group presentations, individual meetings)</li> </ul> <p><b>TRAINING</b></p> <ul style="list-style-type: none"> <li>• New advocates – classroom, homework and court observation</li> <li>• Existing advocates – continuing education</li> <li>• Staff – seminars, conferences</li> <li>• Board – on-going</li> </ul> <p><b>RECRUITING</b></p> <ul style="list-style-type: none"> <li>• Public relations (media, community presentations, street banners, flyers)</li> <li>• Volunteer screening (applications, interviews, CPS and criminal background checks)</li> </ul>	<p><b>PROVISION OF SERVICES</b></p> <p>Number and/or Type of:</p> <p><b>Key Indicators</b></p> <ul style="list-style-type: none"> <li>• Cases assigned (client intake/judicial appointments)</li> <li>• Children served</li> <li>• Total advocates</li> <li>• New advocates activated</li> <li>• Cases closed (reunification, placement w/ relatives, adoption, emancipation)</li> </ul> <p><b>Additional Outputs</b></p> <ul style="list-style-type: none"> <li>• Outreach activities</li> <li>• Individuals reached</li> <li>• Applications received</li> <li>• Interviews held</li> <li>• Classes offered</li> <li>• Hours completed</li> <li>• Court reports filed</li> <li>• Volunteer contacts with children</li> <li>• Court accompaniment</li> <li>• Case meetings attended</li> <li>• Closed case lunches</li> <li>• Appreciation events/activities</li> <li>• Advocates retained</li> <li>• Staff retained</li> <li>• Grant applications</li> <li>• Donation dollars received</li> <li>• Fundraising events</li> <li>• Dollars raised</li> <li>• Annual budget dollars (% direct service, administration, fundraising)</li> </ul>	<p>Abused and neglected children fare better while involved in the child protection court system.</p> <p>Child protection court system is provided with best interest recommendations and testimony.</p> <p>Children are placed in safe and permanent homes.</p>	<p>Children are free of abuse and neglect.</p> <p>The child abuse cycle is broken.</p>

**CASA of Central Texas, Inc.**

**Governing Board Resolution**

**WHEREAS**, the Executive Committee of the Board of Directors of CASA of Central Texas, Inc. finds it in the best interest of the residents of Caldwell, Comal, Guadalupe and Hays Counties, that CASA of Central Texas, Inc. be operated for 2020-2021; and

**WHEREAS**, the Executive Committee of the Board of Directors of CASA of Central Texas, Inc. agrees that in the event of loss or misuse of the City of San Marcos CDBG-CV funds, the Executive Committee of the Board of Directors of CASA of Central Texas, Inc. assures that the funds will be returned to the City of San Marcos in full; and

**WHEREAS**, the Executive Committee of the Board of Directors of CASA of Central Texas, Inc. designates Norma Blackwell, Executive Director, as the grantee's authorized official. The authorized official is given the power to apply for, accept, reject, alter or terminate the grant on behalf of the applicant agency.

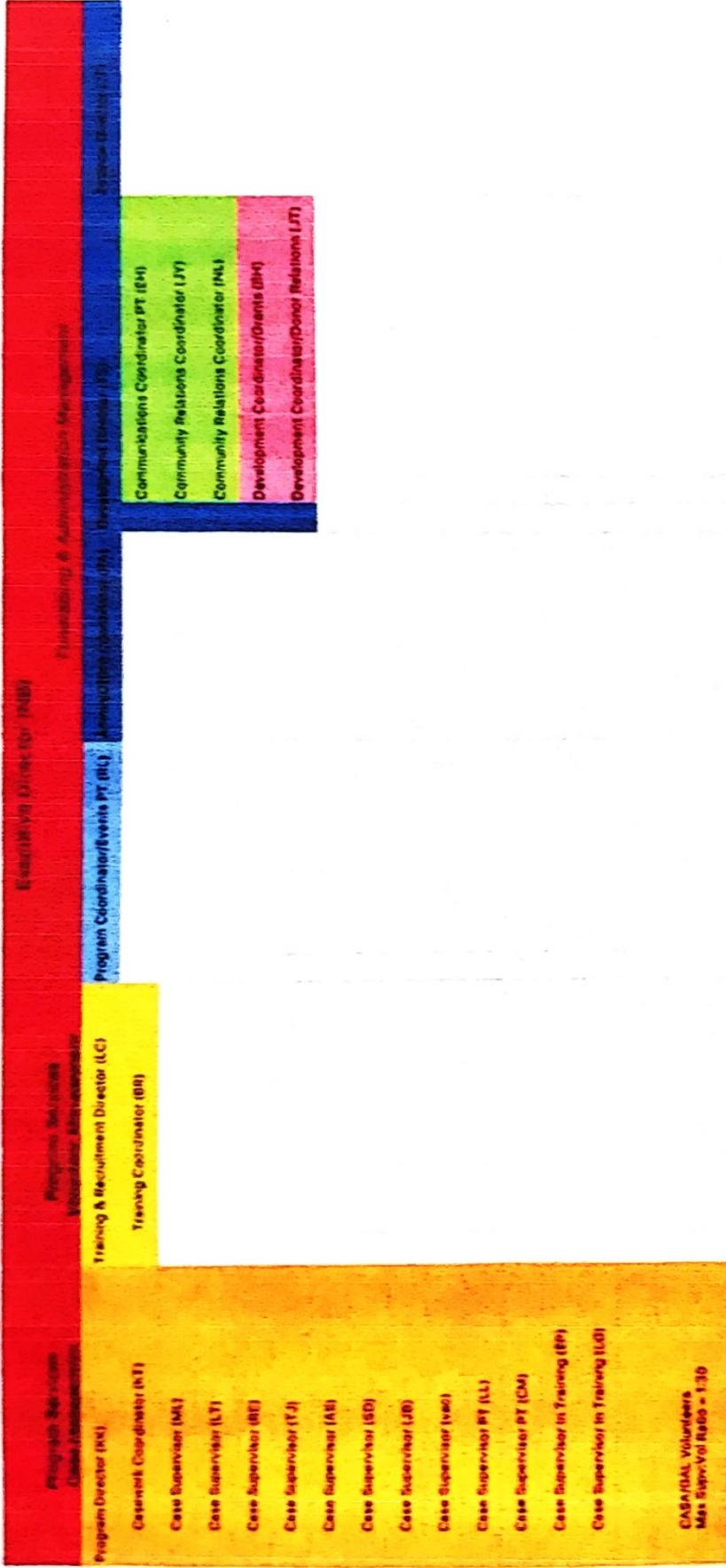
**NOW THEREFORE, BE IT RESOLVED** that the Executive Committee of the Board of Directors of CASA of Central Texas, Inc. authorizes submission of the grant application from CASA of Central Texas, Inc. to the City of San Marcos for CDBG-CV Funding.

Signed by:

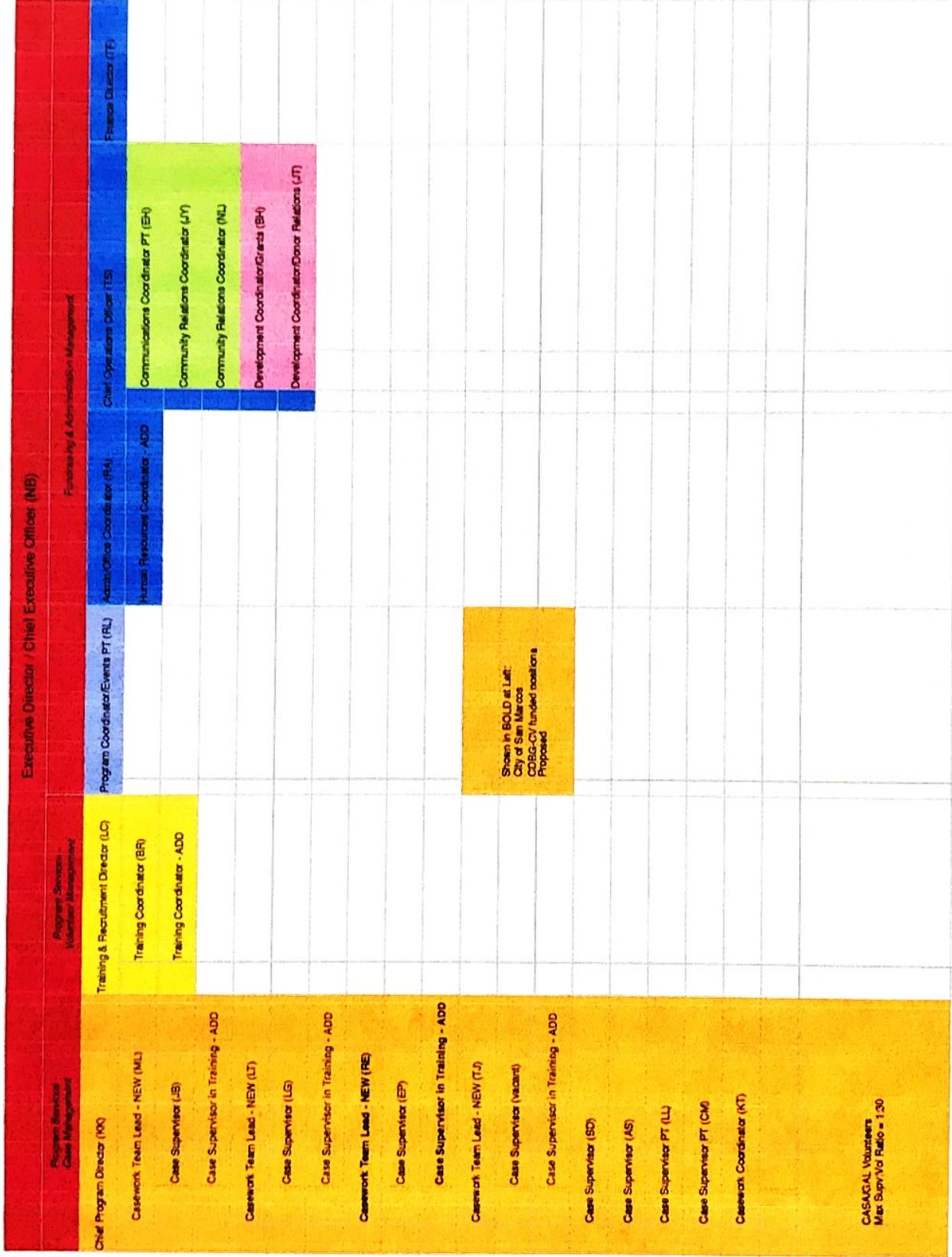
Joanne German

Passed and approved this 18<sup>th</sup> day of May 2020.

# CASA of Central Texas - Organization Chart - 2/1/2020



# CASA of Central Texas - Organization Chart - Proposed 2020-2022



## **CASA of Central Texas, Inc.**

### **Job Description for Casework Supervisor**

**Classification:** Exempt  
**Reports to:** Program Director and/or Casework Team Lead

#### **Summary of Responsibility:**

- ◆ Supervision of volunteer child advocates
- ◆ Maintain child advocate records – participates in case staffings, assists placement options, participates in program evaluation, attends court hearings and provides supervision in filing court reports
- ◆ Coordinate child and child advocate contacts – coordinates all professional contacts; provides information regarding community resources, attends and moderates training sessions for child advocates
- ◆ Maintains statistical case information

#### **Essential Job Functions and Standards:**

##### **A. Case Management**

1. Knowledge of child placement options, levels of care and Department Family and Protective Services (DFPS) policies and procedures.
2. Ability to clearly convey and interpret information to others in a clear manner, both orally and in writing.
3. Ability to work under time constraints and maintain effective job performance.
4. Ability to identify problems in both case management and volunteer coordination and plan corrective action.
5. Ability to make decisions independently in a consistent and timely manner.
6. Carries a caseload of no fewer than 25-30 cases as assigned by a district judge.
7. Coordinates casework responsibilities including family and child contacts, professional contacts, transportation, support services, linkage to community resources, court report monitoring, appearances at hearings and maintenance of case and child advocate volunteer files.
8. Attend court hearings and staffing's with child advocate.
9. Provides notification of meetings and court hearings to child advocates.
10. Provides timely, accurate reports for submission to the court and to other involved parties.
11. Maintains up-to-date case files, including progress notes, reports and motions, correspondence, etc.
12. Maintains case and child advocate statistics for funding and statistical reporting.

13. Maintains and fosters congenial relationships with other professionals.
14. Evaluates child advocate case activity and performance.

**B. Miscellaneous**

1. Participates in new child advocate training sessions.
2. Participates in ongoing continuing education opportunities (in-services).
3. Attends community meetings as agreed upon by Program Director and Executive Director.
4. Assists in program development.
5. Provides input for monthly newsletter.
6. Maintains a professional, organized environment in the daily operation of the CASA office.
7. Completes special projects and tasks as assigned.
8. Has working knowledge of computers and software.
9. Anything else the Executive Director deems necessary

- C.** Able and willing to initiate and coordinate additional areas of responsibility including, but not limited to, such activities as volunteer appreciation, in-service training, new advocate training, statistics, volunteer recruitment and participation on board committees.

**Qualifications:** **B.S. in Social Work or Equivalent**  
**Experience in providing casework services; experience in**  
**volunteer supervision.**

## **Knowledge**

**Customer and Personal Service** — Knowledge of principles and processes for providing personal services. This includes needs assessment, meeting quality standards for services, and evaluation.

**Administration and Management** — Knowledge of business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources.

**English Language** — Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.

**Psychology** — Knowledge of human behavior and performance; individual differences in ability, personality, interests; and learning and motivation.

**Education and Training** — Knowledge of principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and the measurement of training effects.

**Clerical** — Knowledge of administrative and clerical procedures and systems such as word processing, managing files and records, designing forms, and other office procedures and terminology.

**Public Safety and Security** — Knowledge of relevant equipment, policies, procedures, and strategies to promote effective local, state, or national security operations for the protection of people, data, property, and institutions.

## **Skills**

**Active Listening** — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.

**Speaking** — Talking to others to convey information effectively.

**Time Management** — Managing one's own time and the time of others.

**Coordination** — Adjusting actions in relation to others' actions.

**Critical Thinking** — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.

**Judgment and Decision Making** — Considering the relative costs and benefits of potential actions to choose the most appropriate one.

**Management of Personnel Resources** — Motivating, developing, and directing people as they work, identifying the best people for the job.

**Social Perceptiveness** — Being aware of others' reactions and understanding why they react as they do.

**Monitoring** — Monitoring/Assessing performance of yourself, other individuals, or organizations to make improvements or take corrective action.

**Reading Comprehension** — Understanding written sentences and paragraphs in work related documents.

**Abilities**

**Oral Comprehension** — The ability to listen to and understand information and ideas presented through spoken words and sentences.

**Oral Expression** — The ability to communicate information and ideas in speaking so others will understand.

**Speech Clarity** — The ability to speak clearly so others can understand you.

**Deductive Reasoning** — The ability to apply general rules to specific problems to produce answers that make sense.

**Problem Sensitivity** — The ability to tell when something is wrong or is likely to go wrong.

**Speech Recognition** — The ability to identify and understand the speech of another person.

**Written Comprehension** — The ability to read and understand information and ideas presented in writing.

**Inductive Reasoning** — The ability to combine pieces of information to form general rules or conclusions (includes finding a relationship among seemingly unrelated events).

**Written Expression** — The ability to communicate information and ideas in writing so others will understand.

**Information Ordering** — The ability to arrange things or actions in a certain order or pattern according to a specific rule or set of rules (e.g., patterns of numbers, letters, words, pictures, mathematical operations).

I have reviewed and understand the above job description and believe it to be accurate and complete. I also agree that CASA of Central Texas retains the right to change this job description at any time.

\_\_\_\_\_ I have the ability to perform the essential functions of the job with or without a reasonable accommodation.

\_\_\_\_\_ I cannot perform the essential functions of the job with or without a reasonable accommodation.

\_\_\_\_\_  
Casework Supervisor

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
DATE

**CASA of Central  
Texas  
Job Description**

**Job Title:** Advocacy Program Manager (Casework Team Lead)  
**Date:** May 7, 2020 (New)  
**Reports To:** Program Director / Chief Program Officer  
**FLSA Status:** Full Time, Exempt. Starting salary: \$55,000

**About CASA**

CASA (Court Appointed Special Advocates) of Central Texas speaks up for children who've been abused or neglected by empowering our community to volunteer as advocates for them in the court system.

When the state steps in to protect a child's safety, a judge appoints a trained volunteer advocate to make independent and informed recommendations in the child's best interest. Created in 1985, CASA of Central Texas is one of the top ten CASA programs in the nation.

**We operate with...**

**Integrity** we are committed to the best interest of the people we serve and of the organization we represent. We approach people and challenges with honesty, trustworthiness and openness. **Excellence** We strive for continuous improvement, to be the best we can be, individually and collectively. We are accountable. **Action** We get things done. We are determined, creative, strategic and goal-oriented. We persevere. **Empowerment** We build resilience in each other to succeed in this rigorous work. We are empowered when we demonstrate the courage of our convictions. We empower others when we listen and respect their thoughts, opinions and feelings. **Inclusion**: We are stronger as a group when diversity and uniqueness are valued. We strive for equity. **Generosity**: We assume the best about each other's intentions. We speak of others with kindness and treat one another with care and compassion. **Hope**: We remember that good can arise from difficulty and we look for optimism. We believe in the power of one person to change another's life for the better.

Join us!

**General Summary**

The Advocacy Program Manager will lead a team of Child Advocacy Specialists (CASs) and oversee all of their work directly serving CASA's mission, ensuring that highly qualified staff are providing effective support to volunteers offering quality advocacy in the best interest of children to whom CASA is appointed by the courts. The Advocacy Program Manager provides motivation, empowerment, guidance and supervision to their CASs on cases while ensuring accountability for meeting CASA of Central Texas values, policies and standards for volunteer and case management. The Advocacy

Program Manager will fulfill the performance standards of Texas and National CASA, complying with the statutory obligations of guardian ad litem and meeting or exceeding the expectations of the Comal County courts. The Advocacy Program Manager must have a proven record of exercising cultural competency in his/her interaction with children and families, as well as knowledge of child welfare policy and legal procedure.

**Essential Responsibilities and Duties**

**1. Leadership and Staff Management**

The Advocacy Program Manager supervises a team of CASs ensuring that Texas and National CASA policies and standards are met. The Advocacy Program Manager assists the Senior Director of Advocacy in carrying out the mission and vision of CASA through effective advocacy for the best interest of children.

- Provides coaching, motivation, mentoring and recognition of direct reports (CASs) in order to address volunteer management (including volunteer retention), case management, and data expectations. Works collaboratively with the Volunteer Retention Manager to ensure completion of all new CASs on boarding and training.
- Assumes responsibility for ensuring coverage at specific hearings and observes the courtroom presentations of CASA Advocates and CASs. Records feedback as needed and communicates with the appropriate CAS.
- Shadows each CAS assigned in the field, as well as in court.
- Works collaboratively as part of the Program Leadership Team, helping other team members resolve conflict when needed.
- Reviews and signs court reports in conjunction with other Advocacy Program Managers and the Senior Director of Advocacy ensuring the timeliness and consistent quality of all CASA court reports.

### *2 Case Management and Evaluation*

Advocacy Program Manager will coordinate assignment of all new cases to CASs as CASA receives appointments from the court and/or as cases complete the Early Family Engagement process.

- In overseeing the case management of their teams, or in managing cases themselves when necessary, the Advocacy Program Manager will ensure that the goal of safe and expeditious permanency for children is always in focus.
- The Advocacy Program Manager will ensure that all case management activities, theirs or their team's, meet or exceed Texas CASA and National CASA standards and fulfill CASA's obligations as guardian ad litem under Texas law as well as the expectations of Travis County judges.
- The Advocacy Program Manager will collaborate with the Chief Program Officer, Senior Director of Advocacy, Associate Director of Advocacy, data & evaluation team, and others as appropriate, to develop appropriate programmatic outcome measures based on CASA's mission, vision and strategic goals and to ensure that indicators of those outcome measures are consistently tracked.
- The Advocacy Program Manager will assist the Senior Director of Advocacy with program development, evaluation and improvement by compiling and analyzing monthly reports from Optima, and submitting them to the Senior Director of Advocacy for continued monitoring of compliance with minimum standards and best practice expectations.

### *3 Community Awareness & Partnerships*

The Advocacy Program Manager builds effective relationships internally and externally and will serve as an official representative of CASA in a wide variety of settings.

- Maintains effective relationships with CASs, volunteers, lawyers, caseworkers and other stakeholders in the Comal County child welfare system.
- Assists in problem solving with external stakeholders on case-specific and/or systemic challenges that arise.
- Supports the Executive Director and Program Leadership team, as needed, in building relationships with donors, grantors and governmental funders.

### *4 Other duties as assigned.*

## **Knowledge, Skills and Experience**

### *Required:*

- 1 At least five years experience in child welfare or related field.
- 1 A minimum of a Bachelor's degree required. CASA of Central Texas welcomes employees from diverse educational backgrounds and degree programs
- 1 Demonstrated initiative to identify and solve problems creatively and effectively, prioritizing the needs of the child, volunteer and/or organization.
- 1 Demonstrated passion for CASA's mission.
- 1 Demonstrated ability to contribute to a climate where people are motivated to do their best and manage conflict effectively.
- 1 Demonstrated ability to hold self and volunteers accountable to performance standards.
- 1 Demonstrated understanding of child and family advocacy issues that exist in the Texas child welfare system.
- 1 Demonstrated ability to work under time constraints, be goal-oriented and maintain productive and effective relationships with staff, volunteers and community supporters.
- 1 Demonstrated excellence in communication, both written and oral.
- 1 Demonstrated commitment to the values of diversity and inclusion.
- 1 Demonstrated integrity, honesty and ethical conduct.

### *Preferred:*

- 1 Advanced degree, such as a Master's degree.
- 1 At least two years experience at CASA of Central Texas.
- 1 Spanish/English fluency.

## **Physical Requirements and Work Environment**

The Advocacy Program Manager will be expected to have daily transportation to attend court hearings, staffings, visitations, fundraising events, etc. The position requires a flexible schedule as visits with Advocates may occur in the evenings or on weekends. He/she will spend some time in the office that could involve intermittent physical activities including bending, reaching, sitting and walking during working hours. Additionally it is anticipated that the person may spend several hours of each day seated at a PC. Reasonable accommodations may be made to enable a person with physical disabilities to perform the job.



## Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

CASA OF CENTRAL TEXAS, INC.  
Filing Number: 74608001

Nonprofit Periodic Report  
Articles Of Amendment  
Change Of Registered Agent/Office  
Change Of Registered Agent/Office  
Change Of Registered Agent/Office

April 18, 1994  
April 29, 1994  
September 01, 1994  
November 25, 1996  
May 27, 1999

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on October 29, 2007.



A handwritten signature in cursive script that reads "Phil Wilson".

Phil Wilson  
Secretary of State



0 1 8 2 1 0 1 3 7 7

FILED  
In the Office of the  
Secretary of State of Texas

# The State of Texas

APR 18 1994

## Secretary of State

Corporations Section

SECRETARY OF STATE

CHARTER NO. 00746080-01  
ARTICLE 9.01, T.N.P.C.A. REPORT  
FILING FEE \$5.00

PURSUANT TO THE PROVISIONS OF ARTICLE 9.01 OF THE TEXAS NON-PROFIT CORPORATION ACT, THE UNDERSIGNED CORPORATION HEREBY FILES ITS REPORT SETTING FORTH:

1. THE NAME OF THE CORPORATION IS:

COMAL COUNTY CHILD ADVOCACY INC.

2. IT IS INCORPORATED UNDER THE LAWS OF: TEXAS

3. THE STREET ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATION IN THE STATE OF TEXAS IS: 805 ENCINO NEW BRAUNFELS, TX  
(MAKE ANY CHANGES HERE)

4. ITS REGISTERED AGENT AT SUCH ADDRESS IS: BILL M. REIMER  
(MAKE ANY CHANGES HERE)

5. IF A FOREIGN CORPORATION, THE STREET ADDRESS OF ITS PRINCIPAL OFFICE THE STATE OR COUNTRY UNDER THE LAWS OF WHICH IT IS INCORPORATED IS:

6. THE NAMES AND RESPECTIVE ADDRESSES OF ITS DIRECTORS (OR TRUSTEES, ETC.) AND OFFICERS ARE: (NAME AT LEAST 3)

NAME	TITLE	ADDRESS
<u>Pennie Koopman</u>	<u>President</u>	<u>2314 Brittany Grace New Braunfels, TX 78130</u>
<u>John Haas</u>	<u>Vice Pres./Treasurer</u>	<u>1007 Orchid New Braunfels, TX 78130</u>
<u>Bob Stewart</u>	<u>Secretary</u>	<u>502 Riverside New Braunfels, TX 78130</u>
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7. THE FOREGOING INFORMATION IS GIVEN AS OF THE DATE OF THE EXECUTION OF THIS REPORT:

DATED April 14, 19 94

Comal County Child Advocacy, Inc

(NAME OF CORPORATION)

RECEIVED  
SECRETARY OF STATE

BY Pennie L. Koopman  
(SIGNATURE)

APR 18 1994

ITS President  
(TITLE OF OFFICER SIGNING)

NOTE: ALL ITEMS MUST BE COMPLETED. MAKE CHANGES TO ITEMS 3 AND 4 AS NECESSARY. RETURN TO SECRETARY OF STATE, CORPORATIONS SECTION, P.O. BOX 13697, AUSTIN, TEXAS 78711-3697 WITH A \$5.00 FEE.

FILED  
In the Office of the  
Secretary of State of Texas

ARTICLES OF AMENDMENT TO  
ARTICLES OF INCORPORATION OF  
COMAL COUNTY CHILD ADVOCACY, INC.

APR 29 1994

Corporations Section

Pursuant to the provisions of Article 1396-4.03 of the Texas Nonprofit Corporation Act, the Board of Directors adopt the following Articles of Amendment to the Articles of Incorporation of Comal County Child Advocacy, Inc.

ARTICLE ONE

The following amendments to the Articles of Incorporation was adopted by the Board of Directors of the Corporation on April 21st, 1994.

ARTICLE TWO

This Amendment alters Article One of the original Articles of Incorporation to read as follows:

The name of the corporation is CASA OF CENTRAL TEXAS, INC.

ARTICLE THREE

This Amendment alters Article Four of the original Articles of Incorporation to read as follows:

4. The purpose or purposes for which the corporation is organized are: To represent the best interests of physically and sexually abused children in Central Texas in criminal and civil proceedings. To be an independent voice in children's rights. To aid with case preparation; to provide assistance to other child oriented agencies; monitor cases; present and monitor legislation, heighten awareness of the public, judiciary and bar as to child abuse and recruit volunteers.

COPY

ARTICLE FOUR

The foregoing Amendments were adopted by a vote of a majority of the Board of Directors in office, there being no members having voting rights in respect thereof.

DATED: April 21, 1994

SCHEM COUNTY CHILD ADVOCACY, INC.

BY: Pennie R Koopman  
PENNIE KOOPMAN  
Its President

STATEMENT OF CHANGE OF REGISTERED OFFICE  
OR REGISTERED AGENT OR BOTH BY  
A CORPORATION

The Office of the  
Secretary of State of Texas

SEP 01 1994

Corporations Section

1. The name of the corporation is CASA of Central Texas, Inc.  
The corporation's charter number is 00746080

2. The address of the registered office as PRESENTLY shown in the records of the Texas secretary of state is: (Please provide street address, city, state and zip code. The address must be in Texas).

805 Encino, New Braunfels, Texas 78130

3. A.  The address of the NEW registered office is: (Please provide street address, city, state and zip code. The address must be in Texas.)

P78 E. Mill, Room 211 New Braunfels, Texas 78131-1832

OR B.  The registered office address will not change.

4. The name of the registered agent as PRESENTLY shown in the records of the Texas secretary of state is Bill Reimer

5. A.  The name of the NEW registered agent is Jackie Vann

OR B.  The registered agent will not change.

6. Following the changes shown above, the address of the registered office and the address of the office of the registered agent will continue to be identical, as required by law.

7. The changes shown above were authorized by:

(Profit corporations may select A or B)  
(Non-Profit corporations may select A, B, or C)

- A.  The board of directors; OR
- B.  An officer of the corporation so authorized by the board of directors; OR
- C.  The members of the corporation in whom management of the corporation is vested pursuant to article 2.14C of the Texas Non-Profit Corporation Act.

Jackie Vann  
An Authorized Officer

Please submit this form in duplicate with the appropriate filing fee.  
PROFIT corporations: \$15.00; NON-PROFIT corporations: \$5.00



Secretary of State  
Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697

FILED  
In the Office of the  
Secretary of State of Texas  
NOV 25 1996

**STATEMENT OF CHANGE OF REGISTERED OFFICE OR  
REGISTERED AGENT OR BOTH BY A CORPORATION,  
LIMITED LIABILITY COMPANY OR LIMITED PARTNERSHIP**

- 1. The name of the entity is CASA of Central Texas, Inc  
The entity's charter/certificate of authority/file number is 746080-1
- 2. The registered office address as PRESENTLY shown in the records of the Texas secretary of state is: 178 E. Mill, New Braunfels TX 78130
- 3. A.  The address of the NEW registered office is: (Please provide street address, city, state and zip code. The address must be in Texas.)  
101 Unland Road, Suite 106, San Marcos TX 78666
- OR B.  The registered office address will not change.

4. The name of the registered agent as PRESENTLY shown in the records of the Texas secretary of state is Jackie Vann

5. A.  The name of the NEW registered agent is Cindy Stauffer  
OR B.  The registered agent will not change.

6. Following the changes shown above, the address of the registered office and the address of the office of the registered agent will continue to be identical, as required by law.

7. The changes shown above were authorized by:  
Business Corporations may select A or B      Limited Liability Companies may select D or E  
Non-Profit Corporations may select A, B, or C      Limited Partnerships select F

- A.  The board of directors; OR
- B.  An officer of the corporation so authorized by the board of directors; OR
- C.  The members of the corporation in whom management of the corporation is vested pursuant to article 2.14C of the Texas Non-Profit Corporation Act.
- D.  Its members
- E.  Its managers
- F.  The limited partnership

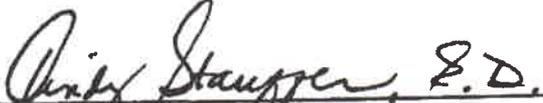
Cindy Stauffer  
(Authorized Officer of Corporation)  
(Authorized Member or Manager of LLC)  
(General Partner of Limited Partnership)

Office of the  
Secretary of State  
Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697

FILED  
In the Office of the  
Secretary of State of Texas  
MAY 27 1999  
Corporations Section

**STATEMENT OF CHANGE OF REGISTERED OFFICE OR  
REGISTERED AGENT OR BOTH BY A CORPORATION,  
LIMITED LIABILITY COMPANY OR LIMITED PARTNERSHIP**

1. The name of the entity is CASA of Central Texas, Inc.  
The entity's charter/certificate of authority/file number is 00746080
  2. The registered office address as PRESENTLY shown in the records of the Texas secretary of state is: 100 Main Plaza, Rm. 112, New Braunfels, TX 78130
  3. A.  The address of the NEW registered office is: (Please provide street address, city, state and zip code. The address must be in Texas.)  
101 Uhland Road, Suite 102, San Marcos, TX 78666
  - OR B.  The registered office address will not change.
  4. The name of the registered agent as PRESENTLY shown in the records of the Texas secretary of state is Bill M. Reimer
  5. A.  The name of the NEW registered agent is Judy G. Carr
  - OR B.  The registered agent will not change.
  6. Following the changes shown above, the address of the registered office and the address of the office of the registered agent will continue to be identical, as required by law.
  7. The changes shown above were authorized by:  
Business Corporations may select A or B      Limited Liability Companies may select D or E  
Non-Profit Corporations may select A, B, or C      Limited Partnerships select F
- A.  The board of directors;  
B.  An officer of the corporation so authorized by the board of directors;  
C.  The members of the corporation in whom management of the corporation is vested pursuant to article 2.14C of the Texas Non-Profit Corporation Act;  
D.  Its members;  
E.  Its managers; or  
F.  The limited partnership.

  
(Authorized Officer of Corporation)  
(Authorized Member or Manager of LLC)  
(General Partner of Limited Partnership)

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Jose A. Esparza  
Deputy Secretary of State

## Office of the Secretary of State

June 27, 2019

CASA OF CENTRAL TEXAS, INC.  
1619 East Common St, Suite 301  
New Braunfels, TX 78130 USA

-----  
RE: CASA OF CENTRAL TEXAS, INC.  
File Number: 74608001

It has been our pleasure to file the Change of Registered Agent/Office for the referenced entity. Enclosed is the certificate evidencing filing. Payment of the filing fee is acknowledged by this letter.

If we may be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555

Enclosure

*Come visit us on the internet at <http://www.sos.state.tx.us/>*

Phone: (512) 463-5555  
Prepared by: Linda Galaviz

Fax: (512) 463-5709  
TID: 10323

Dial: 7-1-1 for Relay Services  
Document: 897818290002



**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

**CASA OF CENTRAL TEXAS, INC.**  
File Number: 74608001

The undersigned, as Deputy Secretary of State of Texas, hereby certifies that the statement of change of registered agent/office for the above named entity has been received in this office and has been found to conform to law.

ACCORDINGLY the undersigned, as Deputy Secretary of State, and by virtue of the authority vested in the Secretary by law hereby issues this Certificate of Filing.

Dated: 06/26/2019

Effective: 06/26/2019



A handwritten signature in black ink, appearing to be "J. Esparza", written over a horizontal line.

Jose A. Esparza  
Deputy Secretary of State

**Form 401  
(Revised 05/11)**

Submit in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512/463-5709  
**Filing Fee: See instructions**



**Statement of Change of  
Registered Office/Agent**

This space reserved for office use.

**FILED**  
In the Office of the  
Secretary of State of Texas  
**JUN 26 2019**  
**Corporations Section**

**Entity Information**

1. The name of the entity is:

CASA of Central Texas, Inc.

*State the name of the entity as currently shown in the records of the secretary of state.*

2. The file number issued to the filing entity by the secretary of state is: 0074608001

3. The name of the registered agent as currently shown on the records of the secretary of state is:

David Junkin

Registered Agent Name

The address of the registered office as currently shown on the records of the secretary of state is:

15401 RR 12, Suite 105

*Street Address*

Wimberly

*City*

TX 78676

*State Zip Code*

**Change to Registered Agent/Registered Office**

4. The certificate of formation or registration is modified to change the registered agent and/or office of the filing entity as follows:

**Registered Agent Change**

(Complete either A or B, but not both. Also complete C if the address has changed.)

A. The new registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The new registered agent is an individual resident of the state whose name is:

David

*First Name*

*M.I.*

Pfeifer

*Last Name*

*Suffix*

**Registered Office Change**

C. The business address of the registered agent and the registered office address is changed to:

234 Campbell Drive

*Street Address (No P.O. Box)*

Canyon Lake

*City*

TX 78133

*State Zip Code*

The street address of the registered office as stated in this instrument is the same as the registered agent's business address.

## Statement of Approval

The change specified in this statement has been authorized by the entity in the manner required by the BOC or in the manner required by the law governing the filing entity, as applicable.

### Effectiveness of Filing (Select either A, B, or C.)

- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:

--

### Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: 06/19/2019

*Norma C. Blackwell*  
Signature of authorized person

Norma Blackwell  
Printed or typed name of authorized person (see instructions)



Acceptance of Appointment  
and  
Consent to Serve as Registered Agent  
§5.201(b) Business Organizations Code

The following form may be used when the person designated as registered agent in a registered agent filing is an individual.

Acceptance of Appointment and Consent to Serve as Registered Agent

I acknowledge, accept and consent to my designation or appointment as registered agent in Texas for  
CASA of Central Texas, Inc.

*Name of represented entity*

I am a resident of the state and understand that it will be my responsibility to receive any process, notice, or demand that is served on me as the registered agent of the represented entity; to forward such to the represented entity; and to immediately notify the represented entity and submit a statement of resignation to the Secretary of State if I resign.

X:  David Pfeifer 06/19/2019  
*Signature of registered agent* *Printed name of registered agent* *Date (mm/dd/yyyy)*

The following form may be used when the person designated as registered agent in a registered agent filing is an organization.

Acceptance of Appointment and Consent to Serve as Registered Agent

I am authorized to act on behalf of Norma Casa of Central Texas  
*Name of organization designated as registered agent*

The organization is registered or otherwise authorized to do business in Texas. The organization acknowledges, accepts and consents to its appointment or designation as registered agent in Texas for:  
Norma C Blacwell  
*Name of represented entity*

The organization takes responsibility to receive any process, notice, or demand that is served on the organization as the registered agent of the represented entity; to forward such to the represented entity; and to immediately notify the represented entity and submit a statement of resignation to the Secretary of State if the organization resigns.

X:  Norma C Blacwell 6/19/19  
*Signature of person authorized to act on behalf of organization* *Printed name of authorized person* *Date (mm/dd/yyyy)*

**BY-LAWS  
OF  
CASA of CENTRAL TEXAS, Inc.**

**Article I - - Name**

**1.01 Name**

The name of the corporation shall be CASA of Central Texas, Inc. CASA is an acronym for Court Appointed Special Advocates. The corporation shall be referred to as CASA or the Corporation in these Bylaws.

**Article II - - Purpose**

**2.01 Purpose**

CASA is organized exclusively for charitable purposes within the meaning of Section 501( c )( 3 ) of the Internal Revenue Code. CASA shall promote, assist, support, develop and continue the CASA program in Caldwell, Comal, Guadalupe and Hays Counties. The CASA program provides court-appointed volunteers to investigate and make recommendations concerning assigned cases dealing with abused and neglected children.

**2.02 Mission Statement**

CASA of Central Texas, Inc. advocates for abused and neglected children in the court system by recruiting, training and supporting community volunteers.

**2.03 Vision Statement**

We believe that every child has a right to a safe, permanent home.

**Article III - - Office and Registered Agent**

**3.01 Office**

The Corporation may have its offices at such place or places within the State of Texas, as the Board of Directors may determine.

**3.02 Registered Office and Registered Agent**

CASA shall have and continuously maintain in the State of Texas a registered office and registered agent whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be, the same as the principal office of CASA in the State of Texas, and the address of the registered office may be changed by the Board of Directors.

## Article IV - - Members

The Corporation shall not have a general membership. The Board of Directors shall be a self-perpetuating body with the successors elected by the Board.

## Article V - - Board of Directors

### 5.01 General Powers

The affairs of CASA shall be managed by its Board of Directors.

### 5.02 Number

The number of voting Directors shall be not less than nine (9) nor more than twenty-one (21).

### 5.03 Accountability for Organizational Integrity

The Board of Directors retains responsibility for overall accountability for policy development, long-range planning, marketing, fundraising, oversight of finances, and risk management.

### 5.04 Composition

The intent of the Corporation shall be to maintain a composition of the Board of Directors with at least one (1) representative from each of Caldwell, Comal, Guadalupe and Hays Counties. The preferred composition of the Board of Directors includes five (5) representatives from each county served, in addition to the President of the Board.

### 5.05 Qualifications

The Board will adopt criteria for Directors. Each Director must be at least twenty-one (21) years of age and possess such skills as legal, fiscal, personnel, management, and marketing; connected to the communities served by CASA; committed to devoting time as a leader, officer, and/or committee member; not be related or married to any employee of CASA or Director; and not be employed by CASA.

### 5.06 Election

The successors to those Directors whose terms of office expire each year shall be elected by the Board of Directors. The election and reelection of Directors shall be by recommendation and motion to the Board by the Board Development Committee at the June meeting, and shall be decided by a vote of the majority of the Directors at the June meeting, and shall assume their positions at the July meeting.

**5.07 The Wing Society Board**

The Board of Directors may invite members of the community to serve as members of the Wing Society Board. A member of the Board of Directors shall serve as a member of the Wing Society. Members of the Wing Society Board may attend and speak at all meetings of the Board of Directors, but shall serve without the right to vote on any action of the agency and shall not be required in order to establish a quorum. Members of the Advisory Board shall be elected annually by the Wing Society Board and shall serve for a term of one (1) year.

**5.08 Term of Office**

The terms of office of Directors shall be three (3) calendar years, staggered with one-third (1/3) of the Directors being elected each year. A person nominated by the Board Development Committee and elected by the Board to fill a vacancy of an unexpired term of a Director will complete the unexpired term. A person nominated by and approved by the Board to fill a vacancy, other than a vacancy with an unexpired term, shall be considered as having completed one year of the three (3) year term as of June 30<sup>th</sup> of the year of election. All terms begin on July 1 and end on June 30 of each calendar year. A director may serve unlimited successive three (3) year terms if duly nominated by the Board Development Committee and elected by the majority of all of the Directors. Written requests for renewals will be delivered to the Chairman of the Board Development Committee in May and if approved by the Board Development Committee, presented to the Board for election in June.

**5.09 Board Member Responsibility**

The Board of Directors shall have the control and general management of the affairs and business of this Corporation.

1. Each Board member is required to attend nine (9) out of eleven (11) regularly scheduled meetings per fiscal year (July 1 through June 30). A Director who misses three (3) out of eleven (11) meetings shall be automatically removed, but may be reinstated by the Board upon a recommendation from the Board Development Committee. Illness of a Board member or serious illness/death of an immediate family member are considered excused absences. Participating in events or meetings related to CASA business is also an excused absence.
2. Each Board member is expected to participate in the fundraising efforts of CASA.
3. Each Board member will submit to background checks before assuming a position on the CASA Board, including the following: (a) Social security number verification, (b) Texas criminal record check obtained from the Texas Crime Information Center maintained by the Texas Dept. of Public Safety, (c) National

criminal record check obtained from the National Crime Information Center (NCIC) maintained by the FBI, (d) Texas Public Sex Offender Registry check maintained by the Texas Dept. of Public Safety, (e) National Sex Offender Registry check maintained by the U.S. Dept. of Justice, and (f) The Child Abuse and Neglect Central Registry maintained by the Texas Dept. of Family and Protective Services.

4. Each Board member will attend ongoing Board training and educational seminars.

#### **5.10 Relationships with Staff and Volunteer Advocates**

Board members should consult with the Executive Director for any assistance needed.

1. Complaints or community concerns should be directed to the Executive Director.
2. Board Directors should annually attend two (2) swearing in ceremonies and receptions for new Volunteer Advocates, participate in two (2) volunteer and staff appreciation activities, and attend one (1) diversity training (which can be through Volunteer Training).

#### **5.11 Policy Development**

Board members should annually review the Mission Statement of CASA, the Policies and Procedures, Articles of Incorporation and Bylaws.

#### **5.12 Long-Range Planning**

It is the responsibility of the Board members to be familiar with the current Strategic Plan. Program goals need to be reviewed and refined as necessary. Human and financial resources need to be acquired by the Board members.

#### **5.13 Resource Development**

The Board of Directors will ensure that adequate financial resources are available to provide and maintain program services. Each Director will approve and support the fundraising plan established by the Fund Development Committee as well as participate in fundraising activities. Each Board member will make an annual financial contribution and the Board will collectively achieve 100% participation.

#### **5.14 Marketing**

The Board of Directors will be knowledgeable about the functions of the CASA program respecting the confidentiality of program services. Directors will approve and support the marketing plan determined by the Fund Development Committee.

**5.15 Oversight of Finances**

The Board of Directors will review and approve the annual budget as determined by the Executive Director and the Finance Committee. Directors will monitor expenditures, review the annual audit, Financial Policy and Procedures, and annually review all insurance policies, fixed assets and inventory. The Board of Directors will review the financial statements monthly.

**5.16 Vacancies**

Vacancies on the Board of Directors occurring between Annual Meetings may be filled for the unexpired portion of the term by majority vote of the Board of Directors, even if there is only one member remaining on the Board.

**5.17 Removal of Directors**

Any one or more of the Directors may be removed, either with or without cause, by a majority vote of the Board of Directors, with the Director to be removed not voting.

**Article VI - - Meetings**

**6.01 Regular Meetings**

The Board of Directors shall meet monthly July through June unless otherwise designated by the President, and will be held as determined by the Board. Except as otherwise provided by statute, the Articles of Incorporation of CASA or these Bylaws, any and all business may be transacted at any regular meeting, and neither the purpose of, nor the business to be transacted at any regular meeting need be specified in any notice or waiver of notice of such meeting. Evaluation of the Executive Director will take place during closed session of the April meeting with prior submission of the evaluation materials at the March meeting of the Board of Directors by a committee appointed by the President.

When Board action is needed before the next regularly scheduled meeting, the Board President may authorize the Executive Director and his/her designee to contact each Board member to conduct a vote on a particular matter by email or otherwise. Such votes should not become the regular method of action for the Board and generally should be conducted only on matters determined to be urgent, non-controversial and not in need of much discussion among the Board. At the next meeting of the Board immediately following such vote, the Board shall re-affirm the vote and have the action recorded in the minutes of the organization.

**6.02 Special Meetings**

Special meetings of the Board of Directors may be called by or at the request of the President or by the written request of one-half (1/2) of the Directors. The person or persons authorized to call special meetings of the Board of Directors shall fix the time and place of any special meeting of the Board of Directors called by them in the notice of the meeting. Written notice stating the place, date, and time of each special meeting will be given to each Director, not less than three (3) days before the date of such meeting. Except as otherwise expressly provided by statute, the Articles of Incorporation of CASA or these Bylaws, any and all business may be transacted at any special meeting and must be specified in the notice or waiver of notice of such meeting.

**6.03 Alternative Forms of Meetings**

Subject to the notice provisions of these Bylaws, the Board may hold an annual, regular or special meeting by means of conference telephone or similar communications equipment or another suitable electronic communications system (such as videoconference) that permits each person participating in the meeting to communicate with all other persons participating in the meeting. Participation in any such meeting shall constitute presence in person at such meeting and waiver of notice of such meeting, except when a person participates in such meeting for the express purpose of objecting to the transaction of any business on the ground that such meeting is not lawfully called or convened. Any committee provided for in these Bylaws or established by the Board may also hold its meetings by means of such conference telephone or similar communications equipment.

**6.04 Place of Meetings**

Meetings of the Board will be held at such places, within or without the State of Texas, as may from time to time be determined by the Board and communicated to all Directors, or as may be specified in the respective notices or waivers of notice of such meetings.

**6.05 Notice of Meetings**

Notice of all annual, regular or special meeting of the Board of Directors shall be given at least ten (10) days previously thereto by written notice delivered, either personally or by mail or email to each Director at the address as shown by the records CASA. If mailed, the notice shall be deemed delivered to the Director when deposited with postage prepaid in the United States mail so addressed. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except when a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the

notice or waiver of notice of such meeting unless specifically required by law or these Bylaws.

**6.06 Annual Meetings**

An annual meeting of the Board will be held in the month of June of each year upon at least ten (10) days written notice to each Director of a date and at such place as determined by the Board. Such annual meetings will include the installation of Directors and Officers, and the transaction of such other business as may be brought before such meetings.

**6.07 Quorum**

One-half (1/2) plus one (1) of the Directors shall constitute a quorum of the transaction of business at any meeting of the Board of Directors, except as otherwise expressly provided by statute, the Articles of Incorporation of CASA or these Bylaws; but if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

**6.08 Manner of Acting**

The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number of Directors is required by law or by these Bylaws.

**6.09 Expectation of Directors**

1. Each Director is expected to serve on at least one (1) committee.
2. Each Director is expected to participate in the fundraising efforts of CASA with the exception of Masters and District Judges.
3. Each Director is expected to contribute financially to CASA.
4. Each Director is expected to attend all meetings of the Board. Any Director missing three (3) of eleven (11) regularly scheduled meetings in a fiscal year due to excused or unexcused absence shall be considered as having resigned and will be removed from the Board, but may be reinstated by the Board. The Board Development Committee may recommend removal of the Director to the Board for non-participation.
5. Each Director is expected to attend a Volunteer Training class or Voices tour, and must attend Board Orientation, to obtain sufficient knowledge of CASA's programs within one (1) year of being elected as a Director.
6. Each Director is expected to attend such programs as Strategic Planning and retreats designed to continue the education, orientation, and development of Directors.
7. Each Director is expected to review and execute CASA's Confidentiality Agreement and Conflicts of Interest Policy annually.

**6.10 Voting**

At all meetings of the Board of Directors, each Director is to have one vote. The Directors present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough Directors leave the meeting so that less than a quorum remains; however, no action may be taken without the vote of a majority of the number of Directors required for a quorum. If a quorum is never present at any time during a meeting, a majority of the Directors present may adjourn and reconvene the meeting once without further notice.

**6.11 Proxy Voting**

A Director may not vote by proxy.

**6.12 Compensation of Directors**

Directors shall not receive compensation, but may be reimbursed for reasonable expenses properly incurred by them on behalf of CASA if approved by the Board.

**Article VII - - Officers**

**7.01 Officers**

The Officers of CASA shall be a President, one or more Vice-Presidents (the number thereof to be determined by the Board of Directors), a Secretary, a Treasurer, and such other Officers that may be elected in accordance with the provisions of this Article. The Board of Directors may elect at least one volunteer from each county to server on the Board or appoint such other Officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such Officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Anyone that holds an office and runs for another office should resign their current position.

**7.02 Election and Term of Office**

No two offices shall be held by the same person. The officers of CASA shall be chosen from the Board of Directors and shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. New offices may be created and filled at any meeting of the Board of Directors. Each Officer shall hold office until his successor shall have been duly elected and shall have been qualified. No person may serve for more than two (2) full consecutive years in any one office of CASA, with the exception of the President who may serve three (3) full consecutive years. To be eligible to serve as President, it is highly desirable that a Director shall have served as a Director for one (1) year and as an Officer or the Chairperson of a Committee identified in Article VII for at least one (1) year.

**7.03 Removal**

Any Officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of CASA would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the Officer so removed.

**7.04 Vacancies**

A vacancy in any office, because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term at any meeting of the Board of Directors.

**7.05 President**

The President shall be the principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and meetings of the Corporation. He or she shall preside, when present, at all meetings of the Board of Directors and serve as an ex officio member of all committees of the Board.

The President shall sign all contracts and agreements in the name of the Corporation, subject to the advice, consent and approval of the Board of Directors.

The President shall be the chairman of the Executive Committee, a member of the Finance Committee, and an ex officio member of all other committees. The President shall have the power and authority to appoint ad hoc committees and chairmen as needed with the approval of the Executive Committee.

**7.06 Vice-President**

During the absence or inability of the President to render and perform the President's duties or exercise the President's powers as set forth in these Bylaws or in the acts under which this Corporation is organized, the same shall be performed and exercised by the Vice-President.

The Vice-President shall be a member of the Executive and Finance Committees, and shall be an ex officio member of all other committees.

**7.07 Secretary**

The Secretary shall see that the minutes of the meetings of the Board of Directors and the Executive Committee are kept, shall see that the books and reports are properly made and filed and shall perform such other functions as from time to time may be directed by the President.

The Secretary shall be a member of the Executive Committee.

**7.08 Treasurer**

The Treasurer may sign, make and enforce in the name of the Corporation all checks, drafts and order for the payment of money under the direction of the President or the Board of Directors, or as may be delegated to the Executive Director.

The Treasurer shall exhibit at all reasonable times the books and accounts of the Corporation to any Director.

The Treasurer shall provide statements of the conditions of the finances of the Corporation at each regular meeting of the Board of Directors and at such other times as may be required of the Treasurer.

The Treasurer shall oversee the acquisition of a Bond, which meets federal, state and local tax requirements, securing an audit as needed and securing insurance for the Corporation as required by the Board of Directors.

The Treasurer shall be the chairperson of the Finance Committee and shall be a member of the Executive Committee.

**Article VIII - - Executive Director**

**8.01 Executive Director**

The Executive Director shall be the Chief Administrative Officer of CASA and shall be responsible to the Board of Directors for the management of CASA. The Executive Director may be assisted by such additional staff as provided for by the Board of Directors. The Board of Directors shall have authority to employ, evaluate, and discharge an Executive Director upon such terms and conditions as the Board may determine.

The Executive Director shall have the authority to make expenditures within the approved budget.

The Executive Director shall serve as a non-voting member of the Board of Directors.

The Board shall evaluate the performance of the Executive Director in writing annually, and compare written performance criteria and objectives between evaluations.

**Article IX - - Committees**

**9.01 Executive Committee**

The Executive Committee shall be composed of the President, the immediate Past President, the Vice-President(s), the Secretary, the

Parliamentarian and the Treasurer. The President shall serve as Chairperson of the Executive Committee. Between meetings of the Board, the Executive Committee shall have all the power and authority of the Board of Directors except that it shall not have the authority to: (a) select members of any standing committee, (b) fill any vacancy in any office, (c) approve the annual budget, or (d) employ or discharge the Executive Director. The Executive Committee shall report its actions to the Board of Directors at the next meeting of the Board of Directors.

#### **9.02 Board Development Committee**

The Board Development Committee shall be composed of a minimum of three (3) Directors. This committee shall set up criteria for Directors, maintain a roster of potential Directors, explain to nominees their duties and responsibilities as Directors, and provide nominees with a copy of these Bylaws:

1. The Chairperson of the Board Development Committee shall request suggestions from the Directors for nominations for Officers and Directors.
2. The report of the Board Development Committee shall be presented to the Board of Directors at its annual meeting. Provided the consent of the nominee has been obtained in advance, nominations in addition to those submitted by the Board Development Committee may be made from the floor by any Director.
3. The Board Development Committee may be requested by the Executive Committee to nominate persons to fill any vacancies on the Board of Directors or in offices of the Board of Directors.

#### **9.03 Finance Committee**

The Finance Committee shall be composed of the Treasurer and additional Directors. The Treasurer shall serve as Chairperson of the Finance Committee:

1. The Finance Committee shall prepare the annual budget for presentation to the Board of Directors, and present an audit report annually to the Board of Directors after the close of the fiscal year.
2. The Finance Committee is responsible for the study and review of all matters involving the finances, appropriations, and expenditures of the funds of CASA, including, but not limited to, review of the budgets and financial reports of CASA.

#### **9.04 Policy/Personnel Committee**

The Policy/Personnel Committee shall be composed of three (3) or more Directors. The President shall appoint the Chairperson of this committee. The Policy/Personnel Committee shall recommend personnel policies to the Board of Directors and assist the Executive Director in developing and maintaining sound programs of personnel administration. This committee shall study and recommend to the Board policies concerning programs,

operations and procedures, which will be reviewed and approved by the Board.

**9.05 Fundraising Committee**

The Fundraising Committee shall have responsibility for the financial support of CASA and shall plan and assist in implementing fundraising programs. This committee is comprised of the entire Board of Directors. It shall be chaired by one or more Directors. Additional membership of this committee may include non-members of the Board of Directors.

**9.06 Fund Development Committee**

The Fund Development Committee shall have responsibility to ensure that adequate financial resources are available to provide and maintain program service. The Committee will be responsible for the fundraising plan and the marketing plan. It shall be chaired by one or more Directors. Additional membership of this committee may include non-members of the Board of Directors.

**9.07 Other Committees**

Other committees not having and exercising the authority of the Board of Directors in the management of CASA may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of such committee shall be Directors, who may be appointed by the President.

**9.08 Term of Office**

Each member of a committee shall continue as such until the next annual meeting of the Board of Directors and until a successor is appointed, unless the committee shall be sooner terminated, or unless such member is removed from such committee, or unless such member shall cease to qualify as a member.

**9.09 Removal**

Any member of any committee may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interest of CASA shall be served by such removal.

**9.10 Vacancies**

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

**9.11 Quorum**

Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall

constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

## **Article X - - Financial Accountability**

No Officer, Director or agent of the Corporation, either singly or jointly with others, shall have the power to make any bill payable, note, check or other negotiable instrument, or endorse the same in the name of the Corporation, or contract or cause to be contracted any debt or liability in the name of or on behalf of the Corporation, except as herein expressly described and provided.

### **10.01 Contracts**

The Board of Directors may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of or on behalf of the corporation. Such authority may be general or confined to specific instances.

### **10.02 Checks and Drafts**

All checks, drafts, or orders for the payment of money, notes or other evidences or indebtedness issued in the name of the Corporation shall be signed by such Officer or Officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution by the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer and counter-signed by the President or a Vice President of the Corporation.

All applications for grants must have Executive Committee or Board of Directors approval prior to submission to the funding source.

## **Article XI - - Indemnification Clause**

### **11.01 Indemnification of Officers and Directors**

The Officers, Directors, agents and employees of the Corporation shall be indemnified to the maximum extent authorized by law.

## **Article XII - - Conflict of Interest**

**12.01** If any matter should come before the Board or any committee thereof in such a way as to give rise to a conflict of interest, the affected member shall make known the potential conflict and withdraw from the meeting for so long as the matter shall continue under discussion, except to answer any questions that might be asked of him or her. Should the matter be brought to a vote, the affected member shall not vote on it. In the event that, when advisable, (s)he fails to withdraw voluntarily, the chairperson

shall require that (s)he remove himself/herself from the room during the discussion and vote on the matter. Each member of the Board will annually sign the conflict of interest policy.

In appropriate instances, the President of the Board of Directors or the Executive Director may seek the advice of an independent professional on a conflict issue.

**12.02 Board Member as Legal Counsel**

Although legal counsel may be provided to CASA under voluntary auspices on a pro bono basis and a lawyer who offers legal counsel may sit on the CASA Board, the role of such legal counsel will be clearly defined in a fee agreement letter from the lawyer in order to keep the two functions separate.

**12.03 Board Member as Staff**

Prior to applying for an employment position with CASA, a Board member must resign from the Board.

**Article XIII - - General Provisions**

**13.01 Amendments**

The Board of Directors shall have the power to alter, amend, or repeal these Bylaws at any regular or special meeting of the Board of Directors by a vote of two-thirds (2/3) of the members present, provided that written notice of the proposed change is given at least ten (10) days prior to such meeting. These Bylaws shall be reviewed each year by the Executive Committee, and a report of the committee shall be included at each end of the fiscal year Board meeting.

**Construction and Terms**

If there is any conflict between the provisions of these Bylaws and the Articles of Incorporation of this Corporation, the provisions of the Articles of Incorporation shall govern. Should any of the provisions or portions of these Bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws shall be unaffected by such holding. All references in these Bylaws to the Articles of Incorporation shall be to the Articles of Incorporation of this Corporation filed with the Secretary of this State and used to establish the legal existence of this Corporation. All references in these Bylaws to a section or sections of the Internal Revenue Code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.

**13.02 Waiver of Notice**

Whenever, under the provisions of any law, the Articles of Incorporation or amendments thereto, or these Bylaws, any notice is required to be given to any Director or committee member, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein shall be equivalent to the giving of such notice.

**13.03 Conference Telephone Meetings**

Meetings of any committee may be held by means of conference telephone or similar communications equipment so long as all persons participating in the meeting can hear each other. Participants in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objection to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**13.04 Fiscal Year**

The fiscal year shall be July 1 through June 30 in each year.

**13.05 Nondiscriminatory Practices**

The Corporation, its Directors, Officers and employees shall not discriminate against any individual or group of individuals on the basis of age, gender, sexual orientation, race, ethnicity, nationality, disability or religion.

**Article XIV- - Restrictions and Requirements**

**14.01** The Corporation shall not pay dividends or other corporate income to its Directors or Officers or otherwise accrue distributable profits or permit the realization of private gain. The Corporation shall not have the power to engage in any activities, except to an insubstantial degree, that are not in furtherance of the purposes set forth above.

**14.02** The Corporation shall have no power to take any action that would be inconsistent with the requirements for tax exempt organizations under Section 501(c)(3) of the Internal Revenue Code and related regulations, rulings and procedures. Regardless of any other provision to these Articles of Incorporation or state law, the Corporation shall have no power to:

1. Engage in activities or use its assets in manners that are not in furtherance of one or more exempt purposes, as set forth above and defined by the Internal Revenue Code and related regulations, rulings, and procedures, except to an insubstantial degree.

2. Serve a private interest other than one that is clearly incidental to an overriding public interest.
3. Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, except as provided by the Internal Revenue Code and related regulations, rulings, and procedures.
4. Participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office. The prohibited activities include the publishing or distributing of statement and any other direct or indirect campaign activities.
5. Have objectives that characterize it as an "action organization" as defined by the Internal Revenue Code and related regulations, rulings and procedures.
6. Permit any part of the net earnings of the Corporation to inure to the benefit of any member of the Corporation or any private individual.
7. Carry on an unrelated trade or business except as a secondary purpose related to the Corporation's primary, exempt purposes.

**14.03 Dissolution**

On dissolution, the Corporation's assets shall be distributed to an organization dedicated to public benefit purposes exempt from taxes under Internal Revenue Code Section 501(c)(3), to be used to accomplish the general purposes for which the Corporation was organized.

**Article XV – Dissolution**

Upon dissolution of the Corporation or the winding up of its affairs, the assets of the Corporation remaining after payment of all debts and liabilities shall be distributed exclusively to the State of Texas or an organization exempt from taxes under Internal Revenue Code Section 501(c)(3).

1619 E. Common Street, New Braunfels, Texas 78130

**The above Bylaws were amended and approved by the Board of Directors of CASA of Central Texas, Inc. on November 8, 2001.**

**Highlighted sections were amended and approved by the Board on February 17, 2004.**

**The above Bylaws were amended and approved by the Board of Directors of CASA of Central Texas, Inc. on November 20, 2007.**

**The above Bylaws were amended and approved by the Board of Directors of CASA of Central Texas, Inc. on May 30, 2011.**

**The above Bylaws were amended and approved by the Board of Directors of CASA of Central Texas, Inc. on June 25, 2013.**

**The above Bylaws were amended and approved by the Board of Directors of CASA of Central Texas, Inc. on February 24, 2015.**

**The above Bylaws were amended and approved by the Board of Directors of CASA of Central Texas, Inc. on June 23, 2015.**

**The above Bylaws were amended and approved by the Board of Directors of CASA of Central Texas, Inc. on April 19, 2016.**

**The above Bylaws were amended and approved by the Board of Directors of CASA of Central Texas, Inc. on October 15, 2018.**

**RESOLUTION**

**On the 15th day of October, 2018, at a meeting of the Board of Directors of CASA of Central Texas, Inc., held in the City of New Braunfels, Comal County, Texas, with a quorum of the Directors present, the following business was conducted:**

**WHEREAS the Board of Directors of CASA of Central Texas, Inc. retains certain responsibilities which should be included in these Bylaws;**

**NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CASA of Central Texas, Inc. approves the following changes to these Bylaws:**

- **The addition of paragraph 12.03, “Board Member as Staff”**
- **The addition of the last sentence in paragraph 8.01**
- **Addition to the last sentence of paragraph 9.04.**

**Voted, passed and approved on October 15, 2018.**

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**JoAnne Germer  
President – Board of Directors  
Board of Directors**

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**Rosemary Hopkins  
Secretary**

INTERNAL REVENUE SERVICE  
District Director

DEPARTMENT OF THE TREASURY  
1100 Commerce St., Dallas, TX 75242

CASA OF CENTRAL TEXAS, INC.  
PO BOX 311832  
NEW BRAUNFELS, TEXAS 78131

Person to Contact:  
BARBARA MITCHELL  
Telephone Number:  
(214) 767-6023  
Refer Reply to:  
EO:CSU:4940DAL  
Date:  
AUGUST 4, 1994

Dear Sir or Madam:

Our records show that CASA OF CENTRAL TEXAS is exempt from Federal Income Tax under section 501(c)(3) of the Internal Revenue Code. This exemption was granted OCTOBER 1986 and remains in full force and effect. Contributions to your organization are deductible in the manner and to the extent provided by section 170 of the Code.

We have classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Internal Revenue Code because you are an organization described in section 170(b)(1)(A)(vi).

If we may be of further assistance, please contact the person whose name and telephone number are shown above.

Sincerely,

*Barbara Mitchell*  
EO Technical Assistor

TAX ID # 74-2403373

## CASA of Central Texas, Inc.

INCOME BUDGET	2019-20
VOCA	317,825.02
VOCA Non-Urban	90,000.00
CDBG-New Braunfels	13,333.00
header	50,000.00
OVAG	42,000.00
Texas CASA - CVC	194,755.00
Texas CASA - CVC Growth	39,468.00
Texas CASA Title 4	5,000.00
Comal County	1,000.00
Guadalupe County	7,500.00
Hays County	35,000.00
County Jury Fees	16,886.33
Caldwell	
Comal	
Guadalupe	
Hays	
City of Buda	3,475.00
City of Lockhart	4,052.05
City of San Marcos H.S.	17,500.00
United Way - Greater Austin	2,000.00
Texas SECC - State Employee Charitable Campaign	4,000.00
CFC - Combined Federal Campaign	
United Way - Comal County	35,000.00
United Way - Guadalupe County	5,000.00
United Way - Hays County	8,500.00
United Way - SA Area	4,000.00
Board Member Contributions	25,000.00
Memorials & Honors	2,000.00
Children's Special Needs	1,500.00
Individual - Big Give S.A.	7,500.00
Individual - Amplify Austin	7,500.00
Individual - Holiday Appeal	10,000.00
Individual - Giving Tuesday	500.00
Individual - Private Donations	60,000.00
Church Contributions	5,000.00
Downtown Rotary NB	5,000.00
NB Rotary	5,000.00
Rotary Club of Seguin	1,500.00
San Marcos Lions Club	10,000.00
Civic - Other	5,500.00
Grande Communications	1,000.00
Corporate - Other	15,000.00
Anderson Charitable Foundation	15,000.00
Baptist Health Foundation	60,000.00
Burdine Johnson Foundation	30,000.00

Comal Cops for Kids	-
GVTC Foundations	5,000.00
In-N-Out Burger - Comal	5,000.00
In-N-Out Burger - Hays	5,000.00
Kronkosky Charitable Foundation	100,000.00
Lola Wright Foundation	15,000.00
McKenna Foundation	40,000.00
Najim Family Foundation	45,000.00
Christus Santa Rosa Foundation	25,000.00
San Antonio Area Foundation	25,000.00
St. Lukes Health Ministries	8,000.00
Texas Bar Foundation	8,000.00
Tomblin Family Foundation	10,000.00
Topfer Family Foundation	5,000.00
Valero Foundation	15,000.00
Event-Gala	75,000.00
Event-Golf Tournament	49,556.92
Event - 3rd Party	10,000.00
Unknown	43,455.32
<b>TOTAL INCOME</b>	<b>1,652,306.64</b>

<b>EXPENSE BUDGET</b>	<b>2019-20</b>
Salaries	1,145,243.00
Insurance Benefits	
Health	42,000.00
Life	3,000.00
Payroll Taxes	87,611.09
Pension	57,262.15
Unemployment Taxes	1,076.40
Workers Comp Insurance	3,200.00
Conferences/Education	12,000.00
Travel	37,214.00
Contract Service - Background	15,000.00
Equipment/Computer/Software	43,000.00
Equipment Rental	14,000.00
Credit Card & Other Fees	5,500.00
Office - General	10,000.00
Office Supplies	10,000.00
Training Expenses	15,000.00
Special Needs for Children	3,000.00
Advocate Recognition	15,000.00
Audit	6,500.00
Advertising/Recruiting	8,000.00
Fundraising	45,000.00
Legal & Professional Fees	2,000.00

## CASA of Central Texas, Inc.

Insurance Benefits	
Directors & Officers	3,200.00
Liability & Fidelity	9,500.00
Membership & Subscriptions	10,000.00
Postage	5,000.00
Printing/Promotions	3,500.00
Telephone/Internet	15,000.00
Utilities	9,500.00
Building Maintenance	15,000.00
Endowment Fees	1,000.00
Reserve	-
<b>TOTAL EXPENSES</b>	<b>1,652,306.64</b>

# CASA of Central Texas, Inc.

INCOME BUDGET 2020-2021	Projected Budget
VOCA	365,498.77
VOCA Non-Urban	103,500.00
CDBG-New Braunfels	15,332.95
CDBG-San Marcos	57,500.00
OVAG	48,300.00
Texas CASA - CVC	223,968.25
Texas CASA - CVC Growth	45,388.20
Texas CASA Title 4	5,750.00
Comal County	1,150.00
Guadalupe County	8,625.00
Hays County	40,250.00
County Jury Fees	19,419.28
Caldwell	-
Comal	-
Guadalupe	-
Hays	-
City of Buda	3,996.25
City of Lockhart	4,659.86
City of San Marcos H.S.	20,125.00
United Way - Greater Austin	2,300.00
Texas SECC - State Employee Charitable Campaign	4,600.00
CFC - Combined Federal Campaign	-
United Way - Comal County	40,250.00
United Way - Guadalupe County	5,750.00
United Way - Hays County	9,775.00
United Way - SA Area	4,600.00
Board Member Contributions	28,750.00
Memorials & Honors	2,300.00
Children's Special Needs	1,725.00
Individual - Big Give S.A.	8,625.00
Individual - Amplify Austin	8,625.00
Individual - Holiday Appeal	11,500.00
Individual - Giving Tuesday	575.00
Individual - Private Donations	69,000.00
Church Contributions	5,750.00
Downtown Rotary NB	5,750.00
NB Rotary	5,750.00
Rotary Club of Seguin	1,725.00
San Marcos Lions Club	11,500.00
Civic - Other	6,325.00
Grande Communications	1,150.00
Corporate - Other	17,250.00
Anderson Charitable Foundation	17,250.00
Baptist Health Foundation	69,000.00
Burdine Johnson Foundation	34,500.00

## CASA of Central Texas, Inc.

Comal Cops for Kids	-
GVTC Foundations	5,750.00
In-N-Out Burger - Comal	5,750.00
In-N-Out Burger - Hays	5,750.00
Kronkosky Charitable Foundation	115,000.00
Lola Wright Foundation	17,250.00
McKenna Foundation	46,000.00
Najim Family Foundation	51,750.00
Christus Santa Rosa Foundation	28,750.00
San Antonio Area Foundation	28,750.00
St. Lukes Health Ministries	9,200.00
Texas Bar Foundation	9,200.00
Tomblin Family Foundation	11,500.00
Topfer Family Foundation	5,750.00
Valero Foundation	17,250.00
Event-Gala	86,250.00
Event-Golf Tournament	56,990.46
Event - 3rd Party	11,500.00
Unknown	49,973.62
<b>TOTAL INCOME</b>	<b>1,900,152.64</b>

EXPENSE BUDGET 2020-2021	Projected Budget
Salaries	1,317,029.45
Insurance Benefits	-
Health	48,300.00
Life	3,450.00
Payroll Taxes	100,752.75
Pension	65,851.47
Unemployment Taxes	1,237.86
Workers Comp Insurance	3,680.00
Conferences/Education	13,800.00
Travel	42,796.10
Contract Service - Background	17,250.00
Equipment/Computer/Software	49,450.00
Equipment Rental	16,100.00
Credit Card & Other Fees	6,325.00
Office - General	11,500.00
Office Supplies	11,500.00
Training Expenses	17,250.00
Special Needs for Children	3,450.00
Advocate Recognition	17,250.00
Audit	7,475.00
Advertising/Recruiting	9,200.00
Fundraising	51,750.00
Legal & Professional Fees	2,300.00

## CASA of Central Texas, Inc.

Insurance Benefits	-
Directors & Officers	3,680.00
Liability & Fidelity	10,925.00
Membership & Subscriptions	11,500.00
Postage	5,750.00
Printing/Promotions	4,025.00
Telephone/Internet	17,250.00
Utilities	10,925.00
Building Maintenance	17,250.00
Endowment Fees	1,150.00
Reserve	
<b>TOTAL EXPENSE</b>	<b>1,900,152.64</b>

CASA OF CENTRAL TEXAS, INC.

FINANCIAL STATEMENTS AND  
INDEPENDENT AUDITOR'S REPORT  
FOR THE YEAR ENDED JUNE 30, 2019

# CASA OF CENTRAL TEXAS, INC.

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## Independent Auditor's Report

To the Board of Directors of  
CASA of Central Texas, Inc.

I have audited the accompanying financial statements of CASA of Central Texas, Inc. (not-for-profit organization), which comprise the statement of financial position as of June 30, 2019, and the related statements of activities, functional expenses, and cash flows for the year then ended, and the related notes to the financial statements.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with auditing standards generally accepted in the United States. Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, I express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion

In my opinion, the financial statements referred to above present fairly, in all material respects, the financial position of CASA of Central Texas, Inc. as of June 30, 2019, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

*Linda J. Gandy, CPA*

San Marcos, Texas  
December 6, 2019

CASA OF CENTRAL TEXAS, INC.  
STATEMENT OF FINANCIAL POSITION  
JUNE 30, 2019

Assets	
Current assets	
Cash and cash equivalents	\$ 1,066,278
Receivables	660,852
Total current assets	<u>1,727,130</u>
Property and equipment	
Building and land	737,078
Construction in progress	280,794
Furniture and equipment	132,797
Accumulated depreciation	<u>(331,222)</u>
Total property and equipment	<u>819,447</u>
Other assets	1,620
Total assets	<u><u>\$ 2,548,197</u></u>
Liabilities and net assets	
Current liabilities	
Payroll liabilities	<u>\$ 100</u>
Total current liabilities	<u>100</u>
Net assets	
Without Donor restrictions	1,643,505
With Donor restrictions	<u>904,592</u>
Total net assets	<u>2,548,097</u>
Total liabilities and net assets	<u><u>\$ 2,548,197</u></u>

The accompanying notes are an integral part of these financial statements.

CASA OF CENTRAL TEXAS  
STATEMENT OF ACTIVITIES  
FOR THE YEAR ENDED JUNE 30, 2019

	Without Donor Restrictions	With Donor Restrictions	Total
Support and revenue			
Grants	\$ 160,385	\$ 525,330	\$ 685,715
Contributions	519,533	15,000	534,533
Capital campaign	-	182,810	182,810
In-kind donations	364,180	-	364,180
Fundraising	200,019	-	200,019
Other income	14,597	-	14,597
Unrealized gain/(loss)	-	1,546	1,546
Interest income	1,138	1,585	2,723
Total support and revenue	<u>1,259,852</u>	<u>726,271</u>	<u>1,986,123</u>
Satisfaction of donor restrictions	1,157,102	(1,157,102)	-
Total support and revenue	<u>2,416,954</u>	<u>(430,831)</u>	<u>1,986,123</u>
Expenses			
Program services	1,319,847	-	1,319,847
Supporting services			
Management and general	166,351	-	166,351
Fundraising	99,168	-	99,168
Total expenses	<u>1,585,366</u>	<u>-</u>	<u>1,585,366</u>
Change in net assets	831,588	(430,831)	400,757
Net assets at beginning of year	811,917	1,335,423	2,147,340
Net assets at end of year	<u>\$ 1,643,505</u>	<u>\$ 904,592</u>	<u>\$ 2,548,097</u>

The accompanying notes are an integral part of these financial statements.

CASA OF CENTRAL TEXAS, INC.  
STATEMENT OF FUNCTIONAL EXPENSES  
FOR THE YEAR ENDED JUNE 30, 2019

	CASA of Central Texas	Supporting Services		Total Supporting Services	Total Expenses
		Management and General	Fundraising		
Payroll expenses	\$ 800,312	\$ 94,154	\$ 47,077	\$ 141,231	\$ 941,543
Health insurance	56,801	6,683	3,341	10,024	66,825
Pension	32,088	3,775	1,888	5,663	37,751
In-kind expenses	264,068	-	-	-	264,068
Capital campaign	323	-	-	-	323
Travel	36,772	-	-	-	36,772
Depreciation expense	12,675	12,675	-	12,675	25,350
Fundraising	-	-	46,862	46,862	46,862
Equipment	34,150	-	-	-	34,150
Conferences/meetings	1,516	-	-	-	1,516
Communications	14,131	-	-	-	14,131
Building maintenance	6,858	6,858	-	6,858	13,716
Insurance	-	12,917	-	12,917	12,917
Advocate recognition	10,570	-	-	-	10,570
Office expenses	-	15,635	-	15,635	15,635
Legal and professional	20,948	-	-	-	20,948
Advertising and recruiting	5,834	-	-	-	5,834
Memberships	8,563	-	-	-	8,563
Contract services	10,764	-	-	-	10,764
Training	2,467	-	-	-	2,467
Utilities	-	6,014	-	6,014	6,014
Children special needs	1,007	-	-	-	1,007
Fees	-	4,780	-	4,780	4,780
Postage	-	2,860	-	2,860	2,860
	<u>\$ 1,319,847</u>	<u>\$ 166,351</u>	<u>\$ 99,168</u>	<u>\$ 265,519</u>	<u>\$ 1,585,366</u>

The accompanying notes are an integral part of these financial statements.

CASA OF CENTRAL TEXAS, INC.  
STATEMENT OF CASH FLOWS  
FOR THE YEAR ENDED JUNE 30, 2019

Cash flows from operating activities		
Change in net assets	\$	400,757
Adjustments to reconcile change in net assets to net cash provided (used) by operating activities:		
Depreciation		25,350
Change in prepaids		250
Change in receivables		29,891
Change in liabilities		<u>(13,694)</u>
Net cash provided by operating activities		<u>442,554</u>
Cash flow from investing activities		
Investment in capital assets		<u>(290,196)</u>
Net cash (used) by investing activities		<u>(290,196)</u>
Net change in cash and cash equivalents		152,358
Cash and cash equivalents, beginning of year		<u>913,920</u>
Cash and cash equivalents, end of year	\$	<u><u>1,066,278</u></u>
Supplementary information		
Interest paid	\$	-
Income taxes paid	\$	-

The accompanying notes are an integral part of these financial statements.

CASA OF CENTRAL TEXAS, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED JUNE 30, 2019

NOTE A - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

*Organization*

CASA of Central Texas, Inc. (CASA), a member of the National Court Appointed Special Advocate Association and Texas CASA, is a nonprofit corporation whose mission is to advocate for abused and neglected children in the court system by recruiting, training, and supporting community volunteers. CASA is funded by federal/state grants, fundraisers, community donations and volunteer hours from trained advocates.

In prior years, the financial statement presentation included CASA Wing Society. CASA Wing Society, established in fiscal year 2009, was an affiliate nonprofit of CASA of Central Texas, Inc. and operated under the CASA's nonprofit tax identification number. However, in August 2018, Wing Society was dissolved and the remaining funds were transferred into CASA of Central Texas, Inc.'s general operating account to be used for advocate appreciation costs.

*Basis of presentation*

The financial statements of CASA of Central Texas, Inc. have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP), which require the organization to report information regarding its financial position and activities to the following net asset classifications:

Net assets without donor restrictions: Net assets that are not subject to donor-imposed restrictions and may be expended for any purpose in performing the primary objectives of the organization. These net assets may be used at the discretion of CASA of Central Texas, Inc.'s management and the board of directors.

Net assets with donor restrictions: Net assets subject to stipulations imposed by donors, and grantors. Some donors' restrictions are temporary in nature; those restrictions will be met by actions of CASA of Central Texas, Inc. or by the passage of time. Other donor restrictions are perpetual in nature, whereby the donor has stipulated the funds be maintained in perpetuity.

Donor restricted contributions are reported as increases in net assets with donor restrictions. When a restriction expires, net assets are reclassified from net assets with donor restrictions to net assets without donor restrictions in the statement of activities.

*Cash and cash equivalents*

For purposes of the statements of cash flows, the organization considers all highly liquid investments available for current use with an initial maturity of three months or less to be cash equivalents. As of June 30, 2019, the organization's cash and cash equivalents totaled \$1,066,278. Cash and cash equivalents balances exceeded federally insured amounts by \$595,065 as of June 30, 2019.

CASA OF CENTRAL TEXAS, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED JUNE 30, 2019

NOTE A - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES-CONTINUED

*Fair Value Measurements*

The organization reports its fair value measures using a three-level hierarchy that prioritizes the inputs used to measure fair value. The hierarchy, established by GAAP, requires that entities maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The three levels of inputs used to measure fair value are as follows:

- Level 1 Inputs that are quoted prices in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.
- Level 2 Inputs other than quoted prices included in level 1 that are observable for the asset or liability, either directly or indirectly.
- Level 3 Inputs that are unobservable for the asset or liability.

A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

The carrying amount of cash and cash equivalents, prepaids, accounts payables and accrued expenses approximates fair market value due to the short-term maturities of these investments.

*Accounting for Contributions*

Contributions received are recorded as net assets without donor restrictions or net assets with donor restrictions, depending on the existence and/or nature of any donor-imposed restrictions. Contributions that are restricted by the donor are reported as an increase in net assets without donor restrictions if the restriction expires in the reporting period in which the contribution is recognized. All other donor restricted contributions are reported as an increase in net assets with donor restrictions, depending on the nature of restriction. When a restriction expires, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statements of activities as net assets released from restrictions.

Contributed property and equipment are recorded at fair value at the date of donation. Contributions with donor-imposed stipulations regarding how long the contributed assets must be used are recorded as net assets with donor restrictions; otherwise, the contributions are recorded as net assets without donor restrictions.

CASA OF CENTRAL TEXAS, INC.  
NOTES TO FINANCIAL STATEMENTS  
FOR THE YEAR ENDED JUNE 30, 2019

NOTE A - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES-CONTINUED

*Gifts Received for Specific Beneficiaries*

As required by ASC 958-605-25, when acting as an agent, the organization does not recognize gifts as revenues if the gifts are designated for specific beneficiaries unless the donor specifies variance power with the gift.

*Expense Recognition and Allocation*

The cost of providing the organization's programs and other activities is summarized on a functional basis in the statement of activities and statement of functional expenses. Expenses that can be identified with a specific program or support service are charged directly to that program or support service. Costs common to multiple functions have been allocated among the various functions benefited.

General and administrative expenses include those costs that are not directly identifiable with any specific program, but which provide for the overall support and direction of the organization.

Fundraising costs are expenses as incurred, even though they may result in contributions received in future years. The organization generally does not conduct its fundraising activities in conjunction with its other activities. In the few cases in which it does, such as when the annual report or donor acknowledgements contain requests for contributions, joint costs have been allocated between fundraising and management and general expenses in accordance with standards for accounting for costs of activities that include fundraising. Additionally, advertising costs are expensed as incurred.

*Use of Estimates*

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of revenues and expenses during the reporting period and the reported amounts of assets and liabilities at the date of the financial statements. On an ongoing basis, the organization's management evaluates the estimates and assumptions based upon historical experience and various other factors and circumstances. The organization's management believes that the estimates and assumptions are reasonable in the circumstances; however, the actual results could differ from those estimates.

*Tax Status*

The organization is incorporated exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (IRC), though it would be subject to tax on income unrelated to its exempt purposes. The tax year is still open to audit for both federal and state purposes.

CASA OF CENTRAL TEXAS, INC.  
 NOTES TO FINANCIAL STATEMENTS  
 FOR THE YEAR ENDED JUNE 30, 2019

NOTE A - ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES-CONTINUED

*New Accounting Pronouncement*

In 2016, FASB issued ASU 2016-14, *Not-for-Profit Entities-Presentation of Financial Statements of Not-for-Profit Entities*. The update addresses the complexity and understandability of net asset classification. CASA of Central Texas, Inc. has adjusted the presentation of these statements accordingly.

NOTE B - GRANT RECEIVABLES

Grant receivables consisted of the following at June 30, 2019:

UW of Comal Co.	\$ 35,000
CVC	20,622
OVAG	7,544
Other	12,670
	<u>\$ 75,836</u>

NOTE C - PLEDGE RECEIVABLES

Pledge receivables are unconditional promises to give that are recognized as contribution when the promise is received. Pledge receivables are recorded at fair value at the date of promise. As of June 30, 2019, pledge receivables were \$585,017. Management has not recorded allowances for un-collectibles based on historical collections that pledges will be collected.

NOTE D - IN KIND DONATIONS

Community volunteer advocates donate time and mileage in their work as court appointed advocates. For the year ended June 30, 2019, recorded value of in-kind donations included the following:

Volunteer hours	\$ 170,133
Mileage	10,517
Donations (goods and services)	61,218
Capital campaign- construction costs	100,112
Rent and utilities	22,200
	<u>\$ 364,180</u>

CASA OF CENTRAL TEXAS, INC.  
 NOTES TO FINANCIAL STATEMENTS  
 FOR THE YEAR ENDED JUNE 30, 2019

NOTE E - PENSION PLAN

CASA of Central Texas participates in a pension plan that is available to all employees after their initial 90-day training period. CASA contributes 5% of gross wages each pay period to the plan and employees can contribute through payroll deductions. CASA's contributions for the year ended June 30, 2019 totaled \$37,751.

NOTE F - DONOR RESTRICTED NET ASSETS

Donor restricted net assets consisted of \$904,592 as of June 30, 2019:

Capital campaign funds	\$845,065
NBACF Endowment fund	\$ 59,527

NOTE G – LIQUIDITY AND AVAILABILITY OF FINANCIAL RESOURCES

The following reflects the organization's financial assets as of the financial position date, reduced by amounts not available for general use because of donor-stipulated restrictions.

	2019
Cash and cash equivalents	\$ 1,066,278
Grants receivable	660,852
Total financial assets	<u>1,727,130</u>
Donor restrictions	<u>904,592</u>
Financial assets available to meet cash needs for expenditures within one year	<u>\$ 822,538</u>

The organization's primary sources of cash flows during the year are related to contributions and grant awards from various individuals, foundations and agencies. These revenue sources provide a consistent inflow of cash throughout the year.

NOTE H - SUBSEQUENT EVENTS

Subsequent events have been evaluated through December 6, 2019, which is the date the financial statements were available to be issued. Events occurring after that date have not been evaluated to determine whether a change in the financial statements would be required. CASA of Central Texas, Inc. is not aware of any material subsequent events.

CASA OF CENTRAL TEXAS, INC.  
SCHEDULE OF CVC/OAG FUNDS  
FOR THE YEAR ENDED JUNE 30, 2019

<u>Grantor/ Program Title</u>	<u>Program or Award Amount</u>	<u>Accrued or [Deferred] Revenue at 7/1/2018</u>	<u>Receipts</u>	<u>Disbursements</u>	<u>Accrued or [Deferred] Revenue at 6/30/2019</u>
CVC					
2017-2018					
CVC-17-58	228,313	38,828	74,664	35,836	-
CVC-2019-70					
	<u>243,644</u>	<u>-</u>	<u>186,254</u>	<u>206,876</u>	<u>20,622</u>
Totals		<u>\$ 38,828</u>	<u>\$ 260,918</u>	<u>\$ 242,712</u>	<u>\$ 20,622</u>

CASA OF CENTRAL TEXAS, INC.  
SCHEDULE OF VOCA FUNDS  
FOR THE YEAR ENDED JUNE 30, 2019

<u>Grantor/ Program Title</u>	<u>Program or Award Amount</u>	<u>Accrued or [Deferred] Revenue at 7/1/2018</u>	<u>Receipts</u>	<u>Disbursements</u>	<u>Accrued or [Deferred] Revenue at 6/30/2019</u>
VOCA					
2017/2018 Programs 13548-18	214,540	32,986	62,796	29,810	-
2018/2019 Programs 13548-18	<u>223,972</u>	<u>-</u>	<u>135,223</u>	<u>135,223</u>	<u>-</u>
Totals		<u>\$ 32,986</u>	<u>\$ 198,019</u>	<u>\$ 165,033</u>	<u>\$ -</u>

CASA OF CENTRAL TEXAS, INC.  
 SCHEDULE OF OVAG FUNDS  
 FOR THE YEAR ENDED JUNE 30, 2019

Grantor/ Program Title	Program or Award Amount	Accrued or [Deferred] Revenue at 7/1/2018	Receipts	Disbursements	Accrued or [Deferred] Revenue at 6/30/2019
OVAG					
2017/2018 Programs	42,000	7,165	13,260	6,095	-
OVAG 1768159					
2018/2019 Programs					
OVAG 1986140	42,000	-	31,827	39,371	7,544
Totals		\$ 7,165	\$ 45,087	\$ 45,466	\$ 7,544

CASA OF CENTRAL TEXAS, INC.  
 SCHEDULE OF COSM-CDBG FUNDS  
 FOR THE YEAR ENDED JUNE 30, 2019

Grantor/ Program Title	Program or Award Amount	Accrued or [Deferred] Revenue at 7/1/2018	Receipts	Disbursements	Accrued or [Deferred] Revenue at 6/30/2019
City of San Marcos-CDBG 2018/2019	15,000	-	15,000	15,000	-

## **CASA of Central Texas, Inc.**

By-Laws, Article XII I- General Provisions

### **13.05 Nondiscriminatory Practices**

The Corporation, its Directors, Officers and employees shall not discriminate against any individual or group of individuals on the basis of age, gender, sexual orientation, race, ethnicity, nationality, disability or religion.

City of San Marcos  
Community Development Block Grant – Coronavirus Response  
(CDBG-CV)  
**2020 Project Application**



City of San Marcos

Planning and Development Services Department

630 East Hopkins

San Marcos TX 78666

<https://www.sanmarcostx.gov/3065/CDBG-Action-Plans>

For more information: Carol Griffith 512.393.8147 [cgriffith@sanmarcostx.gov](mailto:cgriffith@sanmarcostx.gov)

## APPLICANT INSTRUCTIONS

*Persons with limited English proficiency may request assistance by contacting the City at 512-393-8250. (Las personas con habilidad limitada de Inglés puede solicitar la asistencia poniéndose en contacto con la Ciudad en 512-393-8250.)*

Thank you for your interest in the City of San Marcos' Community Development Block Grant - Coronavirus Response (CDBG-CV) program. The City will receive \$425,261 for immediate use upon acceptance of the City's Action Plan by the US Department of Housing and Urban Development (HUD).

Applications may be submitted by for-profit entities, non-profit organizations, government agencies, and City departments; the City is not accepting applications from individuals who need personal housing or other financial assistance. Applications should be for the creation of a program or project that provides assistance to individuals or businesses.

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 512-393-8074 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov).

## APPLICATION INFORMATION

**2020 Application Period:** May 1, 2020-May 20, 2020

APPLICATION SUBMISSION DEADLINE: MAY 20,2020 AT 5:00 PM

**Submit one signed application electronically to:** Carol Griffith, [cgriffith@sanmarcostx.gov](mailto:cgriffith@sanmarcostx.gov)

Please call to verify your application has been received: Carol Griffith, 512-393-8147. *I am currently teleworking; please leave a voicemail and I will be notified.*

## PROJECT ELIGIBILITY

Organizations may propose more than one program or project in separate applications.

### CDBG-CV Requirements

CDBG-CV funds must meet typical CDBG requirements and must be used to prevent, prepare for, and respond to Coronavirus, which can include responding to the economic effects as well as the health impacts of the COVID-19 pandemic. Please note that it has now been determined that up to 100% of the funds can be used for Public Services.

HUD has provided the attached Quick Guide to CDBG Eligible Activities to Support Infectious Disease Response. Additional resources will continue to be posted to [www.hudexchange.info/programs/cdbg/disease/](http://www.hudexchange.info/programs/cdbg/disease/).

Proposed programs and projects will be added to the 2019-2020 CDBG Action Plan so the funds can be used as soon as possible after a required five day comment period and approval by the San Marcos City Council and HUD.

### High Priority Needs

Proposed projects must address one of the High Priority Needs stated in the 2015-2019 Consolidated Plan. It is anticipated that Economic Development will be added as a High Priority Need category through an amendment on June 2, so applications will also be accepted in that category:

- Public Services
- Economic Development
- Affordable Housing
- Public Facilities/Infrastructure/Transportation
- Clearance Activities
- Program Administration

**Not everything in these categories can be funded through CDBG-CV.** Please refer to the Guide to National Objectives and Eligible Activities for CDBG-CV Entitlement Communities for descriptions of projects that can be funded through CDBG-CV. It can be found at the following link:

<https://www.hudexchange.info/resource/89/community-development-block-grant-program-CDBG-CV-guide-to-national-objectives-and-eligible-activities-for-entitlement-communities/>

### **National Objectives**

All funded projects must also meet one of the three CDBG program National Objectives:

- Benefit low to moderate income individuals or families
- Eliminate slum or blight
- Urgent Need (such as disaster recovery)

### **City of San Marcos Human Services Funding:**

It is the City's policy to fund programs from only ONE city funding source. For example, if you apply for CDBG-CV funds for a program, you cannot apply for City of San Marcos Human Services funding for the same program.

### **USE OF FUNDS TO SUPPORT COVID-19 RESPONSE**

Organizations may propose more than one program or project in separate applications.

CDBG-CV funding is particularly geared toward supporting low-to-moderate income people who have been impacted by the COVID-19 pandemic.

For the City of San Marcos, the following programs listed in the Quick Guide may be of particular benefit:

1. Provision of assistance to private, for-profit entities when appropriate to carry out an economic development project, such as:
  - Preventing job loss caused by business closures related to social distancing by providing short-term working capital assistance to small businesses to enable retention of jobs held by low to moderate income persons.
  - Providing technical assistance, grants, loans and other financial assistance to establish, stabilize and expand microenterprises that provide medical, food delivery, cleaning and other services to support home health and quarantine.
2. Provision of new or quantifiably increased public services, such as the following.
  - Delivering meals on wheels to quarantined individuals or individuals who need to maintain social distancing due to medical vulnerabilities.
  - Providing equipment, supplies and materials necessary to carry out a public service.

Do not let this list limit your ideas, however! Please be creative! You may be in a position to know best about a need that is particularly suited to this funding. What use of these funds will have the greatest benefit for San Marcos?

### **APPLICATIONS ARE PUBLIC RECORDS**

**Once an application is submitted to the City, it becomes a public record and as such is open for public review. All or part of the application may be posted on the City's webpage and included in City Council packet materials. Please keep this in mind when submitting personal information for your staff, board, or clients.**

### **APPLICATION CALENDAR AND CITIZEN PARTICIPATION**

The City of San Marcos values the input of its citizens and offers the following opportunities to participate in the deliberation on the best uses of the CDBG-CV funding. Scheduled dates and venues are subject to change. The hearing and funding allocation may be held virtually due to the current status of the COVID-19 pandemic.

Please check the website <https://www.sanmarcostx.gov/3065/CDBG-Action-Plans> for the latest information.

- Public Hearing to review applications and receive citizen comments – **June 2, 2020 at the City Council meeting**

- Public comment period on the proposed CDBG-CV programs and projects – **June 7-13, 2020**
- City Council CDBG-CV funding allocations– **June 16, 2020 at the City Council meeting**

## FUNDING AWARDS

Submitting a complete application does not guarantee that your request will be funded. The CDBG-CV grant can fund only the actual, allowable, and reasonable costs of a proposed project, and requests for funding generally exceed the amount of funding available. Funding allocations are decided by the City Council, subject to HUD approval.

## AVAILABILITY OF FUNDS

Funds awarded for CDBG-CV will be available as soon as City Council and HUD approvals have been received and any necessary environmental review has been completed. The organization’s Subrecipient Agreement with the City must be fully executed prior to the expenditure or commitment of program funds. The appropriate level of environmental review must be completed by Community Initiatives Division staff before any funds are expended or obligated. Environmental reviews typically take 45 to 60 days to complete for small construction projects and about 15 days for projects that are not likely to have a physical impact on the environment. **No reimbursement will be possible for goods purchased or contracts executed prior to meeting these requirements.**

## ORGANIZATION ELIGIBILITY REQUIREMENTS

- Organizations applying for Public Services funding can be a public or private non-profit agency, a for-profit entity, a public housing authority, a City of San Marcos department, or other government entity.
- Non-profit agencies must be established, operating agencies as evidenced through documentation required in the application. Exhibits to show tax exempt status are required.
- Faith based agencies are eligible to apply on the same basis as other non-profit organizations. However, CDBG-CV funds cannot be used to support worship, proselytizing, or religious instruction. Religious activities must be offered separately, in time or location, from the CDBG-CV supported activity. Participation in the religious activity must be voluntary for the beneficiaries of the CDBG-CV-funded project. Projects operated by faith-based agencies must be available to all community members and not restricted to the organization’s membership or congregation.

## NON-DISCRIMINATION AND ACCESSIBILITY

Each agency receiving CDBG-CV funds must:

- Provide assurance that it will conduct its business in compliance with the non-discrimination requirements of the County, State, and Federal governments as applicable.
- Have Equal Opportunity in Employment policies.
- Agree to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

## FINANCIAL CAPACITY AND AUDITING REQUIREMENTS

The *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* issued by the federal Office of Management & Budget (OMB) requires that any organization that expends \$750,000 or more in federal financial assistance in a fiscal year must secure an annual audited financial statement.

The City has established the following financial statement requirements for organizations assisted with CDBG-CV program funds, based on the total assets of the applicant. The term “total assets” is defined to mean the total amount of liquid assets that is documented to be available to the Subrecipient at the time the funding is approved.

- A. CPA preparation of financial records is not required if the Subrecipient has total assets of \$15,000 or less in value;

- B. A compiled financial statement is required if Subrecipient has total assets greater than \$15,000 and less than or equal to \$100,000 in value.
- C. A reviewed financial statement is required if Subrecipient has total assets greater than \$100,000 and less than or equal to \$200,000 in value.
- D. An audited financial statement is required if Subrecipient has total assets of more than \$200,000 in value. (In an “Audited” statement a CPA provides an in-depth study of the records, organizes them into a statement, and issues an opinion to their validity.)

**Organizations receiving CDBG-CV funds must submit the required financial statement which has been prepared by a Certified Public Accountant to the City within nine months from the organization’s fiscal year end and not more than 30 days after the organization’s receipt of the statement.**

## **INSURANCE AND BONDING**

Agencies receiving CDBG-CV funding must provide Workers’ Compensation Insurance coverage for all of its employees involved in the performance of the funded project. At the time of contract signing, funded agencies must provide evidence of insurance including, but not limited to, multi-peril property and liability, worker’s compensation, automobile liability, and other coverage as deemed necessary by the City. In addition, upon funding the City of San Marcos, Officers, Employees and agents must be added as additional insured to the policy.

## **PROJECT IMPLEMENTATION SCHEDULE AND PERFORMANCE MEASUREMENT GOALS**

Performance measurement is an effective management technique that enables those who receive grant funds (Subrecipients) and the City to analyze the benefits of their investments. It is a mechanism that tracks the progression of projects and evaluates their overall effectiveness and success in meeting project goals. **One of the most important overall goals in planning a CDBG-CV project is the completion of the project in a timely manner.**

The City is monitored by HUD to ensure that the CDBG-CV grant program has benefited low-to-moderate-income families; one success measurement that the City must meet is the expenditure of its program funds in a timely manner. The City must take into account the project schedules for each project that is proposed to ensure that the overall CDBG-CV program will comply with its federally mandated timeliness ratio. Thus, it is critical that each applicant accurately forecasts the time that will be involved in completing each step of a proposed project.

**Please use the format included in this application to outline the expected Implementation Schedule for your project.** This document will be incorporated into the Subrecipient Agreement for funded projects. The City will monitor the performance of Subrecipients against the goals and performance standards established by this document. Substandard performance as determined by the City will constitute noncompliance with the Subrecipient Agreement. If action to correct such substandard performance is not taken by the Subrecipient with a reasonable period of time after notification by the City, contract suspension or termination processes may be initiated.

## **NOTES FOR ORGANIZATIONS RECEIVING FEDERAL FUNDS**

### **Subrecipient Registration Requirements:**

- Organizations receiving CDBG-CV funding (Subrecipients) must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number. If you do not have a DUNS number, go to <http://fedgov.dnb.com/webform> to register.
- Funded applicants must also have an active registration with System of Award Management (SAM). To register with SAM, go to [www.sam.gov](http://www.sam.gov) to register. **You must have a DUNS number prior to registering with SAM.** Subrecipients must provide proof of SAM registration prior to the execution of a Subrecipient Agreement. This is required when federal funds are being utilized.

## INCOME LIMITS

Income limits are established by HUD on an annual basis for the purpose of establishing CDBG-CV grant eligibility. The limits are based on household size. Income is calculated for every adult 18 and older residing in the household. HUD considers 80% and below to be low income. San Marcos CDBG-CV Area Median Income (AMI) Limits are based on the Median Family Income for the Austin/Round Rock Metropolitan Statistical Area (MSA). The current Median Family Income for the Austin-Round Rock MSA is \$97,600, which became effective April 8, 2020.

<b>Family Size</b>	<b>1 Person</b>	<b>2 Person</b>	<b>3 Person</b>	<b>4 Person</b>	<b>5 Person</b>	<b>6 Person</b>	<b>7 Person</b>	<b>8 Person</b>
80% AMI	\$54,700	\$62,500	\$70,300	\$78,100	\$84,350	\$90,600	\$96,850	\$103,100

**SUPPLEMENTAL ITEM CHECKLIST**

**CDBG-CV PROGRAM**

**DUE DATE: MAY 20, 2020**

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**Submit one copy of the following items:**

**Required:**

- N/A Board of Directors list including position/title on board.
- N/A Contact numbers for Board Chair or President and Treasurer.
- N/A Resolution or Board Minutes showing approval to submit an application and designation of person who will sign documents on behalf of the organization.
- Organization Chart
- N/A Articles of Incorporation
- N/A Bylaws
- N/A Tax Exempt Determination Letter (for non-profit organizations)
- N/A Organization's Current Budget (2019-2020) and Proposed Budget for next fiscal year
- N/A Most Recent audit or CPA prepared review.
- Description of employees, board members, volunteers who will work with the project
- Non-discrimination Policy Statement

**If applicable:**

- Service area boundary for area benefit projects **City of San Marcos will serve as the boundary**
- N/A Fee schedule or structure for the project proposed for funding
- Copy of program application if one is used to select beneficiaries
- Description of how applicant income will be determined if there are direct beneficiaries
- N/A Detailed explanation of any lawsuits, judgments, or bankruptcy proceedings
- N/A Job descriptions for new positions expected to be filled using CDBG-CV funding

CITY OF SAN MARCOS  
2020 CDBG-CV APPLICATION



NOTE: This form is not to be used for applicants seeking funds to support programs for public or social services.

Due Date: May 20, 2020

I. APPLICANT CONTACT INFORMATION

Applicant Organization: City of San Marcos - Economic Development Department & San Marcos Area Chamber of Commerce

Contact Name: Scott Hardwick - City of San Marcos; Jason Mock - Chamber of Commerce

Telephone: (512) 393-8059

Mailing Address: 630 E Hopkins St, San Marcos, TX 78666

Physical Address, if different from mailing address: \_\_\_\_\_

Contact E-Mail Address: [shardwick@sanmarcostx.gov](mailto:shardwick@sanmarcostx.gov); [jasonm@sanmarcostexas.com](mailto:jasonm@sanmarcostexas.com)

Web Address: <http://www.sanmarcostx.gov/212/Economic-Development>

Who is authorized to execute program documents? Scott Hardwick, Jason Mock, Josie Falletta

II. APPLICATION SUMMARY INFORMATION

Project Name: COVID-19 Small Business Recovery Grant

Amount of CDBG-CV Funds Requested: \$200,000

Project Location: City of San Marcos

High Priority Need

National Objective

Affordable Housing

Benefit to Low/Mod Income Persons

Public Services [Use the Public Services Application]

Slum or Blight Elimination/Prevention

Public Facilities

Urgent Need (such as disaster)

Economic Development

Will all CDBG-CV funds for this project be expended by July 15, 2021?  Yes  No

If "No", what percent is expected to be completed by that date? \_\_\_\_\_

### III. PROJECT DESCRIPTION

#### SUMMARY

Summarize how CDBG-CV funds are proposed to be used:

#### **Overview**

The CDBG-CV funds will be distributed as grant funding to small businesses and micro-enterprises within the City of San Marcos to assist with recovery from the COVID-19 pandemic, contributing to employee retention of low to moderate income persons. The grant program will additionally provide technical assistance to small and micro businesses via workshops (virtual or in person as appropriate) and services by local vendors. While Economic Development will act as the primary applicant, this project is a joint, public-private effort between Economic Development, the Main Street Program and the San Marcos Area Chamber of Commerce. These three entities are dedicated to providing sustained business support to the local community, providing technical assistance, working capital and best practices for how to safely recover and reopen following the COVID-19 pandemic.

#### **Program**

##### I. Pre-Screening

- a. Applicants will be screened for eligibility by a subcommittee that could include: Main Street Board Members, Chamber of Commerce Board Members and community business leaders.
- b. View Exhibit A - Application.

##### II. Mandatory Workshop

- a. Successful applicants will attend a mandatory workshop on allowable grant expenditures and best practices for recovery. The workshop will include the following topics: business safety redesign, sanitation training and best digital practices for social distancing.

##### III. Grant Administration

- a. Economic Development requests \$200,000 in CDBG-CV funding. Of this, \$160,000 will be distributed as grant funding to small and micro businesses. The remaining 20%, or \$40,000, will be allocated as administrative fees. Economic Development will enter into an agreement with the Chamber to provide staffing for grant administration.
- b. Applicants are eligible to receive up to \$5,000 per business. Funds may be used for the following activities:
  - i. Operational Safety - Redesign physical space in order to ensure safety and social distancing. Expenses might include: plexiglass dividers, restructuring of seating, improved air filtration systems, etc.
  - ii. Sanitation Training and PPE - Learn best practices for cleaning options, techniques, technology, products & services and appropriate PPE for businesses to ensure customer safety and social distancing. Expenses might include: PPE, cleaning and sanitation products, staff training on best practices, etc.
  - iii. Digital Redesign for Social Distancing - Set up and implement e-commerce, contactless payment, online ordering, online reservation of services, etc. Expenses may include: POS (point of sale) set up fees, e-commerce set up fees, handheld card reader devices, etc.
- c. Assuming all applicants request the full award amount, this program has the capacity to assist 32 local small businesses and microenterprises.

##### IV. Vendors

- a. For the three primary grant use categories, local vendors will be preferred. In this manner, the grant monies are reinvested back into the local community, benefitting more than just the grantee.

### COVID-19 PANDEMIC IMPACT:

Summarize how this project directly addresses an impact from the current COVID-19 pandemic:

#### **Impact**

Almost all small businesses have been impacted by economic disruptions related to COVID-19. Among the negatively impacted small businesses most were forced to temporarily close, have experienced slower sales, supply chain has been disrupted, and have concerns about gaining customer and employee confidence as a safe business.

Small businesses are a recognized proving ground for entrepreneurs, a vibrant source of innovation and competition, and an essential source of employment. They are suppliers and customers to the broader economy and deeply embedded in local communities. Many were vulnerable even before the crisis, with the median small business holding a 27-day cash buffer in reserve.

A recent survey of San Marcos businesses conducted in April 2020, detailed that 86% of the 53 respondents owned businesses with 50 or less employees. Additionally, of those 53 respondents 83% had lost business due to COVID-19. Our businesses located in the downtown area of San Marcos number approximately 295. Approximately, 108 of these businesses had to close due to governmental restrictions placed on them during April 2020. As those businesses attempt to reopen, they are challenged with trying to adjust their business model to gain as many customers as possible.

This grant program will be impactful in the following ways:

- assisting with costs associated with redesigning their operations to meet new governmental requirements and recommendations for health and safety;
- helping with education and costs of sanitation techniques, technology available, and personal protection equipment - instilling confidence in both customers and employees that all necessary steps are being taken to protect their health;
- assisting with costs to help the business gain more of an online presence, increasing its customer interaction digitally, and taking contactless payment - ultimately increasing sales.

### PROJECT SCOPE:

Please check all statements that apply to this project:

- All project design work is complete for this project (plans, specifications, etc.)
- This project will include selection of professional service providers (architect, engineer, etc.)
- This project includes acquisition of real property
- This project includes the rehabilitation of existing buildings
- This project includes new construction
- This project includes demolition of existing structures

\_\_\_\_\_ This project includes a public facility (such as a senior center)

## **ACCOMPLISHMENTS**

Once the project is completed, how can its success be measured?

### **Success Measurement**

We believe the success of this program will have several indirect effects in the community but the following can be measured as direct impacts of success.

The first measure is by how many small businesses get back to being open as well as operating at their normal business hours. As this application is being written there are still businesses that have not reopened to the public. An Executive Order by Governor Abbott in April 2020 shut down many nonessential businesses. The San Marcos community is now in May 2020 phasing-in the ability for nonessential businesses to reopen. The guidelines for reopening are outlined in The Governor's Report To Open Texas issued on April 27, 2020. As part of the phased-in reopening, there are several health and safety recommendations for businesses to adopt into their business operations. The burden of these new business practices is what our assistance program looks to help alleviate, while also instilling confidence in the consumer to know that businesses in our community are operating in the safest way possible.

The second measure of success is being able to verify how many jobs were retained and how many jobs created by the businesses receiving assistance through the program. Reopening businesses will be operating under a different business model than they were prior to COVID-19. If they are able to retain the same number of employees it takes for them to reopen then that is a success. Additionally, if during their operations, after reopening, the business needs to hire additional employees then those new job positions will be providing additional economic opportunity for local San Marcos residents.

The third measure of success is the number of business applicants to the program and how quickly it takes to disperse all the funds available. If there is a strong demand in applications then that will signal that there is a need in the business community and this program has helped to meet the need.

#### IV. BENEFICIARIES

The CDBG-CV program allows several different methods of documenting that a project benefits low to moderate income persons. *Direct Benefit* projects provide services directly to an individual or family; for example, a housing rehabilitation project is a Direct Benefit project. *Area Benefit* projects benefit a geographic location; for example, a Sidewalk Project.

#### DIRECT BENEFIT PROJECTS:

*Applicant must be able to document that at least 51% of the beneficiaries have an annual income that is at or below 80% of the Area Median Income and are San Marcos residents.*

1. How many unduplicated individuals or households are expected to be served by this project? \_\_\_\_\_

**Presumed Benefit:** Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit a population in which at least 51% of the population is low-to-moderate income. Individual income verification is not required, although residency and other client statistics must be collected. The Presumed Benefit categories are:

a. Elderly persons (62 or older)	e. Battered spouses
b. Homeless persons	f. Abused children
c. Persons living with AIDS	g. Migrant farm workers
d. Illiterate persons (includes non-English speakers)	h. Severely disabled adults (Census Bureau definition)

2. Will all of the program's beneficiaries be in a Presumed Benefit Category? \_\_\_ Yes or \_\_\_ No

If "yes", list the categories: \_\_\_\_\_

3. If the program's beneficiaries cannot be considered "Presumed", how will income eligibility be determined?

\_\_\_\_\_ Projection of the individual or family's income based on family size; or,

\_\_\_\_\_ Other. Please provide details of how eligibility will be determined:

\_\_\_\_\_

#### AREA BENEFIT PROJECTS:

*Some projects, such as a senior center or a park, serve an area rather than individual persons. HUD defines an area benefit project as an activity which is available to benefit all of the residents of an area which is primarily residential. In order to meet the eligibility requirement of benefitting low to moderate persons, the area served must be an area where at least 51% of the residents are low/mod income persons. Most, but not all, San Marcos residential neighborhoods are low/mod.*

1. Will this project be available to benefit all persons in the service area? \_\_\_ Yes \_\_\_ No

2. Are the neighborhoods that will benefit from this project primarily residential? \_\_\_ Yes \_\_\_ No

If "No", please explain: \_\_\_\_\_

3. What neighborhoods will benefit from this project? Please list either individual neighborhoods or describe the boundaries that will define the service area. \_\_\_\_\_  
\_\_\_\_\_

### **PUBLIC FACILITY PROJECTS**

In the CDBG-CV program, Public Facilities are broadly interpreted to include all improvements and facilities that are either publicly owned or that are traditionally provided by the government, or owned by non-profit organizations, and operated so as to be open to the general public. Facilities providing shelter for persons having special needs are also considered to be public facilities.

- Public facility projects cannot include the costs of operating and maintaining public facilities, costs of purchasing construction equipment, the costs of furnishings and other personal items such as uniforms, or new construction of public housing.
- Public facilities are intended to benefit all the residents of an area; thus, in most cases it must serve an area having at least 51% low/mod population.
- Public facilities owned by a nonprofit must be made available to the general public and must be open for use by the general public during all normal hours of operation.
- Reasonable fees may be charged for the use of the facilities assisted with CDBG-CV funds, but charges, such as excessive membership fees, which will have the effect of precluding low/mod income persons from using the facilities, are not permitted.

1. Who is/will be the owner of the facility? \_\_\_\_\_
2. Will fees be charged for the use of the facility? \_\_\_\_\_ Yes or \_\_\_\_\_ No  
*If yes, please attach a fee schedule.*
3. How will the facility be made available to the general public? \_\_\_\_\_

### **ECONOMIC DEVELOPMENT PROJECTS**

Economic Development projects must meet standard CDBG requirements and CDBG-CV requirements. For more information on standard CDBG requirements for economic development programs, please see:

<https://files.hudexchange.info/resources/documents/Basically-CDBG-Chapter-8-Section-108.pdf>.

Among other things, the selected programs must be able to demonstrate that:

- A. At least 51% of beneficiaries have low-to-moderate incomes, OR the project benefits a specified area in which the majority of people have low-to-moderate incomes.
- B. The project directly addresses an impact of the COVID-19 pandemic.

#### **A. Identifying Activity Beneficiaries:**

Applicants and businesses choosing option one below must provide survey results or other documentation showing that at least 51% of the beneficiaries are or will be low-to-moderate income people **prior to release of funding from the City.**

Applicants and businesses choosing option two below must provide adequate supporting documentation **with the application** (i.e., Census tract map, poverty rate, etc.).

1. The business may survey all persons filling a created/retained job to determine income status. This determination is based on the family's size and previous 12-month income and is documented on the Family Income/Size Certification form, which will be provided by the City; OR

2. The persons employed by the business for created/retained jobs may be presumed to be a low-or moderate-income person if the person resides within a census tract that meets the following HUD-determined criteria:

- a. The census tract has a poverty rate of at least 20% as determined by the most recently available decennial census information; OR
- b. The census tract does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30% as determined by the most recently available decennial census information; OR
- c. The census tract shows evidence of pervasive poverty and general distress by meeting at least one of the following standards:
  - i. the census tract has a poverty rate of at least 20%; OR
  - ii. Has at least 70% of its residents who are low-and moderate-income persons; OR
  - iii. The assisted business is located within a census tract that meets the requirements of this subparagraph, and the job under consideration is to be located within that census tract.

To obtain a Census map of a specific area, visit the U.S. Census Bureau web site (<http://www.census.gov/geo/maps-data/maps/block/2010/>).

To obtain census tract poverty rates or low-and moderate-income person rates visit the American FactFinder web site (<http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>).

For census tract poverty rates select “Topics” then “People” then “Poverty” then close the select topics pop up page, then select the “Geographies” option, then the “Census Tract” option, then the “State” option, then the “County” option, then the specific census tract. Click on “Add to Your Selections” then close the geographies pop up page, then select Table #S1701 Poverty Status in the Past 12 Months based on the most current United States Census Bureau American Community Survey (ACS) 5-year estimates. The Percent below poverty level for the specific census tract will be located on the first line of data.

**B. HUD has provided the following examples of applicable projects:**

1. Provision of assistance to private, for-profit entities, when appropriate to carry out an economic development project.
  - Provide grants or loans to support new businesses or business expansion to create jobs and manufacture medical supplies necessary to respond to infectious disease.
  - Prevent job loss caused by business closures related to social distancing by providing short-term working capital assistance to small businesses to enable retention of jobs held by low- and moderate-income persons.
2. Provision of assistance to microenterprises.
  - Provide technical assistance, grants, loans, and other financial assistance to establish, stabilize, and expand microenterprises that provide medical, food delivery, cleaning, and other services to support home health and quarantine.



## LINE ITEM BUDGET

Please use the following format to present your proposed line item budget. Secured funds are funds on-hand, pledged, or awarded. City Council has waived fees for Construction Permitting and Development Code Processes for CDBG-CV projects. Impact fee charges, when applicable, are not waived. Round budget numbers to the nearest dollar.

CDBG-CV funds cannot be spent or obligated until final environmental clearance for the project has been obtained. HUD has interpreted "obligated" to mean that we cannot execute contracts or take bids as that will "obligate" funds. The environmental review is generally prepared by the City's CDBG-CV staff. **Please include \$1,000 for environmental fees for rehabilitation, new construction, demolition or clearance, and land acquisition projects.** No environmental expenses are required for professional service projects that will not include construction.

Budget Item	Total Budget	CDBG-CV Funding Proposed	Other Funding Source(s)	Secured Funds available at project start	Additional Funds Needed to Complete Project
<b>Project Soft Costs</b>					
Environmental Review Costs	\$0	\$0			
Professional Services - Administration	\$40,000	\$40,000	-	-	-
<b>Project Hard Costs</b>					
Grant Funding for Small Business COVID-19 Recovery	\$160,000	\$160,000	-	-	-
<b>BUDGET TOTAL</b>	<b>\$200,000</b>	<b>\$200,000</b>			

## VI. PROJECT IMPLEMENTATION SCHEDULE

The first activity should be environmental review. Projects that do not impact the physical environment generally take about 15 days for environmental review – this would include public services, professional services, homebuyer assistance.

Projects that will potentially have a physical impact on the environment (construction or demolition, for example) generally take 45 to 60 days for environmental review. If the project is located in a FEMA floodplain, add 30 additional days.

Please include reasonable time for procurement activities, including procurement of professional service providers.

<b>Projected Implementation Schedule with Performance Goals</b>			
<b>Activity Description</b>	<b>Start Month/Year</b>	<b>End Month/Year</b>	<b>Performance Measurement Goal</b>
<i>Example: Procurement of Architect</i>	<i>October 2020</i>	<i>December 2020</i>	<i>Contract executed</i>
City Environmental Review	July 2020	August 2020	Approval to use funds
Program Announcement	August 2020	September 2020	Press release and social media announcements
Applications Reviewed and Accepted	September 2020	June 2021	Quarterly Reports Completed
Program Ends	July 2021		All funds distributed and documents submitted

## VII. ORGANIZATION INFORMATION

### REQUIRED ATTACHMENTS

Please attach the following documents with your application, as applicable:

- Organizational Chart
- Articles of Incorporation
- Proof of Tax Exempt status
- Current year budget
- Most recent balance sheet and financial statement
- A listing of key staff and employees who will work directly with the proposed project, their primary job duties, and other pertinent information relating to your proposed project.
- If CDBG-CV funds will be used to hire new personnel, please provide a brief job description of the proposed position(s).
- A listing of your board of directors, including position or title on the board. Provide a contact number for the Chair or President and Treasurer. Note: Information provided will be available for public review.
- Board minutes and resolution authorizing application submittal and specifying who will sign documents. *(The organization's governing board must approve the submittal of this funding application and designate a person who is authorized to execute program documents.)*

### BACKGROUND INFORMATION

1. Organization Type:  
 501(c) Non-Profit Corporation       Public Corporation       Government Entity  
Other: \_\_\_\_\_
2. Name and title of Board of Directors Chair or President: \_\_\_\_\_ N/A
3. How many years has your organization been in business? \_\_\_\_\_ N/A
4. Organization's Taxpayer Identification Number (EIN): \_\_\_\_\_ 74-6002238
5. Organization's Dun and Bradstreet DUNS Number: \_\_\_\_\_ N/A
6. Is the organization currently registered in the federal System for Award Management (SAM)?  Yes  No

### FINANCIAL INFORMATION

1. What is the date of your fiscal year end? \_\_\_\_\_ September 30
2. Does your organization have a purchasing policy?  Yes       No
3. Has your organization currently or within the past five years had any litigation that is pending or has been resolved?  
 Yes       No  
*If "Yes", please attach a summary of the litigation and its status; including any outstanding judgments.*
4. Has your organization filed a petition for bankruptcy or has a petition for bankruptcy been filed against your organization?  
 Yes       No  
*If "Yes", please attach an explanation that includes the current status.*

5. During the last fiscal year did your organization spend \$750,000 or more in Federal financial assistance?  
 Yes       No
6. What level of financial review does your organization obtain from an independent source? Select from the following options:  
 Single Audit       Audited Financial Statement  
 Reviewed Financial Statement       Compiled Financial Statement  
 No independent review       Other (describe):
7. What period was covered by your most recent financial review? FY 2020

**PERSONNEL AND POLICIES**

1. Name and title of your chief administrator Scott Hardwick and Jason Mock  
 Number of years in this position? 6 months and 3 years
2. Total number of current employees at all locations 5
3. Total number of current employees who will be involved in this project 4
4. Total number of new employees expected to be hired for the project 0
5. Does your organization have a personnel policy manual?     Yes       No  
 Does it include a procedure for filing grievances?             Yes       No  
 Does it include a non-discrimination clause?                     Yes       No
6. Does your organization maintain a written code or standards of conduct that governs the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds?  
 Yes       No
7. Separation of duties for financial transactions regarding this project (respond with job title):  
**Pending determination by the Community Initiatives Division whether the Chamber can be the sole subrecipient.**
- a. Who will approve payment of incurred expenses? \_\_\_\_\_
- b. Who will actually prepare the payment check? \_\_\_\_\_
- c. Who will sign checks paying project expenses? \_\_\_\_\_
- d. Who posts the transaction to your financial records? \_\_\_\_\_
- e. Who reconciles monthly bank statements? \_\_\_\_\_

**INSURANCE, BONDING, AND WORKER'S COMPENSATION**

1. Does your organization have liability insurance coverage?     Yes       No
2. If yes, in what amount? \_\_\_\_\_
3. Does your organization pay worker's compensation in accordance with Federal and state laws?  
 Yes       No       N/A
4. Does your organization have fidelity bond coverage for principal staff members who handle the organization's accounts?             Yes       No
5. Will vehicles owned by the organization be used in conjunction with the proposed project?  
 Yes       No
6. If yes, what level of liability insurance is maintained on the vehicles? \_\_\_\_\_

## VIII. CONFLICTS OF INTEREST (24 CFR 570.611; 24 CFR 85.36; AND 24 CFR 84.42)

Two sets of conflict of interest provisions apply to activities carried out with CDBG-CV funding. The first set, applicable to the procurement of goods and services by subrecipients (*funded applicants*), is the procurement regulation found in the *Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards as codified in Title 2, Part 200 of the Code of Federal Regulations*. The second set of provisions is located at 24 CFR 570.611(a)(2).

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

1. Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:
  - An employee, officer, or agent of the subrecipient;
  - Any member of an employee's, officer's, or agent's immediate family;
  - An employee's, agent's, or officer's partner; or
  - An organization which employs or is about to employ any of the persons listed in the preceding sections.
2. Require that employees, agents, and officers of the subrecipient neither solicit nor accept gratuities, favors, or anything of value from contractors or parties to sub-agreements. However, subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
3. Provide for disciplinary actions to be applied for any violation of such standards by employees, agents or officers of the subrecipient.

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

- The requirement applies to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, a designated public agency, or a subrecipient, and to their immediate family members and business partners.
- The requirement applies to such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.
- Upon written request, exceptions may be granted by HUD on a case-by-case basis.

**CONFLICT OF INTEREST QUESTIONNAIRE**

NOTE: For the purpose of this form, a "covered person" includes any person who is an employee, agent, consultant, officer or elected or appointed official of the City of San Marcos, your organization, or any designated public agency.

Name of Organization: City of San Marcos

1. Does your organization maintain a written code or standards of conduct that governs the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds?

Yes  No  If "No" is checked, please explain how you will comply with this requirement:

2. Are any of your Board Members or employees that are responsible for carrying out this project or members of their immediate families or their business associates also:

a. Employed by the City of San Marcos? Yes  No

b. Members of or closely related to members of the San Marcos City Council? Yes  No

c. Members of or closely related to an employee of the City of San Marcos? Yes  No

d. Current beneficiaries or related to beneficiaries of the project for which funds are requested?

Yes  No

e. Paid providers of goods or services to the program or having other financial interest in the program or related to such individuals? Yes  No

3. For each relationship described above, please answer the following questions: (attach additional page if necessary)

a. Name of employee or official: \_\_\_\_\_

Scott Hardwick - full time City employee

Josie Falletta - full time City employee

b. Is this person receiving or likely to receive taxable income from your organization?

Yes  No  Yes, both individuals above are full time City employees.

c. Is your organization receiving or likely to receive taxable income from or at the direction of the employee or official AND the taxable income is not from the City of San Marcos?

Yes  No

d. Is your organization affiliated with a corporation or other business entity in which the employee or official serves as an officer or director, or holds an ownership interest of 10% or more?

Yes  No

4. Describe any other affiliation or business relationship that might cause a conflict of interest with respect to CDBG-CV funds and activities. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Will any of your organization's employees, officers, board members, or members of their immediate family or business partners have a financial interest in any contract, subcontract, or agreement regarding CDBG-CV funded activities?

Yes  No . If yes, please attach an explanation.

## IX. APPLICANT ASSURANCES AND CERTIFICATIONS

The applicant hereby assures and certifies with respect to this project or program, by the submission of this application, that the following are true statements:

1. It possesses legal authority to apply for the grant and to finance the proposed request; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards as codified in Title 2, Part 200 of the Code of Federal Regulations (UAR) and agrees to adhere to the accounting principles and procedures required therein, utilizing adequate internal controls and maintaining necessary source documentation for all costs incurred.
3. If it expends \$750,000 or more of federal funds in a fiscal year, it will comply with the Single Audit Act of 1984.
4. It will comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards, and Executive Order 11990, relating to protection of wetlands. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, and approved December 31, 1976. Section 102(a).
5. It will have sufficient funds available or the ability to obtain the non-federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
6. It will give the City and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
7. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the City that funds have been approved and that the project will be performed to completion with reasonable diligence.
8. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
9. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646), which provides for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs.
10. It will comply with the provisions of the Hatch Act, which limit the political activity of employees.
11. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act as they apply.
12. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the city/federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.
13. It will assist the city/federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.).

14. It will comply with Texas Civil Statutes, Article 5996a, by insuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
15. It will insure that all information collected, assembled or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Texas Civil Statutes, Article 6252-17a, unless otherwise expressly provided by law.
16. It will conduct and administer the program in conformity with the Fair Housing Act (42 USC Section 3901 et. Seq.) and that it will affirmatively further fair housing.
17. It will minimize displacement of persons as a result of activities assisted with CDBG-CV funds. In the event that displacement of residential dwellings will occur in connection with a grant-assisted project, it will follow a residential anti-displacement and relocation assistance plan as specified by the City of San Marcos.
18. It certifies that it is not now, nor has it ever been, on the Federal List of Debarred Contractors.
19. It will not attempt to recover any capital costs of public improvements assisted in whole or in part with such funds by assessing any amount against properties owned and occupied by persons of LMI, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless (a) such funds are used to pay the proportion of such fee or assessment that related to the capital costs of such public improvements that are financed from revenue sources other than such funds; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, applicant certifies that it lacks sufficient funds under this contract to comply with the requirements of clause (a).
20. It agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG-CV)) including subpart J and subpart K of these regulations, except that (1) the Agency does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) Agency does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. Agency also agrees to comply with all other applicable Federal, State, and local laws, regulations, and policies governing the funds provided. Agency further agrees to utilize funds available to supplement rather than supplant funds otherwise available. Agency shall comply with all applicable Federal laws, regulations, and requirements, which include compliance with the provisions of the HCD Act and all rules, regulations, guidelines, and circulars promulgated by the various Federal departments, agencies, administrations, and commissions relating to the CDBG-CV Program. The applicable laws and regulations include, but are not limited to:
  - 24 CFR Part 570;
  - 24 CFR Parts 84 and 85;
  - The Davis-Bacon Fair Labor Standards Act;
  - The Contract Work Hours and Safety Standards Act of 1962;
  - Copeland "Anti-Kickback" Act of 1934;
  - Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
  - Section 3 of the Housing and Urban Development Act of 1968;
  - Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
  - Non-discrimination in employment, established by Executive Order 11246 (as amended by Executive Orders 11375 and 12086);
  - Section 504 of the Rehabilitation Act of 1973 Uniform Federal Accessibility Standards;
  - The Architectural Barriers Act of 1968;
  - The Americans with Disabilities Act (ADA) of 1990;
  - The Age Discrimination Act of 1975, as amended;
  - National Environmental Policy of 1969 (42 USC 4321 et seq.) as amended;

- Lead Based paint regulations established in 24 CFR Parts 35, 570.608, and 24 CFR 982.401;
- Asbestos guidelines established in CPD Notice 90-44;
- HUD Environmental Criteria and Standards (24 CFR Part 51);
- The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39
- Flood Disaster Protection Act of 1973;
- Colorado House Bill 06-1023 and 06-1043;
- Procurement Standards (2 CFR 200.322);
- Rights to Inventions Made Under a Contract or Agreement (37 CFR 401.2 (a));
- Energy Efficiency (2 CFR Part 200 Appendix II); and
- Recycling (2 CFR Part 200 Appendix II).

**CERTIFICATIONS REGARDING LOBBYING:**

21. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.
22. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form – “Disclosure Form to Report Lobbying”, in accordance with its instructions.
23. The undersigned 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 that all subrecipients shall certify and disclose accordingly.
24. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

**GENERAL CERTIFICATIONS:**

25. The information, exhibits, and schedules contained in this application are true and accurate statements and represent fairly the financial condition of our organization;
26. Our organization is eligible to receive federal funding and has not been placed in a debarred or otherwise ineligible status under the provisions of CFR Part 24;
27. Our organization prohibits discrimination in accordance with Title VI of the Civil Rights Act of 1964; and,
28. Our governing body has duly authorized submission of this document. If funded, we agree to comply with the procedures outlined in the “Playing by the Rules” handbook that will be supplied by the City of San Marcos.

I, the duly authorized representative of the applicant organization, certify that the foregoing statements are true to the best of my knowledge and belief:

**CERTIFIED BY:**

Signature: *Scott Hardwick*  
 Printed Name: *Scott Hardwick*  
 Organization Name: *City of San Marcos*

Date Signed: *5/19/20*  
 Title: *Economic + Business Development Manager*

## Description of Employees

### **Scott Hardwick**

Economic & Business Development Manager  
City of San Marcos

Mr. Hardwick is the primary applicant for this project. His department is requesting CDBG-CV funds and will process payment.

### **Jason Mock**

President & CEO  
San Marcos Area Chamber of Commerce

Mr. Mock is a co-applicant for this project. He will supply staff to assist with administration of the grant, specifically to track documentation. Twenty percent (20% or \$40,000) of grant funds will be paid to the Chamber to assist with administrative fees including but not limited to: staff salaries, printing, post and office supplies.

### **Josie Falletta**

Downtown Coordinator  
City of San Marcos

Ms. Falletta is a partner for this project. She will assist with marketing, outreach and communication with prospective subgrantees.

All of the above individuals were actively involved in the writing and submission of this grant application. All three individuals, and their respective departments/organizations, will work in partnership to facilitate the distribution of grant monies, host workshops, provide technical assistance to businesses, and complete all appropriate documentation.

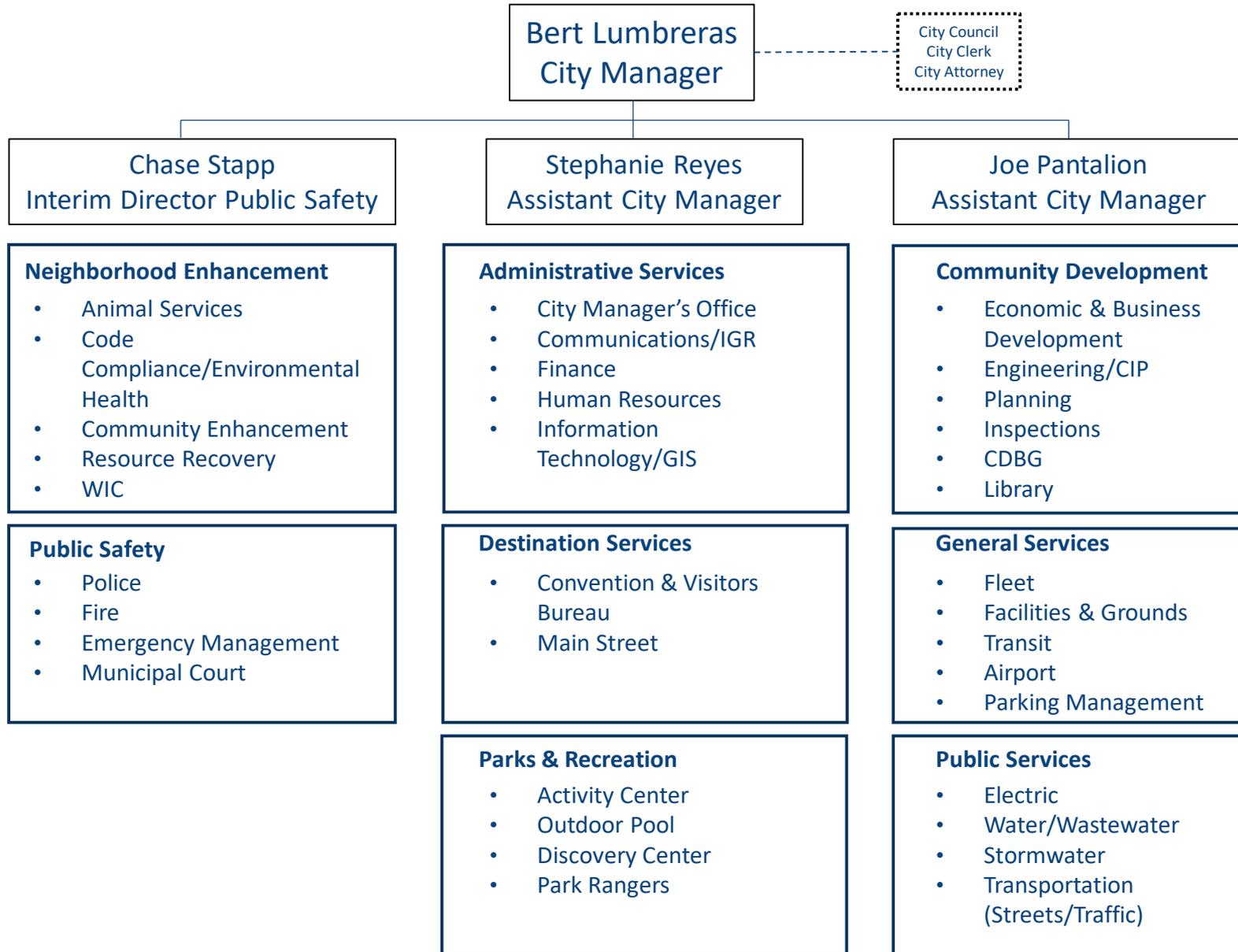
## Service Area Boundary

All businesses located within the City of San Marcos

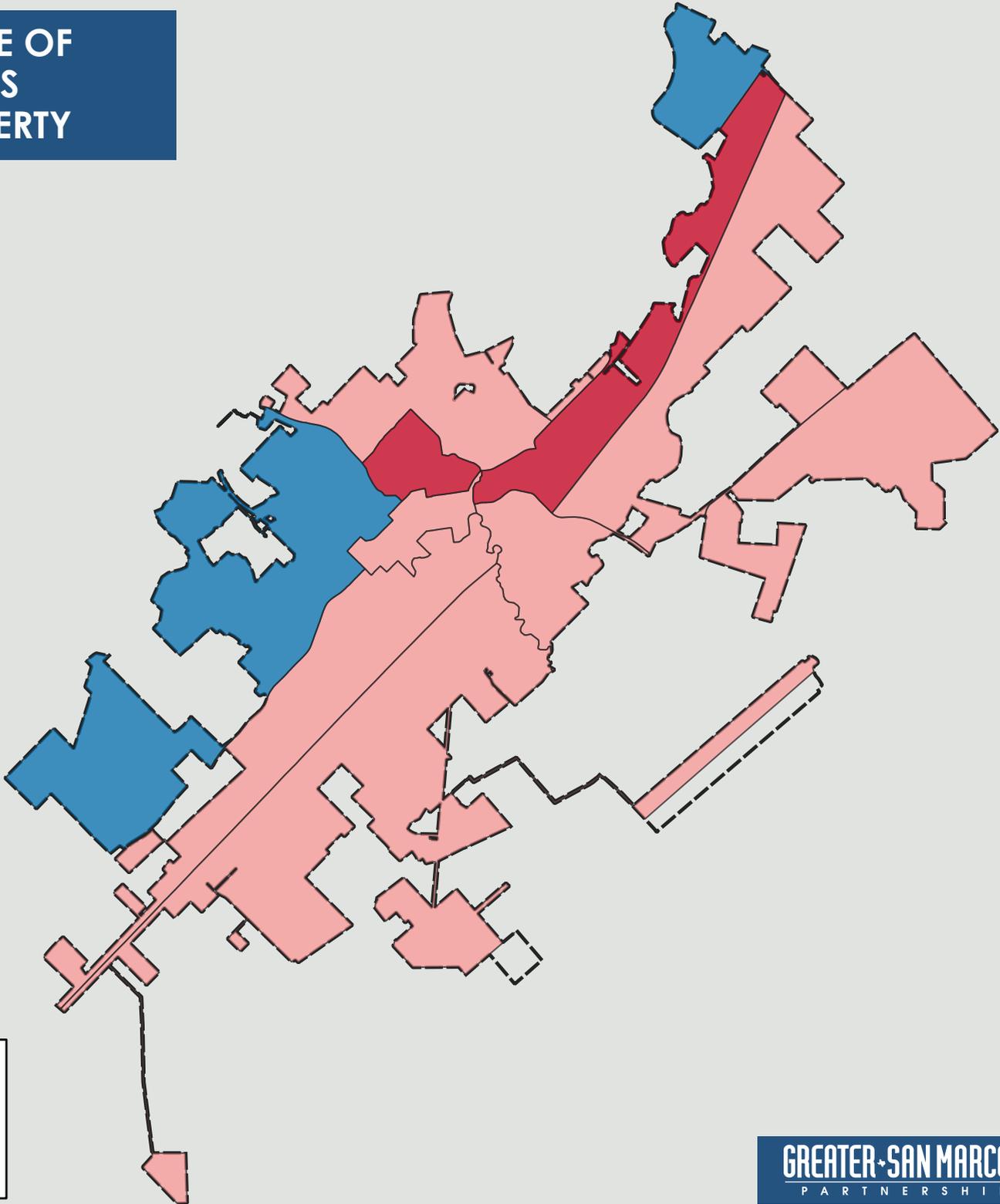
## Description of How Applicant Income Will be Determined

Grant applicants will submit quarterly payroll documents for their business. This will help administrators track and determine that 51% of employees with low to moderate income are served.

# City Org Chart by Cost Center



# PERCENTAGE OF HOUSEHOLDS BELOW POVERTY



Census Tracts

- 0% - 20%
- 20% - 40%
- 40% - 60%

## Poverty Rate by San Marcos Census Tracts

2010 Census Tract Number	Census Tract FIPS code.	OMB Metro/Non-metro Designation, July 2015 (OMB 15-01)	Does Census Tract Qualify For NMTC Low-Income Community (LIC) on Poverty or Income Criteria?	Census Tract Poverty Rate % (2011-2015 ACS)	Does Census Tract Qualify on Poverty Criteria >=20% ?	Census Tract Percent of Benchmarked Median Family Income (%) 2011-2015 ACS	Does Census Tract Qualify on Median Family Income Criteria <=80% ?	Census Tract Unemployment Rate (%) 2011-2015	County Code	State Abbreviation	State Name	County Name	Census Tract Unemployment to National Unemployment Ratio	Is Tract Unemployment to National Unemployment Ratio >1.5?	Population for whom poverty status is determined 2011-2015 ACS
48209010100	Metropolitan	Yes	38.80	Yes	84.75	No	6.00	48209	TX	Texas	Hays	0.72	No	2,588	
48209010200	Metropolitan	Yes	49.90	Yes	111.44	No	21.40	48209	TX	Texas	Hays	2.58	Yes	1,081	
48209010302	Metropolitan	Yes	31.80	Yes	55.06	Yes	5.60	48209	TX	Texas	Hays	0.67	No	4,458	
48209010303	Metropolitan	Yes	37.50	Yes	56.68	Yes	8.90	48209	TX	Texas	Hays	1.07	No	7,543	
48209010304	Metropolitan	Yes	54.10	Yes	27.47	Yes	12.10	48209	TX	Texas	Hays	1.46	No	6,179	
48209010400	Metropolitan	Yes	25.20	Yes	63.43	Yes	7.90	48209	TX	Texas	Hays	0.95	No	10,051	
48209010500	Metropolitan	Yes	33.50	Yes	48.74	Yes	6.80	48209	TX	Texas	Hays	0.82	No	4,337	
48209010600	Metropolitan	No	10.10	No	98.38	No	5.40	48209	TX	Texas	Hays	0.65	No	10,305	
48209010701	Metropolitan	Yes	44.10	Yes	76.68	Yes	12.60	48209	TX	Texas	Hays	1.52	Yes	7,938	
48209010702	Metropolitan	Yes	35.20	Yes	95.22	No	5.70	48209	TX	Texas	Hays	0.69	No	3,210	

**San Marcos Area Chamber of Commerce Board of Directors Roster  
2019-2020**

<b>Executive/Finance Members</b>	<b>Role</b>	<b>Name</b>	<b>1st Term</b>	<b>2nd Term</b>	<b>Year Rolling Off Board</b>	<b>Phone Number</b>	<b>Email</b>
<b>Chair</b>	Board Member	David Case	2015-2018	2018-2021	2021	██████████	██████████
<b>Chair-Elect</b>	Board Member	Keely Sonlitner	2018-2021		2021		
<b>Immediate Past Chair</b>	Board Member	Jessica Pizana	2013-2016	2016-2019	2020		
<b>Secretary</b>	Board Member	Tommy Curtis	2019-2022		2022		
<b>Treasurer</b>	Board Member	Matthew Worthington	2017-2020	2020-2023	2023	██████████	██████████
	Board Member	Brian Olson	2014-2017	2017-2020	2020		
	Board Member	Lance Spruiell	2014-2017	2017-2020	2020		
	Board Member	Monica Malorgio	2011-2014	2014-2017	2020		
	Board Member	Walter Elias	2013-2016	2016-2020	2020		
	Board Member	Vic Patel	2015-2018	2018-2021	2021		
	Board Member	Alfonso Sifuentes	2015-2018	2018-2021	2021		
	Board Member	Dr. Walter Horton	2018-2021		2021		
	Board Member	Eli Pabon	2018-2021		2021		
	Board Member	Elva Zdeb	2019-2022		2022		
	Board Member	Jessica Walshak	2019-2022		2022		
	Board Member	Justin Payne	2019-2022		2022		
	Board Member	Lance Winter	2019-2022		2022		
	Board Member	Forrest Higdon	2017-2020	2020-2023	2023		
	Ex-Officio	City of San Marcos					
	Ex-Officio	CVB					
	Ex-Officio	GSMP					
	Ex-Officio	San Marcos CISD					
<b>President &amp; CEO</b>	Staff	Jason Mock				██████████	██████████

ORGANISATIONAL CHART OF

# SAN MARCOS AREA CHAMBER OF COMMERCE



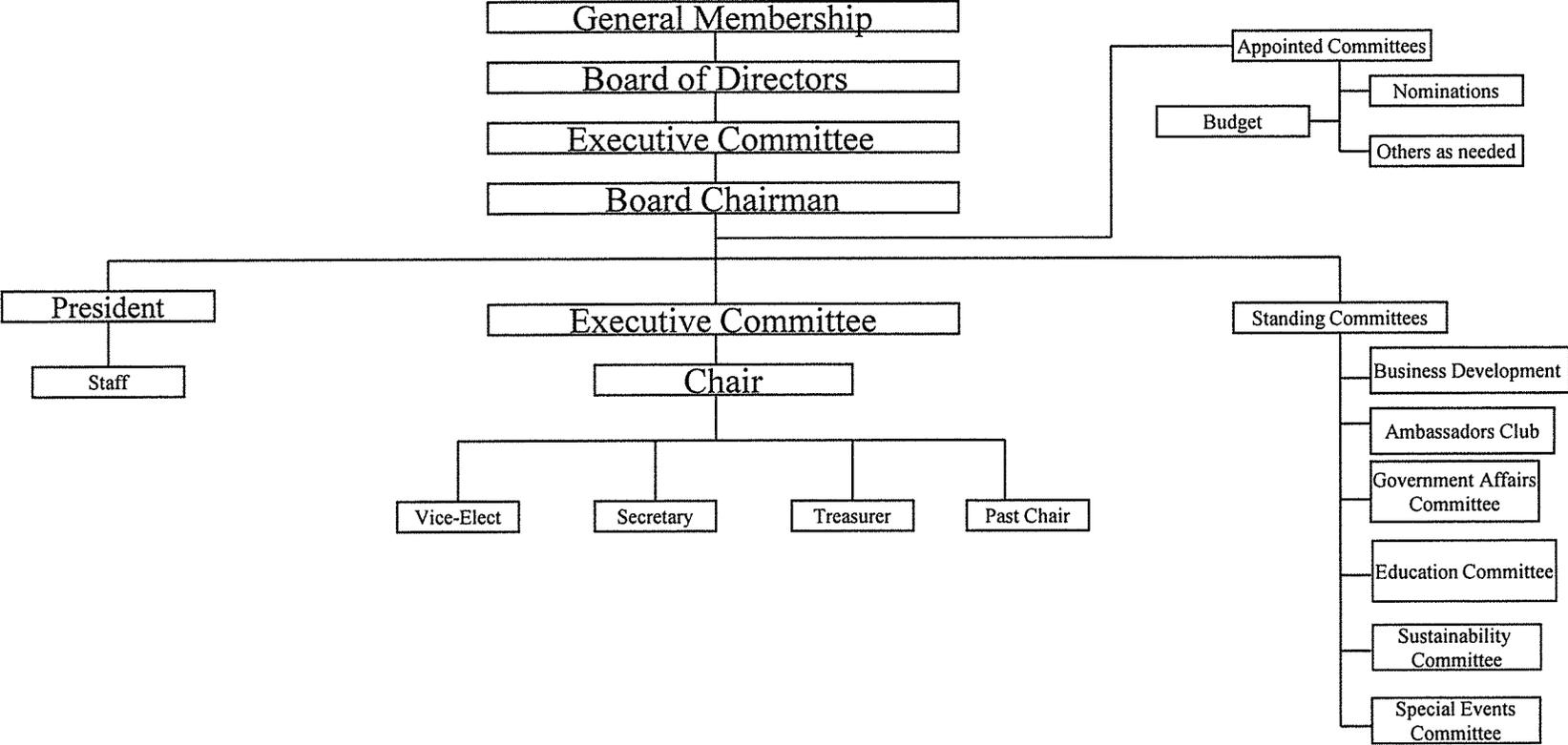
JASON MOCK  
PRESIDENT & CEO  
JASONM@SANMARCOSTEXAS.COM  
512-393-5900

LAUREN SURLEY  
VICE PRESIDENT OF COMMUNICATIONS  
LAURENS@SANMARCOSTEXAS.COM  
512-393-5900

ASHLEY DAWKINS  
ACCOUNT EXECUTIVE  
ASHLEYD@SANMARCOSTEXAS.COM  
512-393-5900

MARISOL GOMEZ MENDOZA  
OPERATIONS & MEMBERSHIP MANAGER  
MARISOL@SANMARCOSTEXAS.COM  
512-393-5900

# San Marcos Chamber of Commerce Organizational Chart



DEC 14 1976

ARTICLES OF INCORPORATION  
OF  
SAN MARCOS AREA CHAMBER OF COMMERCE, INCORPORATED

*James H. Doherty*  
Secretary of State, Corporation Division

We, the undersigned natural persons of the age of eighteen years or more, at least two of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE ONE

The name of the Corporation is San Marcos Area Chamber of Commerce, Incorporated.

ARTICLE TWO

The Corporation is a Non-Profit Corporation.

ARTICLE THREE

The period of its duration is to be perpetual.

ARTICLE FOUR

The purpose or purposes for which the Corporation is organized are: to promote the public interest of San Marcos Area Citizens and Businesses.

ARTICLE FIVE

The street address of the initial registered office of the Corporation is 100 W. Hopkins Street, San Marcos, Texas 78666, and the name of its initial registered agent at such address is Gordon W. Thompson.

ARTICLE SIX

The number of directors constituting the initial Board of Directors of the Corporation is 3, and the names and addresses of the persons who are to serve as the initial directors are:

Name	Address
<u>William C. Pennington</u>	<u>325 N. Comanche</u>
<u>Bill Veidt</u>	<u>505 Uhland Rd.</u>
<u>Charles R. Ramsay</u>	<u>714 Burleson</u>

ARTICLE SEVEN

The name and street address of each incorporator is:

Name	Address
<u>William C. Pennington</u>	<u>325 N. Comanche</u>
<u>Bill Veidt</u>	<u>505 Uhland Rd.</u>
<u>Charles R. Ramsay</u>	<u>714 Burleson</u>

ARTICLE EIGHT

The members of the Corporation shall be all those adult residents and business enterprises of the San Marcos area, who join or become members of the corporation. No part of the income, assets, or property of the Corporation shall ever inure to the benefit of any private member or individual.

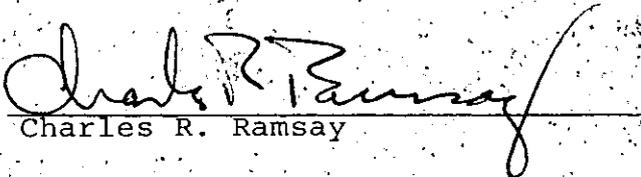
The corporation shall be operated exclusively for the purpose for which it is created, as set forth above, and the corporation shall not be operated for the purpose of making and creating profit.

The Corporation is, and is to continue to be, without capital stock, and has no intention of having capital stock. The value of the funds, goods, chattel, bonds, rights, and credits owned by the Corporation is estimated at Eight thousand dollars (\$8,000.00).

IN TESTIMONY WHEREOF, we here unto sign our names this 9th day of December, A. D.; 1976.

  
William C. Pennington

  
Bill Veidt

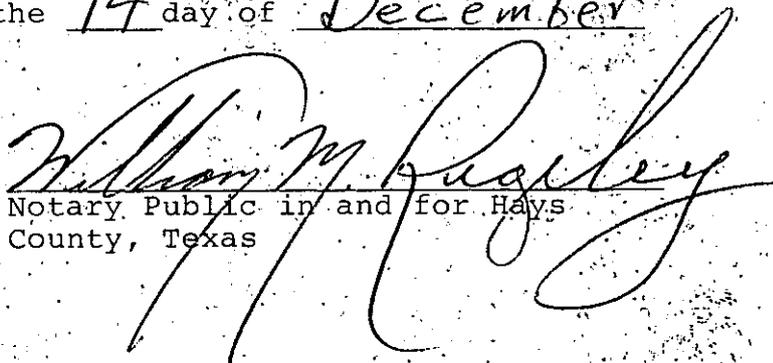
  
Charles R. Ramsay

STATE OF TEXAS §

COUNTY OF HAYS §

BEFORE ME, the undersigned authority, on this day appeared William C. Pennington, Bill Veidt, and Charles R. Ramsay, known to me to be the persons who executed the above instrument.

SWORN AND SUBSCRIBED on this the 14 day of December A.D., 1976.

  
Notary Public in and for Hays  
County, Texas

**BY-LAWS  
SAN MARCOS AREA CHAMBER OF COMMERCE**

**ARTICLE I**

**Name and Offices**

Section 1. Name. This organization is a non-profit corporation incorporated and organized under the laws of the State of Texas and shall be known as the San Marcos Area Chamber of Commerce (the “Chamber”)

Section 2. Principal Office. The principal office of the Chamber shall be situated at a strategic location within its service area, as deigned below in Section 4 of this Article, the exact address to be designated by the Chamber Board of Directors (sometimes referred to herein as the “Board”). A change in the location of the office of the Chamber may be authorized, at any time, by a majority vote of the members of the Board of Directors.

Section 3. Registered Office. The Chamber shall maintain at all times a registered office in the State of Texas and a registered agent at the office. The registered office shall be the principal office as set forth above.

Section 4. Service Area. The corporation will serve the City of San Marcos, Texas area.

**ARTICLE II**

**Purpose and Powers**

Section 1. Purpose. The objectives and purposes of the Chamber are to acquire and administer funds and property which, after the payment of necessary expenses, shall be devoted exclusively to serving businesses by: strategic economic growth; enhancing quality of life; promoting education, and creating a positive business climate for the future of the San Marcos and Hays County, Texas community, all within the meaning of section 501 (c) (6) of the Internal Revenue law. The purposes shall include any other lawful activity not prohibited by the Texas Non-Profit Corporation Act.

Section 2. Powers. The Chamber shall have power to sue; buy, hold, sell, exchange, lease or mortgage real estate; to incur debts, to borrow money, giving therefore notes of the Chamber signed by one or more officials duly authorized by the Board of Directors for that purpose, and to enter into contracts of any kind furthering the purpose of the Chamber. The powers shall include any other lawful powers not prohibited by the Texas Non-Profit Corporation Act.

Section 3. Inappropriate Use of Net Earnings/Profits. No member, director, officer or employee, member of a committee connected with the Chamber or any other private individual shall receive at any time any of the net earnings or pecuniary profit of the Chamber provided that this shall not prevent the payment to any such person of such reasonable compensation for services rendered to or for the Chamber in effecting any of its purposes as shall be fixed by the Board.

### **ARTICLE III**

#### **Membership**

Section 1. Membership. Any business entity, association, or individual may subscribe for membership in the Chamber and shall nominate one (1) individual to represent each member. Each firm, corporation, association, or individual, as a subscriber, shall be listed as a sustaining member, and, for each minimum investment/dues or multiple thereof subscribed to, shall appoint one (1) representative, regardless of the total investment/dues. Individuals eligible for membership shall include all other persons who are not associated with a business entity or association.

Section 2. Right of Removal. The Board of Directors may remove any member by a vote of three-fourths (3/4) of the directors present at a duly called meeting of the Board where a quorum is present provided, however, the member has been given 10 days notice and opportunity to address a quorum of the Board of Directors prior to removal.

### **ARTICLE IV**

#### **Investment/Dues**

Section 1. Amount – When Payable. The annual investment/dues of members shall be set by the Board of Directors. Dues are payable in advance, as agreed upon when subscribing to membership.

Section 2. Delinquency. If any member shall fail to pay its investment/dues thirty (30) days after the due date (“Delinquency Date”), written notice of its delinquency shall be given the member by the Chamber. Seventy-five (75) days after delinquency date, if investment/dues still remain unpaid, the member shall be dropped from membership.

## **ARTICLE V**

### **Board of Directors**

Section 1. Composition. The government of the Chamber, management of its affairs, the direction of its work, and the control of its properties shall be vested in a Board of Directors. The Board of Directors shall consist of not more than eighteen (18) voting members.

The make-up of the Board shall be as follows:

- A. The number of elected directors shall be determined by the Board of Directors annually and shall consist of eighteen (18) Elected Directors who shall serve three (3) year terms. All Elected Directors shall have voting privileges.
- B. The Chairperson, Chair-Elect, Secretary, Treasurer, Immediate Past Chairperson, and President & CEO shall also serve on the Board of Directors during the year of their duties and enjoy the same privileges as Elected Directors.
- C. Non-Voting (Ex Officio) Members of the Board of Directors. Upon recommendation by the Executive Committee and subject to approval by a majority vote of the Board of Directors, an Executive Officer, designated by each applicable organization, from up to six (6) local or regional organizations can be elected for a term of one year.

Section 2. Qualifications. Directors shall be natural persons who are 18 years of age or older, who they, their business or employers are members in good standing of the Chamber.

Section 3. Election. Elected Members of the Board of Directors shall be deemed elected upon affirmation of a majority vote by the Board of Directors by the August Board meeting. The Board of Directors shall notify the Membership as to the elected members of the Board of Directors within 30 days following the August Board Meeting.

Section 3.1. Seating of New Directors. Each newly-elected Board member will be formally seated as a member of the Board with voting power beginning October 1.

Section 4. Rules. The Board of Directors shall enact such rules and regulations and establish such committees as may be deemed necessary to conduct the business of the Chamber, not inconsistent with the terms of these Bylaws.

Section 5. Meetings. The Board of Directors shall meet at such times and places as designated by the Chairman, but in no event less often than bimonthly. Special meetings of the full Board

may be called by the Chairperson of the Board or by the President & CEO on petition of ten (10) directors made upon the President & CEO.

Section 5.1. Place of Meetings. The Board of Directors may hold regular or special meetings either within or outside of the State of Texas.

Section 5.2. Notice of Meetings. Regular meetings of the Board of Directors may be held without notice at such date, time and place as shall from time to time be determined by the Board. Special meetings of the Board of Directors may be called by the Chairperson of the Board or President & CEO, as the case may be, on at least one day's oral, telegraphic, electronic or written notice of the date, time and place of the meeting to each director. The notice of a meeting need not state the purpose of the meeting.

Section 5.3. Waiver of Notice. Notice of a meeting of the Board of Directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting unless the director, at the beginning of the meeting or promptly upon his or her arrival, objects to holding the meeting or transacting the business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 6. Quorum. Except as otherwise provided by law, the Articles of Incorporation, or these Bylaws, 9 (9) directors shall constitute a quorum for the transaction of business. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors. If a quorum shall not be present, or shall no longer be present, at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 7. Vacancies. Should a vacancy occur on the Board of Directors, the Chairperson shall appoint a member, or member's representative, in good standing to fill the un-expired term. The appointment by the Chairperson is made subject to the approval and confirmation of the Board of Directors. An individual serving an unexpired term is not precluded from serving a full term on any proceeding Board of Directors. Should an officer resign, within five (5) working days of such vacancy, the Chairperson shall select a nominee whose name shall be presented at the next regular or called Board meeting for approval.

Section 8. Committees. The Board of Directors may establish committees and define the purposes and authority of such committees.

Section 9. Report to Membership. The Board of Directors, through the Chairperson or otherwise, shall, at the Annual Meeting of the Chamber, makes a report to the membership of the affairs, activities and conditions of the Chamber. This may be in verbal or written form.

Section 10. Absenteeism and Removal.

- A. Absenteeism. A Director absent from three (3) regularly scheduled meetings of the Board of Directors, without excuse, may be suspended. Such suspension may be lifted by the Executive Committee upon written request of any director so suspended, filed with the President & CEO prior to the next regularly scheduled Board meeting. Any Director so suspended may address the Executive Committee prior to any vote to terminate.
- B. Removal. The Board of Directors may remove any Director, with cause, by a vote of two-thirds (2/3) of the Directors at a duly called meeting of the Board where a quorum is present provided, however, the member has been given 10 days' notice and an opportunity to address a quorum of the Board of Directors prior to removal. The Board of Directors shall immediately fill the position by interim appointment pursuant to Section 7 of this Article.

Section 11. Action Without A Meeting of the Board of Directors. Action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is evidenced by one or more written consents or electronic transmissions describing the action taken and signed by each director. Action by consent has the effect of a meeting vote and may be described as such in any document.

Section 12. Proxy Votes. Proxy votes shall not be permitted.

## **ARTICLE VI**

### **Officers**

Section 1. Election of Officers. At the August Executive Committee meeting a slate of officers for the upcoming year will be appointed and will be presented to the Board of Directors for approval at the August Board Meeting.

Section 2. Ratification of Committee Chairs. Prior to October 1 of each year, the newly elected Board of Directors, including those retained thereon, shall meet, qualify, confirm and approve the Committee Chairs as appointed by the Chair-Elect.

Section 3. Chairperson of the Board. The Chairperson of the Board of Directors (also referred to herein as "Chairperson") shall take office October 1 of each year and shall preside at the meetings of the Board of Directors and at meetings of the members of the Chamber and shall perform all other and further duties incidental to this office. The Chairperson shall, with the advice and counsel of the President & CEO, assign Committee Chairs to committee responsibilities, subject to approval of the Board of Directors. The Chairperson shall, with the

advice and counsel of the President & CEO and Committee Chairs, determine the membership of the various committees.

Section 4. Chair-Elect. The Chair-Elect shall exercise power and authority over all duties performed by the Chairperson in the absence or disability of the Chairperson.

Section 5. President & CEO. The President & CEO shall be the chief administrative and executive officer of the Chamber. The President & CEO shall prepare notices and agendas and collect minutes of meetings of the Board of Directors from the Secretary and Treasurer. The President & CEO shall serve as Secretary of the Executive Committee.

Section 6. Treasurer. The Treasurer shall be responsible for the safeguarding of all funds received by the Chamber and for their proper disbursement. Such funds shall be kept on deposit in financial institutions or invested in a manner approved by the Board of Directors. The Treasurer shall cause a monthly financial report to be made to the Executive Committee.

Section 7. Secretary. Secretary is responsible for the taking of minutes at all regular meetings of the Board of Directors.

Section 8. Bonding. The Secretary and Treasurer, together with regular staff employees, shall give the Chamber a bond in such sum, or such conditions, and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office, at the expense of the Chamber.

Section 9. Term in Office. The term of office, for all officers except the President & CEO shall be for one calendar year, and until their successors are elected and assume office on the first day of October each year. No officers, with the exception of the President & CEO, may serve more than three years in the same office.

## **ARTICLE VII**

### **Committees**

Section 1. Appointment and Dissolution. The Chairperson shall have the authority to appoint and dissolve committees and their Chairpersons, subject to confirmation by the Board of Directors.

Section 2. Committee Member Removal Right. The Board of Directors may remove any committee member, with or without cause, by a vote of two-thirds (2/3) of Directors at a duly called meeting of the Board of Directors where a quorum is present.

Section 3. Committee Meetings. Meetings of committees may be called at any time by the Chairperson, by the Chairperson of such committee, or by the President & CEO.

Section 4. Authority of Committees. It shall be the function of committees to investigate and make recommendations to the Board of Directors or take such other action as defined by the Board of Directors. With the exception of the Executive Committee, no committee shall represent the Chamber in endorsing or opposing any project without the specific confirmation of the Board of Directors, or such confirmation as may be clearly granted under the general powers by the Board of Directors to that committee.

Section 5. Executive Committee. The Executive Committee shall consist of the Chairperson of the Board of Directors, immediate past Chairperson of the Board, Chair-Elect, Secretary, Treasurer, and the President & CEO. The Executive Committee shall act in executive capacity of the Board of Directors between its meetings and shall submit reports of its actions to the Board of Directors at each regular meeting of the Board of Directors.

## **ARTICLE VIII**

### **Membership Meetings**

Section 1. Annual Meeting. The annual meeting of the Chamber shall be held prior to December 1 each year.

Section 2. Special Meetings. The Chairperson of the Board of Directors may call a special meeting of the members at any time. The President & CEO or the Secretary must call a special meeting:

- (a) when so directed by the Board of Directors;
- (b) at the request in writing of 25% of members in good standing provided that such request shall state the purposes for which the meeting is to be called.

Section 2.1. Business Conducted. Except as otherwise provided in these Bylaws, only business within the purpose or purposes described in the notice of the meeting may be conducted at a special meeting.

Section 3. Place of Annual or Special Meetings. Annual or special meetings of the members of the Chamber shall be held at the principal office of the Chamber or at any other place within or outside San Marcos, Texas as may be specified in the notice of the meeting.

Section 4. Notice of Annual or Special Meetings. Notice of the annual or special meetings of members, stating the place, date and time of the meeting, shall be given to each member of record entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

Section 4.1. Notice of Annual or Special Meetings by Mail. Notice may be given in any manner permitted by law. Any written notice deposited in the United States mail with prepaid first-class

postage thereon addressed to the member at his or her address as it appears on the Chamber's records shall be deemed delivered when so deposited in the mail.

Section 4.2. Waiver of Notice by Attendance. A member's or member's representative's attendance at the annual or special meeting of members shall constitute:

- (a) a waiver of notice of the meeting and of all objections to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and
- (b) a waiver of objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

Section 4.3. Other Waivers of Notice. Notice of the annual or special meeting of members need not be given to any member who signs a waiver of notice either before or after the meeting. Neither the business transacted nor the purpose of the meeting need be specified in the waiver, except that any waiver of the notice of a meeting at which the members consider an amendment of the Articles of Incorporation, a plan of merger, or a sale or other disposition of assets, or any other action which would entitle the member to dissent shall not be effective unless:

- (a) prior to the execution of the waiver, the member shall have been furnished the same material that would have been required to be sent to the member in a notice of the meeting, including notice of any applicable dissenters' rights; or
- (b) the waiver expressly waives the right to receive the material required to be furnished.

Section 5. Quorum. At all meetings of the members, 10% of members entitled to vote thereat shall constitute a quorum for the transaction of all business, except as otherwise provided by law, by the Articles of Incorporation, or by these Bylaws. Once a member is present for any purpose at a meeting other than solely to object to holding the meeting or transacting business at the meeting, the member is present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is set for the adjourned meeting.

Section 6. Member Voting Rights. Unless the Articles of Incorporation, Bylaws or applicable law otherwise provide, each member, through its duly appointed representative, shall be entitled to one vote on each matter voted on at a meeting of members. If a quorum exists, action on a matter is approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the Articles of Incorporation, these Bylaws, or applicable law require a different vote.

Section 7. List of Members. The Chamber shall keep or cause to be kept a record of its members, giving their names and addresses. After the date for a meeting of members is fixed,

the Chamber will prepare an alphabetical list of the names of its members who are entitled to notice of the meeting. The list will show the address of the members and comply as to form in all other respects with applicable law. The list of members will be available for inspection by any member, his or her agent, or his or her attorney at the Chamber's office during its regular business hours. The Chamber's refusal or failure to prepare or make available the list of members shall not affect the validity of action taken at a meeting of members.

## **ARTICLE IX**

### **Board Elections**

Section 1. Nominating Committee. At the regular April meeting of the Board of Directors, the Chairperson shall appoint, subject to approval by the Board of Directors, a Nominating Committee of five (5) members of the Chamber. The Nominating Committee shall be made up of the Immediate Past-Chairperson, Chair-Elect, Current Chairperson and two (2) members at large. The Past-Chairperson shall serve as Chairperson of the Nominating Committee. If the Past-Chairperson is unable to serve as Chairperson of the Nominating Committee, the Chairperson of the Board shall appoint an additional member to the Nominating Committee, subject to approval by the Board of Directors.

Section 1.1. Judges. At the regular April meeting of the Board of Directors, the Chairperson shall appoint, subject to approval by the Board of Directors, a Judges Committee of three (3) members who are not members of the Board of Directors or candidates for election. Such judges shall have complete supervision of the election, including the auditing of the ballots.

Section 2. Nominations. The nomination and election of Directors shall take place prior to August 31 of each year and the election process shall be completed at least ten (10) days prior to September 30 of each year.

Section 3. Elections. In May of each year, the Nominating Committee shall notify the membership that it may submit, in writing, names of members to be considered by the Nominating Committee for the upcoming year's slate of Board Members. The nominations shall be submitted to the Nominating Committee within fifteen (15) days of notification.

At the June Board Meeting, the Nominating Committee shall submit for approval a slate of candidates for election to the Board of Directors. All candidates shall have been contacted and affirmed their acceptance of serving on the Board of Directors.

Section 4. Term in Office. Except for voting for the election of Chair-Elect and other officers, pursuant to Article VI of these Bylaws, the candidates, if given an affirmative vote by the Board of Directors, shall be declared elected and shall serve a term of three (3) year term. Board of Directors can be elected to a second three (3) year term. Board Members will take office on

October 1 of each year. No board member who has served two consecutive 3-year terms is eligible for election for a third term. A period of 1 year must elapse before eligibility is restored. Board Members of the Executive Committee who are currently severing on the Executive Committee and is up for re-election will be elected by the Board of Directors to serve out the remainder terms.

Section 5. Petition. Additional names of candidates for the Board of Directors can be nominated by petition bearing the genuine signature of at least (50) qualified members of the Chamber. Such petition shall be filed by a member in good standing with the Chairperson of the Nominating Committee within (10) days after notice has been given of the names of those Directors affirmed by the Board of Directors at the June Board of Directors Meeting. The Nominating Committee has the authority to declare the petition final. If a petition is satisfactory, the Nominating Committee will make a report to the Board of Directors at a called or regular meeting of the Board of Directors. The Board of Directors shall consider such petition and determine whether any change shall be made to the slate of Board Members elected at the September Board Meeting. Any change to the previously elected slate of Board Members shall require 2/3 vote of the Board of Directors. The Chamber shall promptly notify its members of any changes to the elected slate of Board Members.

## **ARTICLE X**

### **General**

Section 1. Seal. The corporate seal shall have inscribed thereon the name of the Chamber, the year of its organization and the words "Corporate Seal" and "Texas." The seal may be used by causing it or a facsimile thereof to be impressed or affixed upon a document. In the event it is inconvenient or impractical to use such a seal at any time, the signature or name of the Chamber followed by or used in conjunction with the word "Seal" or the words "Corporate Seal" or words of similar import shall be deemed the seal of the Chamber.

Section 2. Fiscal Year. The fiscal year of the Chamber shall be from October 1 to September 30, unless otherwise designated by the Board of Directors

Section 3. Annual Budget. The Board of Directors shall adopt an annual budget at the beginning of each fiscal year. The annual budget shall be prepared by the Executive Committee and recommended to the Board of Directors upon the vote of a majority of the Executive Committee. The annual budget may be amended only by the Board of Directors.

Section 4. Dissolution. The Chamber shall use its funds only to accomplish the objects and purposes specified in these Bylaws, and no part of said funds shall inure, or be distributed, to the

members of the Chamber. Upon dissolution of the Chamber, any funds remaining shall be distributed to one or more duly organized and qualified charitable, educational, scientific, or philanthropic organizations duly selected by the Board of Directors.

Section 5. Liability Insurance. The Board of Directors may elect, by a majority vote, to provide general liability insurance to cover any legally incurred liability by members of the Board of Directors, the Officers, the President & CEO, the Secretary-Treasurer and the staff of the Chamber. The policy length and coverage shall be determined by the Board of Directors, and alternative proposals shall be secured and evaluated prior to selection of any one policy.

Section 6. Auditing Procedure. The Board of Directors shall order an audit of all Chamber financial records on an annual basis. The audit period will be for the preceding year unless otherwise directed by the Board of Directors.

Section 7. Requests for Financial Statements. Upon written request, the Chamber shall promptly mail to any member of record a copy of the most recent annual balance sheet and profit and loss statement. If prepared for other purposes, the Chamber shall also furnish upon written request a statement of changes in members' equity for the fiscal year.

Section 8. Parliamentary Authority. The most current edition of Robert's Rules of Order shall be the final source of authority in all questions of parliamentary procedures, when such rules are inconsistent with the Charter or Bylaws.

## **ARTICLE XI**

### **Indemnification of Officers, Directors, Employees, and Agents**

Section 1. Authority to Indemnify. Every person who is or was an officer, director, employee or agent of the Chamber may in accordance with Section 3 of this Article hereof be indemnified for any liability and expense that may be incurred by him or her in connection with or resulting from any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, or in connection with any appeal relating thereto, in which he or she may have become involved, as a party, prospective party or otherwise, by reason of his or her being an officer, director, employee or agent of the Chamber, if he or she acted in a manner he or she believed in good faith to be in or not opposed to the best interest of the Chamber and, in the case of any criminal proceeding, he or she had no reasonable

cause to believe his or her conduct was unlawful. As used in this Article, the terms "expense" and "liability" shall include attorney's fees and reasonable expenses incurred with respect to a proceeding and the obligation to pay a judgment, settlement, interest, penalty, and fine including an excise tax assessed with respect to an employee benefit plan.

Notwithstanding the foregoing, the Chamber shall not indemnify an officer, director, employee or agent in connection with a proceeding by or in the right of the Chamber in which the officer, director, employee, or agent was adjudged liable to the Chamber or in connection with any other proceeding in which he or she was adjudged liable on the basis that personal benefit was improperly received by him or her. In addition, indemnification permitted pursuant to this Section in connection with a proceeding by or in the right of the Chamber is limited to reasonable expenses incurred in connection with the proceeding.

Section 2. Mandatory Indemnification. Every officer, director, employee or agent of the Chamber, to the extent that he or she has been successful, on the merits or otherwise, in defense of any proceeding to which he or she was a party, or in defense of any claim issue or matter therein, because he or she is or was an officer, director, employee or agent of the Chamber, shall be indemnified by the Chamber against reasonable expenses incurred by him or her in connection therewith.

Section 3. Determination and Authorization of Indemnification. Except as provided in Section 2 of this Article, any indemnification under Section 1 of this Article shall not be made unless a determination has been made in the specific case that indemnification of the officer, director, employee, or agent of this Chamber is permissible under the circumstances because he or she has met the standard of conduct set forth in Section 1 of this Article. The determination shall be made: (a) by majority vote of a quorum of the Board of Directors consisting of Directors not at the time parties to the proceeding; (b) if a quorum of the Board of Directors cannot be obtained, then by majority vote of a committee duly designated by the Board of Directors (in which designation Directors who are parties to the proceeding may participate in the vote), consisting of two or more Directors none of whom at the time are parties to the proceeding; (c) by special legal counsel (i) selected by the Board of Directors or a committee duly designated by the Board of Directors in the manner prescribed above, or (ii) if a quorum of the Board of Directors cannot be obtained and a committee cannot be designated, then selected by majority vote of the full Board of Directors (in which selection Directors who are parties may participate in the vote); or (d) by majority vote of Chamber members, excluding members under the control of Directors who are at the time parties to the proceeding.

Once it has been determined that indemnification of the officer, director, employee, or agent is permissible, an authorization of indemnification or an obligation to indemnify and an evaluation

as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be determined in the manner prescribed in item (c) above.

Section 4. Advance for Expenses. Expenses incurred with respect to any claim, action, suit or proceeding of the character described in Article XI, Section 1 may be advanced by the Chamber prior to the time of the disposition thereof upon the receipt of written affirmation from the Director of his or her good faith belief that he or she has met the standard of conduct set forth in Section 1 of this Article, and the officer, director, employee or agent furnishes the Chamber a written undertaking executed personally or on his or her behalf to repay any advances if it is ultimately determined that he or she is not entitled to indemnification under Section 1 of this Article.

## **ARTICLE XII**

### **Amendments**

These Bylaws may be amended or altered by a two-thirds (2/3) vote of the Board of Directors, or by a majority of the members of the Chamber at any regular or special meeting, providing the notice for the meeting includes the proposals for amendments. The Board of Directors or the members in writing may submit any proposed amendments or alterations at least ten (10) days in advance of the meeting in which they are to be acted upon.

Any changes of the Bylaws are to be incorporated as "Amendments" within 48 hours of approval by the Board of Directors. Each year, at the October Board of Directors meeting, the Board of Directors will vote to incorporate the Amendments approved during the year as permanent changes to the Bylaws.

*Amended: September 26, 1984*

*Amended: May 27, 1987*

*Amended: November 1, 1989*

*Amended: March 25, 1992*

*Amended: October 24, 1994*

*Amended: March 27, 2003*

*Amended: April 2009*

*Amended: March 9, 2012*

*Amended: February 27, 2019*

District Director

Date: APR 02 1987

EFN: 74-0880672  
Employer Identification Number:

74-0880672

Case Number:

757026002EO

Person to Contact:

EO Technical Assistor

Contact Telephone Number:

(214) 767-3526

Internal Revenue Code

Section 501(c)(6)

San Marcos Area Chamber of Commerce,  
Incorporated  
202 C.M. Allen Parkway  
San Marcos, TX 78666

Accounting Period Ending:

December 31

Form 990 Required:  Yes  No

Dear Applicant:

Caveat Applies:

None

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from Federal income tax under the provisions of the Internal Revenue Code section indicated above.

Unless specifically excepted, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) for each employee to whom you pay \$100 or more during a calendar year. And, unless excepted, you are also liable for tax under the Federal Unemployment Tax Act for each employee to whom you pay \$50 or more during a calendar quarter if, during the current or preceding calendar year, you had one or more employees at any time in each of 20 calendar weeks or you paid wages of \$1,500 or more in any calendar quarter. If you have any questions about excise, employment or other Federal taxes, please address them to this office.

If your sources of support, or your purposes, character, or method of operation change, please let us know so we can consider the effect of the change on your exempt status. In the case of an amendment to your organizational document or bylaws, please send us a copy of the amended document or bylaws. Also, you should inform us of all changes in your name or address.

The box checked at the top of this letter shows whether you must file Form 990, Return of Organization Exempt from Income Tax. If Yes is checked, you are required to file Form 990 only if your gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. The law provides for a penalty of \$10 a day, up to a maximum of \$5,000, when a return is filed late, unless there is reasonable cause for the delay. This penalty may also be charged if a return is not complete. So, please make sure your return is complete before you file it.

(over)

District Director, Dallas District

Letter 948(DO) (Rev. 4-86)

# SAN MARCOS AREA CHAMBER OF COMMERCE

## BUDGET OVERVIEW: BUDGET FOR 2019-2020 - FY20 P&L

October 2019 - September 2020

	TOTAL
Income	
4000 MEMBERSHIP INCOME	
4005 Renewing Membership Investment	250,000.00
4010 Membership Investment	56,200.00
4015 Less Tier Benefits used	-25,000.00
<b>Total 4000 MEMBERSHIP INCOME</b>	<b>281,200.00</b>
4200 ANNUAL EVENTS INCOME	
4220 Annual Dinner	
4221 Sponsorships	37,000.00
4230 Individual Ticket Sales	5,730.00
4235 Annual Dinner Tables	8,000.00
4240 Auction	10,000.00
4249 All Other Annual Dinner Income	1,000.00
<b>Total 4220 Annual Dinner</b>	<b>61,730.00</b>
4260 Business on the Green - Golf Classic	
4261 Sponsorships	22,000.00
4263 Individual Ticket Sales	500.00
4265 Golf Teams	800.00
4267 Raffle Tickets	1,000.00
<b>Total 4260 Business on the Green - Golf Classic</b>	<b>24,300.00</b>
4270 OPERATION THANK YOU REVENUE	
4271 Sponsors - Operation Thank You	1,500.00
<b>Total 4270 OPERATION THANK YOU REVENUE</b>	<b>1,500.00</b>
4310 BUSINESS EXPO INCOME	
4311 Sponsorships	26,000.00
4318 Business Expo Booths	33,000.00
<b>Total 4310 BUSINESS EXPO INCOME</b>	<b>59,000.00</b>
<b>Total 4200 ANNUAL EVENTS INCOME</b>	<b>146,530.00</b>
4400 PROGRAMS INCOME	
4420 Business After Hours Mixer	1,500.00
4460 INTER-CITY VISITS	
4461 Inter-City Visits Sponsorship	8,000.00
4462 Group Registration Fees Inter-City Visits	57,000.00
<b>Total 4460 INTER-CITY VISITS</b>	<b>65,000.00</b>
4490 LUNCH AND LEARN INCOME	
4500 Sponsorship	2,500.00
4510 Lunch & Learn Tickets	1,500.00
4515 Business @ Breakfast Tickets	800.00
<b>Total 4490 LUNCH AND LEARN INCOME</b>	<b>4,800.00</b>
4520 SM Young Professionals Income	5,000.00
4530 LEADS PROGRAMS	
4533 Leads - SMCANG #1	1,500.00

# SAN MARCOS AREA CHAMBER OF COMMERCE

## BUDGET OVERVIEW: BUDGET FOR 2019-2020 - FY20 P&L

October 2019 - September 2020

	TOTAL
<b>Total 4530 LEADS PROGRAMS</b>	<b>1,500.00</b>
4545 SHINING STAR INCOME	
4546 Sponsorships	2,000.00
4547 Ticket Sales	1,000.00
<b>Total 4545 SHINING STAR INCOME</b>	<b>3,000.00</b>
4550 TRANSPORTATION SUMMIT	
4551 Sponsorships	12,000.00
4552 Ticket Sales	3,000.00
<b>Total 4550 TRANSPORTATION SUMMIT</b>	<b>15,000.00</b>
4555 STATE OF THE CITY	
4556 Sponsorships	18,500.00
4557 Ticket Sales	6,500.00
<b>Total 4555 STATE OF THE CITY</b>	<b>25,000.00</b>
4563 STATE OF HEALTH	
4564 Sponsorships	2,500.00
4565 Ticket Sales	4,000.00
<b>Total 4563 STATE OF HEALTH</b>	<b>6,500.00</b>
4570 COFFEE & COMMERCE	1,800.00
4601 ED PROGRAM INCOME	
4604 Teacher Externship Income	15,000.00
<b>Total 4601 ED PROGRAM INCOME</b>	<b>15,000.00</b>
4602 ED Program - Stem Fair	
4603 Sponsorships	1,750.00
4605 All Other Stem Fair Income/Grant	5,000.00
<b>Total 4602 ED Program - Stem Fair</b>	<b>6,750.00</b>
<b>Total 4400 PROGRAMS INCOME</b>	<b>150,850.00</b>
4600 PRODUCTS AND SERVICES	
4660 Guide/Magazine Ad Income	25,000.00
4694 Relocation Packet Sponsorship	7,000.00
<b>Total 4600 PRODUCTS AND SERVICES</b>	<b>32,000.00</b>
4800 CONTRACT RELATED INCOME	
4810 Contracted Adm Support SEV-CVB	24,000.00
4825 Contracted Adm Support SEV-EDC	10,200.00
4826 Contracted Adm SEV-EDC Bartered	5,000.00
<b>Total 4800 CONTRACT RELATED INCOME</b>	<b>39,200.00</b>
4900 OTHER INCOME	
4910 Interest & Dividend Income	1,500.00
4920 Tech Improvements-MBRS Vol Con	3,000.00
4999 All Other Income	5,000.00
<b>Total 4900 OTHER INCOME</b>	<b>9,500.00</b>
<b>Total Income</b>	<b>\$659,280.00</b>

# SAN MARCOS AREA CHAMBER OF COMMERCE

## BUDGET OVERVIEW: BUDGET FOR 2019-2020 - FY20 P&L

October 2019 - September 2020

	TOTAL
GROSS PROFIT	<b>\$659,280.00</b>
Expenses	
5009 ANNUAL EVENTS EXPENSE	
5010 Annual Dinner Expenses	38,000.00
5025 Business Expo Expenses	16,000.00
5150 Operation Thank You Expenses	365.00
5221 Business on the Greens - Golf Classic	10,000.00
<b>Total 5009 ANNUAL EVENTS EXPENSE</b>	<b>64,365.00</b>
5500 PROGRAMS	
5660 Leads Program Expenses	
5680 Leads-SMCANG # 1 Expenses	300.00
<b>Total 5660 Leads Program Expenses</b>	<b>300.00</b>
5690 SM Young Professional Expenses	3,000.00
5710 Shining Star Expenses	3,000.00
5750 Transportation Summit Expenses	8,500.00
5760 State of the City Expenses	13,000.00
5780 Intercity Trip Expense	35,500.00
5790 State of Health Expenses	5,000.00
6046 ED PROGRAM EXPENSE	
6047 Stem Fair - ED PGM	3,500.00
6049 All Other ED Program Expense	15,000.00
<b>Total 6046 ED PROGRAM EXPENSE</b>	<b>18,500.00</b>
<b>Total 5500 PROGRAMS</b>	<b>86,800.00</b>
6000 PRODUCTS & SERV EXP	
6010 Guide/Magazine Expense	2,000.00
6030 Ambassadors Club Expense	1,500.00
6040 ADVERTISING/PROMO NON EVENT/PGM EXPENSE	
6041 Membership Promotion Expense	300.00
6042 Marketing and Promo Expense	19,000.00
<b>Total 6040 ADVERTISING/PROMO NON EVENT/PGM EXPENSE</b>	<b>19,300.00</b>
6100 COMMITTEE, BOARD, ETC MEET EXPENSE	
6150 Government Affairs Committee Expense	1,500.00
6160 Board of Directors	3,000.00
6165 Business Development Committee	250.00
6180 Membership Committee Expense	1,500.00
6190 Education Committee Expense	1,500.00
6199 All Other Committee Meetings Expense	250.00
<b>Total 6100 COMMITTEE, BOARD, ETC MEET EXPENSE</b>	<b>8,000.00</b>
6900 Relocation Packet Expense	500.00
<b>Total 6000 PRODUCTS &amp; SERV EXP</b>	<b>31,300.00</b>
7000 PERSONNEL SERVICES EXPENSE	
7010 Salaries	236,733.72

# SAN MARCOS AREA CHAMBER OF COMMERCE

## BUDGET OVERVIEW: BUDGET FOR 2019-2020 - FY20 P&L

October 2019 - September 2020

	TOTAL
7040 Payroll Taxes Expense	22,130.10
7050 Employer Retirement Program Contribution	10,279.00
7060 Medical/Dental/Vision Insurance	20,000.00
7070 Workers' Compensation Insurance	1,000.00
7090 Commissions Paid on Sales	
7091 Membership Sales Commissions	33,000.00
7092 Magazine/Directory Commission	1,300.00
<b>Total 7090 Commissions Paid on Sales</b>	<b>34,300.00</b>
7110 Professional Development	10,000.00
7120 Payroll Processing Fees	1,300.00
7130 Contracted Labor/Temps	18,000.00
7140 Employee Search & Relocation	2,000.00
<b>Total 7000 PERSONNEL SERVICES EXPENSE</b>	<b>355,742.82</b>
<b>8000 OPERATIONS EXPENSES</b>	
8010 Audit/Legal Services	4,000.00
8020 Vehicle Mileage Reimbursement	1,000.00
8025 Vehicle Allowances	4,911.00
8030 Credit Card, Bank, & Late Payment Fees	8,000.00
8050 Building/Equip/Break Rm Maintenance & Supplies	10,000.00
8055 Furniture & Equipment-Non Cap (Fixed) Asset	3,000.00
8060 Copy Machine Rent & Supplies	7,203.60
8070 Computer/Tech Maintenance & Supplies	17,000.00
8090 Membership Dues & Subscriptions	5,000.00
8091 Memberships-EDC Bartered	5,000.00
8100 Insurance - Liability & Property	8,000.00
8140 Office Supplies	5,000.00
8160 PR/Hosting/Staff Meetings	200.00
8180 Postage	2,000.00
8205 Membership Recruiting Fee	18,500.00
8220 Telephone	3,000.00
8230 Utilities	11,000.00
<b>Total 8000 OPERATIONS EXPENSES</b>	<b>112,814.60</b>
<b>Total Expenses</b>	<b>\$651,022.42</b>
NET OPERATING INCOME	<b>\$8,257.58</b>
NET INCOME	<b>\$8,257.58</b>

**Williams, Crow, Mask, L.L.P.**  
**1100 NE Loop 410 Ste 350**  
**San Antonio, TX 78209**  
**210-684-1071**

August 12, 2019

**CONFIDENTIAL**

San Marcos Area Chamber of Commerce  
202 North C M Allen Pkwy  
San MARcos, TX 78666

Dear Jason Mock:

We have prepared the following return from information provided by you without verification or audit.

Return of Organization Exempt From Income Tax (Form 990)

We suggest that you examine this return carefully to fully acquaint yourself with all items contained therein to ensure that there are no omissions or misstatements. Attached are instructions for signing and filing the return. Please follow those instructions carefully.

Enclosed is any material you furnished for use in preparing the return. If the return is examined, requests may be made for supporting documentation. Therefore, we recommend that you retain all pertinent records for at least seven years.

In order that we may properly advise you of tax considerations, please keep us informed of any significant changes in your financial affairs or of any correspondence received from taxing authorities.

If you have any questions, or if we can be of assistance in any way, please call.

Sincerely,

Williams, Crow, Mask, L.L.P.

## Filing Instructions

### San Marcos Area Chamber of Commerce

### Exempt Organization Tax Return

### Taxable Year Ended September 30, 2018

**Date Due:** AS SOON AS POSSIBLE

**Remittance:** None is required. Your Form 990 for the tax year ended 9/30/18 shows no balance due.

**Signature:** You are using a Personal Identification Number (PIN) for signing your return electronically. Form 8879-EO, IRS *e-file* Signature Authorization for an Exempt Organization should be signed and dated by an authorized officer of the organization and returned to:

Williams, Crow, Mask, L.L.P.  
1100 NE Loop 410 Ste 350  
San Antonio, TX 78209

***Important:*** Your return will not be filed with the IRS until the signed Form 8879-EO has been received by this office. If previously signed and returned no further action is required.

**Other:** Your return is being filed electronically with the IRS and is not required to be mailed. If you Mail a paper copy of your return to the IRS it will delay the processing of your return.

Form **8879-EO**

### IRS e-file Signature Authorization for an Exempt Organization

OMB No. 1545-1878

For calendar year 2017, or fiscal year beginning 10/01, 2017, and ending 9/30, 2018

▶ Do not send to the IRS. Keep for your records.

▶ Go to [www.irs.gov/Form8879EO](http://www.irs.gov/Form8879EO) for the latest information.

# 2017

Department of the Treasury  
Internal Revenue Service

Name of exempt organization

**SAN MARCOS AREA CHAMBER OF COMMERCE**

Employer identification number

**74-0880672**

Name and title of officer

**JASON MOCK  
PRESIDENT CEO**

#### Part I Type of Return and Return Information (Whole Dollars Only)

Check the box for the return for which you are using this Form 8879-EO and enter the applicable amount, if any, from the return. If you check the box on line 1a, 2a, 3a, 4a, or 5a, below, and the amount on that line for the return being filed with this form was blank, then leave line 1b, 2b, 3b, 4b, or 5b, whichever is applicable, blank (do not enter -0-). But, if you entered -0- on the return, then enter -0- on the applicable line below. Do not complete more than one line in Part I.

1a	Form 990 check here ▶ <input checked="" type="checkbox"/>	b	Total revenue, if any (Form 990, Part VIII, column (A), line 12)	1b	<u>553,430</u>
2a	Form 990-EZ check here ▶ <input type="checkbox"/>	b	Total revenue, if any (Form 990-EZ, line 9)	2b	
3a	Form 1120-POL check here ▶ <input type="checkbox"/>	b	Total tax (Form 1120-POL, line 22)	3b	
4a	Form 990-PF check here ▶ <input type="checkbox"/>	b	Tax based on investment income (Form 990-PF, Part VI, line 5)	4b	
5a	Form 8868 check here ▶ <input type="checkbox"/>	b	Balance Due (Form 8868, line 3c)	5b	

#### Part II Declaration and Signature Authorization of Officer

Under penalties of perjury, I declare that I am an officer of the above organization and that I have examined a copy of the organization's 2017 electronic return and accompanying schedules and statements and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that the amount in Part I above is the amount shown on the copy of the organization's electronic return. I consent to allow my intermediate service provider, transmitter, or electronic return originator (ERO) to send the organization's return to the IRS and to receive from the IRS (a) an acknowledgement of receipt or reason for rejection of the transmission, (b) the reason for any delay in processing the return or refund, and (c) the date of any refund. If applicable, I authorize the U.S. Treasury and its designated Financial Agent to initiate an electronic funds withdrawal (direct debit) entry to the financial institution account indicated in the tax preparation software for payment of the organization's federal taxes owed on this return, and the financial institution to debit the entry to this account. To revoke a payment, I must contact the U.S. Treasury Financial Agent at 1-888-353-4537 no later than 2 business days prior to the payment (settlement) date. I also authorize the financial institutions involved in the processing of the electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to the payment. I have selected a personal identification number (PIN) as my signature for the organization's electronic return and, if applicable, the organization's consent to electronic funds withdrawal.

Officer's PIN: check one box only

I authorize WILLIAMS, CROW, MASK, L.L.P. to enter my PIN 12345 as my signature  
ERO firm name Enter five numbers, but do not enter all zeros

on the organization's tax year 2017 electronically filed return. If I have indicated within this return that a copy of the return is being filed with a state agency(ies) regulating charities as part of the IRS Fed/State program, I also authorize the aforementioned ERO to enter my PIN on the return's disclosure consent screen.

As an officer of the organization, I will enter my PIN as my signature on the organization's tax year 2017 electronically filed return. If I have indicated within this return that a copy of the return is being filed with a state agency(ies) regulating charities as part of the IRS Fed/State program, I will enter my PIN on the return's disclosure consent screen.

Officer's signature ▶

Date ▶ 03/01/19

#### Part III Certification and Authentication

ERO's EFIN/PIN. Enter your six-digit electronic filing identification number (EFIN) followed by your five-digit self-selected PIN.

**74094512345**

Do not enter all zeros

I certify that the above numeric entry is my PIN, which is my signature on the 2017 electronically filed return for the organization indicated above. I confirm that I am submitting this return in accordance with the requirements of Pub. 4163, Modernized e-File (MeF) Information for Authorized IRS e-file Providers for Business Returns.

ERO's signature ▶

Date ▶ 03/01/19

**ERO Must Retain This Form — See Instructions**

**Do Not Submit This Form to the IRS Unless Requested To Do So**

For Paperwork Reduction Act Notice, see back of form.

Form **8879-EO** (2017)

Form **990**

Department of the Treasury  
Internal Revenue Service

**Return of Organization Exempt From Income Tax**  
Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

Do not enter social security numbers on this form as it may be made public.  
Go to [www.irs.gov/Form990](http://www.irs.gov/Form990) for instructions and the latest information.

OMB No. 1545-0047

**2017**  
Open to Public Inspection

**A For the 2017 calendar year, or tax year beginning 10/01/17, and ending 09/30/18**

<b>B</b> Check if applicable: <input type="checkbox"/> Address change <input type="checkbox"/> Name change <input type="checkbox"/> Initial return <input type="checkbox"/> Final return/terminated <input type="checkbox"/> Amended return <input type="checkbox"/> Application pending	<b>C</b> Name of organization <p style="text-align: center;"><b>SAN MARCOS AREA CHAMBER OF COMMERCE</b></p> Doing business as Number and street (or P.O. box if mail is not delivered to street address) Room/suite <p><b>202 NORTH C M ALLEN PKWY</b></p> City or town, state or province, country, and ZIP or foreign postal code <p><b>SAN MARCOS TX 78666</b></p>	<b>D</b> Employer identification number <p style="text-align: center;"><b>74-0880672</b></p> <b>E</b> Telephone number G Gross receipts \$ <b>553,430</b>
<b>F</b> Name and address of principal officer: <p style="text-align: center;"><b>JASON MOCK</b></p>		H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list. (see instructions)

<b>I</b> Tax-exempt status: <input type="checkbox"/> 501(c)(3) <input checked="" type="checkbox"/> 501(c) ( <b>6</b> ) (insert no.) <input type="checkbox"/> 4947(a)(1) or <input type="checkbox"/> 527	<b>J</b> Website: <b>WWW.SANMARCOSTEXAS.COM</b>	<b>H(c)</b> Group exemption number
<b>K</b> Form of organization: <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Association <input type="checkbox"/> Other	<b>L</b> Year of formation: <b>1955</b>	<b>M</b> State of legal domicile: <b>TX</b>

**Part I Summary**

	1 Briefly describe the organization's mission or most significant activities: <p style="text-align: center;"><b>TO IMPROVE THE ECONOMIC WELL BEING OF THE GREATER SAN MARCOS AREA</b></p>			
Activities & Governance	2 Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.			
	3 Number of voting members of the governing body (Part VI, line 1a)	3	17	
	4 Number of independent voting members of the governing body (Part VI, line 1b)	4	17	
	5 Total number of individuals employed in calendar year 2017 (Part V, line 2a)	5	5	
	6 Total number of volunteers (estimate if necessary)	6	0	
	7a Total unrelated business revenue from Part VIII, column (C), line 12	7a		0
b Net unrelated business taxable income from Form 990-T, line 34	7b		0	
Revenue	8 Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year	
	9 Program service revenue (Part VIII, line 2g)	165,184	239,306	
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	278,711	313,333	
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	643	791	
	12 Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)	444,538	553,430	
	Expenses	13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)		
14 Benefits paid to or for members (Part IX, column (A), line 4)				0
15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)		253,029	276,340	
16a Professional fundraising fees (Part IX, column (A), line 11e)				0
b Total fundraising expenses (Part IX, column (D), line 25) ▶		0		
17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)		234,169	280,530	
18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)	487,198	556,870		
19 Revenue less expenses. Subtract line 18 from line 12	-42,660	-3,440		
Net Assets or Fund Balances	20 Total assets (Part X, line 16)	Beginning of Current Year	End of Year	
	21 Total liabilities (Part X, line 26)	433,825	419,070	
	22 Net assets or fund balances. Subtract line 21 from line 20	35,755	24,440	
		398,070	394,630	

**Part II Signature Block**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

<b>Sign Here</b>	Signature of officer <p style="text-align: center;"><b>JASON MOCK</b></p> Type or print name and title	Date <p style="text-align: center;"><b>PRESIDENT CEO</b></p>
<b>Paid Preparer Use Only</b>	Print/Type preparer's name <p><b>KIRK MASK</b></p> Preparer's signature Date <p><b>08/12/19</b></p> Check <input type="checkbox"/> if self-employed PTIN <p><b>P01231314</b></p> Firm's name <p><b>WILLIAMS, CROW, MASK, L.L.P.</b></p> Firm's EIN <p><b>74-2985734</b></p> Firm's address <p><b>1100 NE LOOP 410 STE 350 SAN ANTONIO, TX 78209</b></p> Phone no. <p><b>210-684-1071</b></p>	

May the IRS discuss this return with the preparer shown above? (see instructions)  Yes  No

**Part III Statement of Program Service Accomplishments**

Check if Schedule O contains a response or note to any line in this Part III

1 Briefly describe the organization's mission:

**TO IMPROVE THE ECONOMIC WELL BEING OF THE GREATER SAN MARCOS AREA**

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ?  Yes  No

If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services?  Yes  No

If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code: ) (Expenses \$ **479,764** including grants of \$ ) (Revenue \$ **313,333** )

**TO IMPROVE THE ECONOMIC WELL BEING OF THE GREATER SAN MARCOS AREA AND THE BUSINESSES WITHIN THE AREA THROUGH A VARIETY OF ACTIVITIES THAT ARE AVAILABLE TO MEMBERS AND THE GENERAL PUBLIC. ACTIVITIES INCLUDE BANQUETS, BUSINESS SHOWCASES, MAPS, DIRECTORIES, NETWORKING AND OTHER ACTIVE PARTICIPATION ACTIVITIES.**

4b (Code: ) (Expenses \$ including grants of \$ ) (Revenue \$ )

4c (Code: ) (Expenses \$ including grants of \$ ) (Revenue \$ )

4d Other program services (Describe in Schedule O.)

(Expenses \$ including grants of \$ ) (Revenue \$ )

4e Total program service expenses **479,764**

**Part IV Checklist of Required Schedules**

		Yes	No
1	Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? If "Yes," complete Schedule A		X
2	Is the organization required to complete Schedule B, Schedule of Contributors (see instructions)?		X
3	Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I		X
4	<b>Section 501(c)(3) organizations.</b> Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? If "Yes," complete Schedule C, Part II		
5	Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? If "Yes," complete Schedule C, Part III		X
6	Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? If "Yes," complete Schedule D, Part I		X
7	Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? If "Yes," complete Schedule D, Part II		X
8	Did the organization maintain collections of works of art, historical treasures, or other similar assets? If "Yes," complete Schedule D, Part III		X
9	Did the organization report an amount in Part X, line 21, for escrow or custodial account liability, serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? If "Yes," complete Schedule D, Part IV		X
10	Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi-endowments? If "Yes," complete Schedule D, Part V		X
11	If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.		
a	Did the organization report an amount for land, buildings, and equipment in Part X, line 10? If "Yes," complete Schedule D, Part VI	X	
b	Did the organization report an amount for investments—other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VII		X
c	Did the organization report an amount for investments—program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VIII		X
d	Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part IX		X
e	Did the organization report an amount for other liabilities in Part X, line 25? If "Yes," complete Schedule D, Part X	X	
f	Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? If "Yes," complete Schedule D, Part X		X
12a	Did the organization obtain separate, independent audited financial statements for the tax year? If "Yes," complete Schedule D, Parts XI and XII	X	
b	Was the organization included in consolidated, independent audited financial statements for the tax year? If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional		X
13	Is the organization a school described in section 170(b)(1)(A)(ii)? If "Yes," complete Schedule E		X
14a	Did the organization maintain an office, employees, or agents outside of the United States?		X
b	Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at \$100,000 or more? If "Yes," complete Schedule F, Parts I and IV		X
15	Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or other assistance to or for any foreign organization? If "Yes," complete Schedule F, Parts II and IV		X
16	Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or other assistance to or for foreign individuals? If "Yes," complete Schedule F, Parts III and IV		X
17	Did the organization report a total of more than \$15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? If "Yes," complete Schedule G, Part I (see instructions)		X
18	Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? If "Yes," complete Schedule G, Part II		X
19	Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? If "Yes," complete Schedule G, Part III		X

**Part IV Checklist of Required Schedules (continued)**

		Yes	No
20a	Did the organization operate one or more hospital facilities? <i>If "Yes," complete Schedule H</i>		<b>X</b>
b	If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return?		
21	Did the organization report more than \$5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? <i>If "Yes," complete Schedule I, Parts I and II</i>		<b>X</b>
22	Did the organization report more than \$5,000 of grants or other assistance to or for domestic individuals on Part IX, column (A), line 2? <i>If "Yes," complete Schedule I, Parts I and III</i>		<b>X</b>
23	Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? <i>If "Yes," complete Schedule J</i>		<b>X</b>
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? <i>If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a</i>		<b>X</b>
b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?		
c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?		
d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?		
25a	<b>Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations.</b> Did the organization engage in an excess benefit transaction with a disqualified person during the year? <i>If "Yes," complete Schedule L, Part I</i>		
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? <i>If "Yes," complete Schedule L, Part I</i>		
26	Did the organization report any amount on Part X, line 5, 6, or 22 for receivables from or payables to any current or former officers, directors, trustees, key employees, highest compensated employees, or disqualified persons? <i>If "Yes," complete Schedule L, Part II</i>		<b>X</b>
27	Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? <i>If "Yes," complete Schedule L, Part III</i>		<b>X</b>
28	Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions):		
a	A current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i>		<b>X</b>
b	A family member of a current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV</i>		<b>X</b>
c	An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? <i>If "Yes," complete Schedule L, Part IV</i>		<b>X</b>
29	Did the organization receive more than \$25,000 in non-cash contributions? <i>If "Yes," complete Schedule M</i>		<b>X</b>
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? <i>If "Yes," complete Schedule M</i>		<b>X</b>
31	Did the organization liquidate, terminate, or dissolve and cease operations? <i>If "Yes," complete Schedule N, Part I</i>		<b>X</b>
32	Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? <i>If "Yes," complete Schedule N, Part II</i>		<b>X</b>
33	Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? <i>If "Yes," complete Schedule R, Part I</i>		<b>X</b>
34	Was the organization related to any tax-exempt or taxable entity? <i>If "Yes," complete Schedule R, Part II, III, or IV, and Part V, line 1</i>		<b>X</b>
35a	Did the organization have a controlled entity within the meaning of section 512(b)(13)?		<b>X</b>
b	If "Yes" to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? <i>If "Yes," complete Schedule R, Part V, line 2</i>		
36	<b>Section 501(c)(3) organizations.</b> Did the organization make any transfers to an exempt non-charitable related organization? <i>If "Yes," complete Schedule R, Part V, line 2</i>		
37	Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? <i>If "Yes," complete Schedule R, Part VI</i>		<b>X</b>
38	Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11b and 19? <b>Note.</b> All Form 990 filers are required to complete Schedule O.	<b>X</b>	

**Part VI Governance, Management, and Disclosure** For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.

Check if Schedule O contains a response or note to any line in this Part VI

**Section A. Governing Body and Management**

		Yes	No
<b>1a</b>	Enter the number of voting members of the governing body at the end of the tax year If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.		
	<b>17</b>		
<b>1b</b>	Enter the number of voting members included in line 1a, above, who are independent		
	<b>17</b>		
<b>2</b>	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?		<b>X</b>
<b>3</b>	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person?		<b>X</b>
<b>4</b>	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?		<b>X</b>
<b>5</b>	Did the organization become aware during the year of a significant diversion of the organization's assets?		<b>X</b>
<b>6</b>	Did the organization have members or stockholders?		<b>X</b>
<b>7a</b>	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?		<b>X</b>
<b>b</b>	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?		<b>X</b>
<b>8</b>	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
<b>a</b>	The governing body?	<b>X</b>	
<b>b</b>	Each committee with authority to act on behalf of the governing body?	<b>X</b>	
<b>9</b>	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O		<b>X</b>

**Section B. Policies** (This Section B requests information about policies not required by the Internal Revenue Code.)

		Yes	No
<b>10a</b>	Did the organization have local chapters, branches, or affiliates?		<b>X</b>
<b>b</b>	If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?		
<b>10b</b>			
<b>11a</b>	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?	<b>X</b>	
<b>b</b>	Describe in Schedule O the process, if any, used by the organization to review this Form 990.		
<b>12a</b>	Did the organization have a written conflict of interest policy? If "No," go to line 13	<b>X</b>	
<b>b</b>	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	<b>X</b>	
<b>12b</b>			
<b>c</b>	Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done	<b>X</b>	
<b>12c</b>			
<b>13</b>	Did the organization have a written whistleblower policy?	<b>X</b>	
<b>14</b>	Did the organization have a written document retention and destruction policy?	<b>X</b>	
<b>15</b>	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
<b>a</b>	The organization's CEO, Executive Director, or top management official	<b>X</b>	
<b>15a</b>			
<b>b</b>	Other officers or key employees of the organization If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).	<b>X</b>	
<b>15b</b>			
<b>16a</b>	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?		<b>X</b>
<b>b</b>	If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?		
<b>16b</b>			

**Section C. Disclosure**

- 17** List the states with which a copy of this Form 990 is required to be filed ► **NONE**
- 18** Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.  
 Own website  Another's website  Upon request  Other (explain in Schedule O)
- 19** Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.
- 20** State the name, address, and telephone number of the person who possesses the organization's books and records: ►

**JUDY MANGUS**  
**SAN MARCOS**

**202 C M ALLEN PKWY**

**TX 78666**

**512-393-5900**

**Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors**

Check if Schedule O contains a response or note to any line in this Part VII

**Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees**

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1) JON SPRENCEL BOARD MEMBER	0.00 0.00	X						0	0	0
(2) TANYA TOUNZEN BOARD MEMBER	0.00 0.00	X						0	0	0
(3) SHAWN ASH BOARD MEMBER	0.00 0.00	X						0	0	0
(4) TOMMY CURTIS BOARD MEMBER	0.00 0.00	X						0	0	0
(5) WALTER ELIAS BOARD MEMBER	0.00 0.00	X						0	0	0
(6) KAYLI HEAD BOARD MEMBER	0.00 0.00	X						0	0	0
(7) FORREST HIGDON BOARD MEMBER	0.00 0.00	X						0	0	0
(8) MONICA MALORGIO BOARD MEMBER	0.00 0.00	X						0	0	0
(9) BRIAN OLSON BOARD MEMBER	0.00 0.00	X						0	0	0
(10) VIC PATEL BOARD MEMBER	0.00 0.00	X						0	0	0
(11) LANCE SPRUIELL BOARD MEMBER	0.00 0.00	X						0	0	0

**Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)**

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(12) <b>AMY STANFIELD</b>	0.00									
BOARD MEMBER	0.00	X					0	0	0	
(13) <b>JESSICA WALSHAK</b>	0.00									
BOARD MEMBER	0.00	X					0	0	0	
(14) <b>MATHEW WORTHINGTON</b>	0.00									
BOARD MEMBER	0.00	X					0	0	0	
(15) <b>JESSICA PIZANA</b>	0.00									
CHAIR-ELECT	0.00			X			0	0	0	
(16) <b>KEVIN CARSWELL</b>	0.00									
CHAIR	0.00			X			0	0	0	
(17) <b>DAVID CASE</b>	0.00									
SECRETARY	0.00			X			0	0	0	
(18) <b>DON MOORE</b>	0.00									
TREASURER	0.00			X			0	0	0	
<b>1b Sub-total</b>										
<b>c Total from continuation sheets to Part VII, Section A</b>										
<b>d Total (add lines 1b and 1c)</b>										

**2** Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization **0**

	Yes	No
<b>3</b> Did the organization list any former officer, director, or trustee, key employee, or highest compensated employee on line 1a? If "Yes," complete Schedule J for such individual		X
<b>4</b> For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? If "Yes," complete Schedule J for such individual		X
<b>5</b> Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? If "Yes," complete Schedule J for such person		X

**Section B. Independent Contractors**

**1** Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation

**2** Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization **0**

**Part VIII Statement of Revenue**

Check if Schedule O contains a response or note to any line in this Part VIII

			(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514
<b>Contributions, Gifts, Grants and Other Similar Amounts</b>	1a Federated campaigns	1a				
	b Membership dues	1b	239,306			
	c Fundraising events	1c				
	d Related organizations	1d				
	e Government grants (contributions)	1e				
	f All other contributions, gifts, grants, and similar amounts not included above	1f				
	g Noncash contributions included in lines 1a-1f: \$					
	<b>h Total. Add lines 1a-1f</b>		<b>239,306</b>			
<b>Program Service Revenue</b>	2a PROGRAM SERVICES	Busn. Code	125,158	125,158		
	b MEMBER EVENTS		102,530	102,530		
	c OTHER REVENUES		85,645	85,645		
	d					
	e					
	f All other program service revenue					
	<b>g Total. Add lines 2a-2f</b>		<b>313,333</b>			
<b>Other Revenue</b>	3 Investment income (including dividends, interest, and other similar amounts)		791	791		
	4 Income from investment of tax-exempt bond proceeds					
	5 Royalties					
	6a Gross rents	(i) Real				
		(ii) Personal				
	b Less: rental exps.					
	c Rental inc. or (loss)					
	d Net rental income or (loss)					
	7a Gross amount from sales of assets other than inventory	(i) Securities				
		(ii) Other				
	b Less: cost or other basis & sales exps.					
	c Gain or (loss)					
	d Net gain or (loss)					
	8a Gross income from fundraising events (not including \$ of contributions reported on line 1c). See Part IV, line 18	a				
	b Less: direct expenses	b				
c Net income or (loss) from fundraising events						
9a Gross income from gaming activities. See Part IV, line 19	a					
b Less: direct expenses	b					
c Net income or (loss) from gaming activities						
10a Gross sales of inventory, less returns and allowances	a					
b Less: cost of goods sold	b					
c Net income or (loss) from sales of inventory						
Miscellaneous Revenue		Busn. Code				
11a						
b						
c						
d All other revenue						
e Total. Add lines 11a-11d						
<b>12 Total revenue. See instructions.</b>			<b>553,430</b>	<b>314,124</b>	<b>0</b>	<b>0</b>

**Part IX Statement of Functional Expenses**

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX

<b>Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.</b>	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21				
2 Grants and other assistance to domestic individuals. See Part IV, line 22				
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16				
4 Benefits paid to or for members				
5 Compensation of current officers, directors, trustees, and key employees				
6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)				
7 Other salaries and wages	177,100	159,390	17,710	
8 Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions)	30,697	27,627	3,070	
9 Other employee benefits	50,636	45,572	5,064	
10 Payroll taxes	17,907	16,116	1,791	
11 Fees for services (non-employees):				
a Management				
b Legal				
c Accounting	3,950		3,950	
d Lobbying				
e Professional fundraising services. See Part IV, line 17				
f Investment management fees				
g Other. (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Schedule O.)				
12 Advertising and promotion				
13 Office expenses	19,037	10,580	8,457	
14 Information technology	16,795	15,115	1,680	
15 Royalties				
16 Occupancy	5,614	5,053	561	
17 Travel	5,875	5,875		
18 Payments of travel or entertainment expenses for any federal, state, or local public officials				
19 Conferences, conventions, and meetings				
20 Interest				
21 Payments to affiliates				
22 Depreciation, depletion, and amortization	17,302	17,302		
23 Insurance	12,227	11,004	1,223	
24 Other expenses. Itemize expenses not covered above (List miscellaneous expenses in line 24e. If line 24e amount exceeds 10% of line 25, column (A) amount, list line 24e expenses on Schedule O.)				
a <b>ANNUAL EVENTS</b>	86,939	86,939		
b <b>OTHER EVENTS &amp; ACTIVITIES</b>	77,294	77,294		
c <b>TELEPHONE</b>	11,771	1,177	10,594	
d <b>BUILDING &amp; MAINTENANCE</b>	9,837		9,837	
e All other expenses	13,889	720	13,169	
<b>25 Total functional expenses.</b> Add lines 1 through 24e	<b>556,870</b>	<b>479,764</b>	<b>77,106</b>	<b>0</b>
26 <b>Joint costs.</b> Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here <input type="checkbox"/> if following SOP 98-2 (ASC 958-720)				

**Part X Balance Sheet**

Check if Schedule O contains a response or note to any line in this Part X

		(A) Beginning of year		(B) End of year
Assets	1 Cash—non-interest bearing	190,507	1	187,188
	2 Savings and temporary cash investments		2	
	3 Pledges and grants receivable, net		3	
	4 Accounts receivable, net	11,345	4	8,711
	5 Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees. Complete Part II of Schedule L		5	
	6 Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instructions). Complete Part II of Schedule L		6	
	7 Notes and loans receivable, net		7	
	8 Inventories for sale or use		8	
	9 Prepaid expenses and deferred charges		9	8,500
	10a Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D	10a 512,847		
	b Less: accumulated depreciation	10b 298,176	231,973	10c 214,671
	11 Investments—publicly traded securities		11	
	12 Investments—other securities. See Part IV, line 11		12	
	13 Investments—program-related. See Part IV, line 11		13	
	14 Intangible assets		14	
	15 Other assets. See Part IV, line 11		15	
16 <b>Total assets.</b> Add lines 1 through 15 (must equal line 34)		433,825	16	419,070
Liabilities	17 Accounts payable and accrued expenses	35,755	17	9,245
	18 Grants payable		18	
	19 Deferred revenue		19	14,195
	20 Tax-exempt bond liabilities		20	
	21 Escrow or custodial account liability. Complete Part IV of Schedule D		21	
	22 Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L		22	
	23 Secured mortgages and notes payable to unrelated third parties		23	
	24 Unsecured notes and loans payable to unrelated third parties		24	
	25 Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D		25	1,000
	26 <b>Total liabilities.</b> Add lines 17 through 25		35,755	26
Net Assets or Fund Balances	<b>Organizations that follow SFAS 117 (ASC 958), check here <input checked="" type="checkbox"/> and complete lines 27 through 29, and lines 33 and 34.</b>			
	27 Unrestricted net assets	398,070	27	394,630
	28 Temporarily restricted net assets		28	
	29 Permanently restricted net assets		29	
	<b>Organizations that do not follow SFAS 117 (ASC 958), check here <input type="checkbox"/> and complete lines 30 through 34.</b>			
	30 Capital stock or trust principal, or current funds		30	
	31 Paid-in or capital surplus, or land, building, or equipment fund		31	
	32 Retained earnings, endowment, accumulated income, or other funds		32	
33 <b>Total net assets or fund balances</b>		398,070	33	394,630
34 <b>Total liabilities and net assets/fund balances</b>		433,825	34	419,070

**Part V Statements Regarding Other IRS Filings and Tax Compliance**

Check if Schedule O contains a response or note to any line in this Part V

		Yes	No
<b>1a</b>	Enter the number reported in Box 3 of Form 1096. Enter -0- if not applicable		
<b>1b</b>	Enter the number of Forms W-2G included in line 1a. Enter -0- if not applicable		
<b>1c</b>	Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?		<b>X</b>
<b>2a</b>	Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return		
<b>2b</b>	If at least one is reported on line 2a, did the organization file all required federal employment tax returns? <b>Note.</b> If the sum of lines 1a and 2a is greater than 250, you may be required to e-file (see instructions)	<b>X</b>	
<b>3a</b>	Did the organization have unrelated business gross income of \$1,000 or more during the year?		<b>X</b>
<b>3b</b>	If "Yes," has it filed a Form 990-T for this year? If "No" to line 3b, provide an explanation in Schedule O		
<b>4a</b>	At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)?		<b>X</b>
<b>4b</b>	If "Yes," enter the name of the foreign country: <b>▶</b> See instructions for filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).		
<b>5a</b>	Was the organization a party to a prohibited tax shelter transaction at any time during the tax year?		<b>X</b>
<b>5b</b>	Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?		<b>X</b>
<b>5c</b>	If "Yes" to line 5a or 5b, did the organization file Form 8886-T?		
<b>6a</b>	Does the organization have annual gross receipts that are normally greater than \$100,000, and did the organization solicit any contributions that were not tax deductible as charitable contributions?		<b>X</b>
<b>6b</b>	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?		
<b>7</b>	<b>Organizations that may receive deductible contributions under section 170(c).</b>		
<b>7a</b>	Did the organization receive a payment in excess of \$75 made partly as a contribution and partly for goods and services provided to the payor?		
<b>7b</b>	If "Yes," did the organization notify the donor of the value of the goods or services provided?		
<b>7c</b>	Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it was required to file Form 8282?		
<b>7d</b>	If "Yes," indicate the number of Forms 8282 filed during the year		
<b>7e</b>	Did the organization receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?		
<b>7f</b>	Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?		
<b>7g</b>	If the organization received a contribution of qualified intellectual property, did the organization file Form 8899 as required?		
<b>7h</b>	If the organization received a contribution of cars, boats, airplanes, or other vehicles, did the organization file a Form 1098-C?		
<b>8</b>	<b>Sponsoring organizations maintaining donor advised funds.</b> Did a donor advised fund maintained by the sponsoring organization have excess business holdings at any time during the year?		
<b>9</b>	<b>Sponsoring organizations maintaining donor advised funds.</b>		
<b>9a</b>	Did the sponsoring organization make any taxable distributions under section 4966?		
<b>9b</b>	Did the sponsoring organization make a distribution to a donor, donor advisor, or related person?		
<b>10</b>	<b>Section 501(c)(7) organizations.</b> Enter:		
<b>10a</b>	Initiation fees and capital contributions included on Part VIII, line 12		
<b>10b</b>	Gross receipts, included on Form 990, Part VIII, line 12, for public use of club facilities		
<b>11</b>	<b>Section 501(c)(12) organizations.</b> Enter:		
<b>11a</b>	Gross income from members or shareholders		
<b>11b</b>	Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them.)		
<b>12a</b>	<b>Section 4947(a)(1) non-exempt charitable trusts.</b> Is the organization filing Form 990 in lieu of Form 1041?		
<b>12b</b>	If "Yes," enter the amount of tax-exempt interest received or accrued during the year		
<b>13</b>	<b>Section 501(c)(29) qualified nonprofit health insurance issuers.</b>		
<b>13a</b>	Is the organization licensed to issue qualified health plans in more than one state? <b>Note.</b> See the instructions for additional information the organization must report on Schedule O.		
<b>13b</b>	Enter the amount of reserves the organization is required to maintain by the states in which the organization is licensed to issue qualified health plans		
<b>13c</b>	Enter the amount of reserves on hand		
<b>14a</b>	Did the organization receive any payments for indoor tanning services during the tax year?		<b>X</b>
<b>14b</b>	If "Yes," has it filed a Form 720 to report these payments? If "No," provide an explanation in Schedule O		

**Part XI Reconciliation of Net Assets**

Check if Schedule O contains a response or note to any line in this Part XI

1	Total revenue (must equal Part VIII, column (A), line 12)	1	553,430
2	Total expenses (must equal Part IX, column (A), line 25)	2	556,870
3	Revenue less expenses. Subtract line 2 from line 1	3	-3,440
4	Net assets or fund balances at beginning of year (must equal Part X, line 33, column (A))	4	398,070
5	Net unrealized gains (losses) on investments	5	
6	Donated services and use of facilities	6	
7	Investment expenses	7	
8	Prior period adjustments	8	
9	Other changes in net assets or fund balances (explain in Schedule O)	9	
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 33, column (B))	10	394,630

**Part XII Financial Statements and Reporting**

Check if Schedule O contains a response or note to any line in this Part XII

	Yes	No
1 Accounting method used to prepare the Form 990: <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual <input type="checkbox"/> Other _____ If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O.		
2a Were the organization's financial statements compiled or reviewed by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both: <input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input checked="" type="checkbox"/> Both consolidated and separate basis		X
b Were the organization's financial statements audited by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both: <input checked="" type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis	X	
c If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.		
3a As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?		X
b If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits.		

SCHEDULE D (Form 990)

Department of the Treasury Internal Revenue Service

Supplemental Financial Statements

Complete if the organization answered "Yes" on Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b. Attach to Form 990.

Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2017

Open to Public Inspection

Name of the organization

Employer identification number

SAN MARCOS AREA CHAMBER OF COMMERCE

74-0880672

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.

Complete if the organization answered "Yes" on Form 990, Part IV, line 6.

Table with 2 columns: (a) Donor advised funds, (b) Funds and other accounts. Rows include: 1 Total number at end of year, 2 Aggregate value of contributions to (during year), 3 Aggregate value of grants from (during year), 4 Aggregate value at end of year, 5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control? (Yes/No), 6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds can be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit? (Yes/No)

Part II Conservation Easements.

Complete if the organization answered "Yes" on Form 990, Part IV, line 7.

Table with 2 columns: Description, Held at the End of the Tax Year. Rows include: 1 Purpose(s) of conservation easements held by the organization (check all that apply), 2 Complete lines 2a through 2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year (2a Total number of conservation easements, 2b Total acreage restricted by conservation easements, 2c Number of conservation easements on a certified historic structure included in (a), 2d Number of conservation easements included in (c) acquired after 7/25/06, and not on a historic structure listed in the National Register), 3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year, 4 Number of states where property subject to conservation easement is located, 5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds? (Yes/No), 6 Staff and volunteer hours devoted to monitoring, inspecting, handling of violations, and enforcing conservation easements during the year, 7 Amount of expenses incurred in monitoring, inspecting, handling of violations, and enforcing conservation easements during the year, 8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)? (Yes/No), 9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered "Yes" on Form 990, Part IV, line 8.

Table with 2 columns: Description, Amount. Rows include: 1a If the organization elected, as permitted under SFAS 116 (ASC 958), not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIII, the text of the footnote to its financial statements that describes these items. b If the organization elected, as permitted under SFAS 116 (ASC 958), to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items: (i) Revenue included on Form 990, Part VIII, line 1, (ii) Assets included in Form 990, Part X, 2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 (ASC 958) relating to these items: a Revenue included on Form 990, Part VIII, line 1, b Assets included in Form 990, Part X

**Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets (continued)**

3 Using the organization's acquisition, accession, and other records, check any of the following that are a significant use of its collection items (check all that apply):

- a  Public exhibition
- b  Scholarly research
- c  Preservation for future generations
- d  Loan or exchange programs
- e  Other .....

4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.

5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection?  Yes  No

**Part IV Escrow and Custodial Arrangements.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X?  Yes  No

b If "Yes," explain the arrangement in Part XIII and complete the following table:

	Amount
1c	Beginning balance
1d	Additions during the year
1e	Distributions during the year
1f	Ending balance

2a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability?  Yes  No

b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided on Part XIII

**Part V Endowment Funds.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 10.

	(a) Current year	(b) Prior year	(c) Two years back	(d) Three years back	(e) Four years back
1a	Beginning of year balance				
b	Contributions				
c	Net investment earnings, gains, and losses				
d	Grants or scholarships				
e	Other expenditures for facilities and programs				
f	Administrative expenses				
g	End of year balance				

2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:

- a Board designated or quasi-endowment ▶ %
- b Permanent endowment ▶ %
- c Temporarily restricted endowment ▶ %

The percentages on lines 2a, 2b, and 2c should equal 100%.

3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:

- (i) unrelated organizations
- (ii) related organizations

	Yes	No
3a(i)		
3a(ii)		
3b		

b If "Yes" on line 3a(ii), are the related organizations listed as required on Schedule R?  
 4 Describe in Part XIII the intended uses of the organization's endowment funds.

**Part VI Land, Buildings, and Equipment.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

Description of property	(a) Cost or other basis (investment)	(b) Cost or other basis (other)	(c) Accumulated depreciation	(d) Book value
1a Land				
b Buildings		443,655	250,665	192,990
c Leasehold improvements		26,883	15,351	11,532
d Equipment		28,810	20,468	8,342
e Other		13,499	11,692	1,807
<b>Total.</b> Add lines 1a through 1e. (Column (d) must equal Form 990, Part X, column (B), line 10c.)				<b>214,671</b>

**Part VII Investments—Other Securities.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 11b. See Form 990, Part X, line 12.

(a) Description of security or category (including name of security)	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1) Financial derivatives .....		
(2) Closely-held equity interests .....		
(3) Other .....		
(A) .....		
(B) .....		
(C) .....		
(D) .....		
(E) .....		
(F) .....		
(G) .....		
(H) .....		
<b>Total.</b> (Column (b) must equal Form 990, Part X, col. (B) line 12.) ▶		

**Part VIII Investments—Program Related.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 11c. See Form 990, Part X, line 13.

(a) Description of investment	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1) .....		
(2) .....		
(3) .....		
(4) .....		
(5) .....		
(6) .....		
(7) .....		
(8) .....		
(9) .....		
<b>Total.</b> (Column (b) must equal Form 990, Part X, col. (B) line 13.) ▶		

**Part IX Other Assets.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 11d. See Form 990, Part X, line 15.

(a) Description	(b) Book value
(1) .....	
(2) .....	
(3) .....	
(4) .....	
(5) .....	
(6) .....	
(7) .....	
(8) .....	
(9) .....	
<b>Total.</b> (Column (b) must equal Form 990, Part X, col. (B) line 15.) ▶	

**Part X Other Liabilities.**

Complete if the organization answered "Yes" on Form 990, Part IV, line 11e or 11f. See Form 990, Part X, line 25.

1. (a) Description of liability	(b) Book value	
(1) Federal income taxes		
(2) <b>OTHER LIABILITIES</b>	<b>1,000</b>	
(3) .....		
(4) .....		
(5) .....		
(6) .....		
(7) .....		
(8) .....		
(9) .....		
<b>Total.</b> (Column (b) must equal Form 990, Part X, col. (B) line 25.) ▶	<b>1,000</b>	

2. Liability for uncertain tax positions. In Part XIII, provide the text of the footnote to the organization's financial statements that reports the organization's liability for uncertain tax positions under FIN 48 (ASC 740). Check here if the text of the footnote has been provided in Part XIII





**SCHEDULE O**  
(Form 990 or 990-EZ)

Department of the Treasury  
Internal Revenue Service

Name of the organization

**Supplemental Information to Form 990 or 990-EZ**

Complete to provide information for responses to specific questions on  
Form 990 or 990-EZ or to provide any additional information.

▶ Attach to Form 990 or 990-EZ.  
▶ Go to [www.irs.gov/Form990](http://www.irs.gov/Form990) for the latest information.

OMB No. 1545-0047

**2017**

Open to Public  
Inspection

Employer identification number

**SAN MARCOS AREA CHAMBER OF COMMERCE**

**74-0880672**

FORM 990, PART VI, LINE 11B - ORGANIZATION'S PROCESS TO REVIEW FORM 990  
THE GOVERNING BODY REVIEWS THE RETURN ALONG WITH THE CEO. UPON APPROVAL  
THE RETURN IF FILED WITH THE IRS.

FORM 990, PART VI, LINE 12C - ENFORCEMENT OF CONFLICTS POLICY  
ALL OFFICERS AND BOARD MEMBERS ARE REQUIRED TO EXECUTE A CONFLICT OF  
INTEREST STATEMENT ANNUALLY AND UPDATE DURING THE YEAR IF THE SITUATION  
CHANGES

FORM 990, PART VI, LINE 15A - COMPENSATION PROCESS FOR TOP OFFICIAL  
ALL OFFICERS AND KEY PERSONNEL ARE REVIEWED ANNUALLY. ALL COMPENSATION IS  
APPROVED BY THE BOARD

FORM 990, PART VI, LINE 15B - COMPENSATION PROCESS FOR OFFICERS  
ALL EMPLOYEES ARE REVIEWED ANNUALLY. ALL COMPENSATION IS APPROVED BY THE  
BOARD

FORM 990, PART VI, LINE 19 - GOVERNING DOCUMENTS DISCLOSURE EXPLANATION  
ALL CHAMBER DOCUMENTS ARE AVAILABLE TO ITS MEMBERS UPON WRITTEN REQUEST AND  
MAY BE ACCESSED AT THE CHAMBER OFFICES ONLY

Form **4562**

**Depreciation and Amortization**  
(Including Information on Listed Property)

OMB No. 1545-0172

**2017**

Department of the Treasury  
Internal Revenue Service (99)

▶ Attach to your tax return.

▶ Go to [www.irs.gov/Form4562](http://www.irs.gov/Form4562) for instructions and the latest information.

Attachment  
Sequence No. **179**

Name(s) shown on return

**SAN MARCOS AREA CHAMBER OF COMMERCE**

Identifying number

**74-0880672**

Business or activity to which this form relates

**INDIRECT DEPRECIATION**

**Part I Election To Expense Certain Property Under Section 179**

**Note:** If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount (see instructions)	1	510,000
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	2,030,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	
6	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2016 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but don't enter more than line 11	12	
13	Carryover of disallowed deduction to 2018. Add lines 9 and 10, less line 12	▶ 13	

**Note:** Don't use Part II or Part III below for listed property. Instead, use Part V.

**Part II Special Depreciation Allowance and Other Depreciation (Don't include listed property.) (See instructions.)**

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	17,302

**Part III MACRS Depreciation (Don't include listed property.) (See instructions.)**

**Section A**

17	MACRS deductions for assets placed in service in tax years beginning before 2017	17	0
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here	▶ <input type="checkbox"/>	

**Section B—Assets Placed in Service During 2017 Tax Year Using the General Depreciation System**

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only—see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
i Nonresidential real property			27.5 yrs.	MM	S/L	
			39 yrs.	MM	S/L	

**Section C—Assets Placed in Service During 2017 Tax Year Using the Alternative Depreciation System**

20a	Class life				S/L	
b	12-year		12 yrs.		S/L	
c	40-year		40 yrs.	MM	S/L	

**Part IV Summary (See instructions.)**

21	Listed property. Enter amount from line 28	21	
22	<b>Total.</b> Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions	22	17,302
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions.

Form **4562** (2017)

## Description of Employees

Jason Mock  
President & CEO  
San Marcos Area Chamber of Commerce

Mr. Mock is a co-applicant for this project. He will supply staff to assist with administration of the grant, specifically to track documentation. Twenty percent (20% or \$40,000) of grant funds will be paid to the Chamber to assist with administrative fees including but not limited to: staff salaries, printing, post and office supplies.

Lauren Surley  
VP of Communication  
San Marcos Area Chamber of Commerce

As the VP of Communication for the Chamber, Ms. Surley will help to market and communicate this program to the business community of San Marcos.

Marisol Mendoza  
Operations & membership Manager  
San Marcos Area Chamber of Commerce

Mrs. Mendoza will help with the data collection of all the documents from everyone who applies and is awarded funding.



### **Non-discrimination Statement**

The San Marcos Area Chamber of Commerce does not and shall not discriminate on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations. These activities include, but are not limited to, hiring and firing of staff, selection of volunteers and vendors, and provision of services. We are committed to providing an inclusive and welcoming environment for all members of our staff, clients, volunteers, subcontractors, vendors, and clients.

The San Marcos Area Chamber of Commerce is an equal opportunity employer. We will not discriminate and will take affirmative action measures to ensure against discrimination in employment, recruitment, advertisements for employment, compensation, termination, upgrading, promotions, and other conditions of employment against any employee or job applicant on the bases of race, color, gender, national origin, age, religion, creed, disability, veteran's status, sexual orientation, gender identity or gender expression.

## Small Business Grant Fund Application

Date

Business Name \*

Business Address \*

Number of Additional Storefronts in San Marcos \*

Number of Additional Storefronts outside of San Marcos \*

Contact Person \*

Phone

Email \*

Website

TX ID Number

## Project Summary and Cost Information

Viewport ( Width : 1903px , Height :969px )

**Written Summary/Scope of Work \***

**Two detailed quotes from two providers (including the selected provider) must be submitted with this application for any new projects. If seeking reimbursement for a completed project undertaken in response to the COVID-19 pandemic (project initiated after March 25, 2020), please submit detailed scope of work for completed project.**

**Project Cost \***

**Grant Funds Requested**

Submit

Viewport ( Width : 1903px , Height :969px )



## City of San Marcos Title VI Compliance Policy

### Introduction

The City of San Marcos, as a recipient of Federal Financial Assistance and under Title VI of the Civil Rights Act of 1964 and related statutes, affirms no person shall on the grounds of race, color, national origin, gender, age, disability or religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 200d-3) be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the City regardless of whether these projects and activities are federally funded or not.

Also, Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (LEP), provides that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal Financial Assistance. As a recipient of Federal Financial Assistance in its transportation and other improvement projects, the City of San Marcos must provide access to individuals with limited ability to speak, write, or understand the English language.

The City of San Marcos must not restrict an individual in any way from the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under its programs or projects. Individuals may not be subjected to criteria or methods of administration which cause adverse impact because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program because of race, color or national origin. Therefore, the primary goals and objectives of City of San Marcos's Title VI Non-Discrimination Plan are:

1. To assign responsibilities and procedures for ensuring compliance with Title VI of the Civil Rights Act of 1964 and pertinent directives;
2. To ensure that people affected by the City's programs and projects receive the services, benefits, and opportunities to which they are entitled without regard to race, color, national origin, age, sex, or disability;
3. To prevent discrimination in City programs and activities, whether those programs and activities are federally funded or not;
4. To establish procedures for identifying impacts in any program, service, or activity that may create an illegal adverse impact on any person because of race, color, national origin, age, sex, or disability; or on minority populations, low-income populations, the elderly, persons with disabilities, and all affected Title VI populations;
5. To establish procedures to annually review Title VI compliance of specific program areas within the City of San Marcos;
6. To set forth procedures for filing and processing complaints by persons who believe they have been subjected to illegal discrimination under Title VI in a City-provided service, project, program or activity.



## Title VI Policy Statement City of San Marcos

It is the policy of the City of San Marcos, Texas, to provide reasonable assurances that it will comply with the requirements and provisions of the Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d-42 U.S.C 2000d-4, and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person who resides in, or does business with, the City of San Marcos on the grounds of race, color, national origin, sex, age, disability or economic condition, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of our programs or activities.

A handwritten signature in blue ink, appearing to read "Bert Lumbreras", written over a horizontal line.

Bert Lumbreras, City Manager  
City of San Marcos

A handwritten date "10/17/18" in blue ink, written over a horizontal line.

Date



## ORGANIZATIONAL RESPONSIBILITIES

The Title VI Program Coordinator be responsible for leading a team formed for City-wide compliance with the Title VI program, plan and assurance for the City of San Marcos.

**Complaints:** If any individual believes that he/she or any other program beneficiaries have been the object of unequal treatment or discrimination as to the receipt of benefits and/or service, or on the grounds of race, color, national origin (including Limited English Proficiency), sex, age or handicap, he/she may exercise his/her right to file a complaint with the City's Title VI Coordinator. Every effort will be made to resolve complaints informally and at the lowest level first.

**Data Collection:** Statistical data on race, color, national origin, English language proficiency and sex of participants in and beneficiaries of City programs, e.g. impacted citizens and affected communities, will be gathered and maintained by the City. The gathering procedures will be reviewed annually to ensure sufficiency of the data in meeting the requirements of the Title VI program.

**Program Reviews:** Special emphasis program reviews will be conducted based on the annual summary of Title VI activities, accomplishments and issues. The reviews will be conducted by the Title VI Program Coordinator to assure effectiveness in their compliance with Title VI provisions. The Title VI Program Coordinator will coordinate efforts to ensure equal participation in all programs and activities at all levels. The City will conduct reviews annually by the end of the fiscal year.

**Title VI Reviews on Sub-Recipients:** Title VI compliance reviews will be conducted annually and coordinated by the Title VI Program Coordinator in conjunction with Department representatives. Priority for conducting reviews will be given to those sub-recipients of Federal (U.S. Department of Transportation) funds with the greatest potential of impact to those groups covered by the Act. The status of each review will be reported in the annual update to TxDOT.

**Annual Reporting:** The Title VI Program Coordinator will be responsible for coordination and submission of the Annual Compliance Plan and Accomplishment Report to the Texas Department of Transportation, Office of Civil Rights via TxDOT's Title VI/ Nondiscrimination Annual Work Plan & Accomplishments Report Development Guide, as presented in TxDOT's Title VI/ Nondiscrimination Technical Assistance Guide for Sub-Recipients.

**Title VI Plan Updates:** The City will review the need for any updates to its Title VI Assurances every three years or as necessary.

**Remedial Action:** The City will actively pursue the prevention of Title VI deficiencies and violations and will take the necessary steps to ensure compliance with all program administrative requirements. When deficiencies are found, procedures will be promptly implemented to correct the deficiencies and to put in writing the corrective action(s).

**Non-Discrimination Training** is provided every two years to employees at the City of San Marcos and on as needed basis regarding harassment and non-discrimination.



## Title IV COMPLAINT AND APPEAL PROCEDURES

This Complaint Procedure is established to meet the requirements of the Title VI of the Civil Rights Act of 1964. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of race, color, sex, age, disability, or national origin in the provision of services, activities, programs, or benefits by the City of San Marcos.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem including whether it is related to race, color, sex, age, disability or national origin. Alternative means of filing complaints will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 180 calendar days after the alleged violation to:

Title VI Program Coordinator  
City of San Marcos  
630 E Hopkins  
San Marcos, TX 78666  
512-393-8065  
Email: [TitleVICompliance@sanmarcostx.gov](mailto:TitleVICompliance@sanmarcostx.gov)

Within 15 calendar days after receipt of the complaint, the Title VI Program Coordinator or his/her designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 30 calendar days of the meeting, the Title VI Program Coordinator or his/her designee will respond in writing, and where appropriate, in a format accessible to the complainant. The response will explain the position of the City of San Marcos and offer options for substantive resolution of the complaint.

If the complaint is related to transportation, then the City shall forward the complaint to TxDOT within 10 days. If the response by the Title VI Program Coordinator or his/her designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the City Manager of his/her designee.

Within 15 calendar days after receipt of the appeal, the City Manager or his/her designee will meet with the complainant to discuss the complaint and possible resolutions.

Within 15 calendar days after the meeting, the City Manager or his/her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the Title VI Program Coordinator or his/her designee, appeals to the City Manager or his/her designee, and responses from these two offices will be retained by the City of San Marcos for at least three years.

If the City of San Marcos has discriminated against you, please fill out attached form and mail or e-mail to the Title VI Program Coordinator listed above.



**City of San Marcos, TX  
Title VI Complaint Form**

<b>Section 1</b>			
Name:			
Address:			
Telephone:		Telephone (Alternative):	
Electronic Mail Address:			
Accessible Format Requirements?	Large Print	Audio Tape	
	Other		
<b>Section 2</b>			
Are you filing this complaint on your own behalf?		Yes*	No
*If you answered "yes" to this question, go to Section III.			
If not, please supply the name and relationship of the person for whom you are complaining:			
Please explain why you have filed for a third party:			
Please confirm that you have obtained the permission of the aggrieved party if you are filing on behalf of a third party.		Yes	No
<b>Section 3</b>			
I believe the discrimination I experienced was based on:			
Date of Alleged Discrimination (Month, Day, Year): _____			
Explain as clearly as possible what happened and why you believe you were discriminated against. Describe all persons who were involved. Include the name and contact information of the person(s) who discriminated against you (if known) as well as names and contact information of any witnesses. If more space is needed, please use the back of this form.			
<b>Section 4</b>			
Have you previously filed a Title VI complaint with this agency?	Yes	No	



### Section 5

Have you filed this complaint with any other Federal, State, or local agency, or with any Federal or State court?  Yes  No If yes, check all that apply:  Federal Agency:  Federal Court  State Agency  State Court  Local Agency

Please provide information about a contact person at the agency/court where the complaint was filed.

Name:

Title:

Agency:

Address:

Telephone:

You may attach any written materials or other information that you think is relevant to your complaint.

Signature and date required below

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please submit this form in person at the address below, or mail this form to:

Title VI Program Coordinator  
City of San Marcos  
630 E Hopkins  
San Marcos, TX 78666  
512-393-8065  
Email: [TitleVICoordinator@sanmarcostx.gov](mailto:TitleVICoordinator@sanmarcostx.gov)



**City of San Marcos, TX**  
**Título VI Formulario de Queja**

<b>Section 1</b>			
Nombre::			
Dirección:			
Teléfono:		Teléfono (Alternativa)	
Dirección de correo electrónico:			
Requisitos de formato accesible?	Cinta de	audio de impresión grande	
	Otro		
<b>Section 2</b>			
¿Está presentando esta queja en su propio nombre?		Sí*	No
* Si respondió "sí" a esta pregunta, vaya a la Sección III.			
Si no es así, proporcione el nombre y la relación de la persona por la que se queja:			
Explique por qué ha solicitado un tercero:			
Confirme que ha obtenido el permiso de la parte perjudicada si está presentando una demanda en nombre de un tercero.		Sí	No
<b>Section 3</b>			
Creo que la discriminación que sucedió se basó en:			
Fecha de presunta discriminación (mes, día, año): _____			
Explique con la mayor claridad posible qué sucedió y por qué cree que fue discriminado. Describe a todas las personas que estuvieron involucradas. Incluya el nombre y la información de contacto de la persona (s) que lo discriminó (si lo conoce), así como los nombres y la información de contacto de los testigos. Si necesita más espacio, utilice la parte de atrás de este formulario.			
<b>Section 4</b>			
¿Ha presentado anteriormente una queja del Título VI con esta agencia?	Sí	No	
<b>Section 5</b>			



¿Ha presentado esta queja ante cualquier otra agencia federal, estatal o local, o ante cualquier tribunal federal o estatal?  Sí  No En caso afirmativo, marque todo lo que corresponda:  Agencia federal:  Tribunal federal  Organismo estatal  Tribunal estatal  Agencia local

---

Proporcione información sobre una persona de contacto en la agencia / tribunal donde se presentó la queja.

Nombre: \_\_\_\_\_

Título: \_\_\_\_\_

Agencia: \_\_\_\_\_

Dirección: \_\_\_\_\_

Teléfono: \_\_\_\_\_

Puede adjuntar cualquier material escrito u otra información que considere relevante para su reclamo.

Firma y fecha requeridas a continuación

\_\_\_\_\_ Firma

\_\_\_\_\_ Fecha

Envíe este formulario en persona a la dirección que se encuentra debajo, o envíe este formulario por correo a:

Title VI Program Coordinator  
 City of San Marcos  
 630 E Hopkins  
 San Marcos, TX 78666  
 512-393-8065  
 Email: [TitleVICoordinator@sanmarcostx.gov](mailto:TitleVICoordinator@sanmarcostx.gov)



## Department of Transportation (DOT) Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient Persons (DOT LEP Guidance)

In 2005, the DOT published updated guidance for its recipients. This document provides suggestions to best comply with the statutory and regulatory obligations to provide meaningful access to the benefits, services and information, and other important portions of their programs and activities for individuals who are LEP. A defining component of this guidance is a recommendation to use a four-factor analysis framework to conduct a LEP needs assessment.

### Four Factor Analysis:

- 1) Number and proportion of LEP persons in eligible service population.
- 2) Frequency with LEP individuals come in contact with the program.
- 3) Importance of the service provided by the program.
- 4) Resources available to the agency.

#### 1) **Number of Proportion of LEP persons in eligible service population.**

According to the US Census Bureau (2010-2016 statistics) the City of San Marcos has a population of approximately 54,953 persons. Of those residents, approximately 72.6 % speak English only and 25.1% speak "English less than very well" resulting in approximately 3776 people needing limited English assistance citywide. See, 2010-2016 Census Data attached here to (**Table 1.**) Also, see 2010-2016 Census Maps, showing low income areas in the city, included herein (**Table 2**)

- 2) **Frequency with LEP individuals come in contact with the program.** The City of San Marcos handled over approximately 27,030 customer calls through the main line for the City for Fiscal Year 2017. Of which, 78 were conducted in Spanish language.
- 3) **Importance of the service provided by the program.** The City of San Marcos also develops and distributes vital information in Spanish.
- 4) **Resources available to the agency.** There are over 10 customer service representatives located in the various City departments that are bi-lingual and able to translate/communicate with residents needing assistance with limited English.



## **City's Public Participation Policies and Procedures**

The Public Information Office for the City of San Marcos works in coordination with the City Clerk, Public Works, Community Services, Engineering and other City departments to publish notice of public meetings throughout the City of San Marcos. The City typically holds an initial public meeting to discuss proposed Capital Improvement Projects and a second meeting when the Project is ready to be awarded to a Contractor.

The City's Public Meeting Procedures for are attached to this Plan. The City also uses a door hanger process to notify property owners adjacent to road construction projects to notify them of the upcoming public works project two-weeks out and again 2-days prior to the start of construction. Door hangers are printed in both English and Spanish for LEP portions of the City's population.

The City Council and City Planning & Zoning Commission also hold frequent public hearings on zoning and land use matters, Transportation Plans, Capital Improvement Projects and other programs of interest to the citizens of San Marcos. The City publishes notice of these Public Hearings in and the City posts notice of public hearings on the City's website which is accessible to the public.

The City publishes city ordinances calling for City Elections in both English and Spanish. The City also publishes any notices or public hearings related to city elections in both English and Spanish so that citizens who are LEP know when public hearings are scheduled, and which candidates are up for consideration or election.

## **Standard Non-Discrimination Clauses for TxDOT Projects**

The City of San Marcos includes all standard U.S. DOT Title VI assurance clauses in project bid documents and contracts which are funded by TxDOT, U.S. Department of Transportation, or Federal Aviation Administration dollars.

## **Monitoring and Enforcement Mechanism**

The City will employ the following monitoring and enforcement mechanisms to ensure compliance with Title VI Program requirements:

1. The City reserves the right to inspect all records of the contractor and subcontractor concerning any USDOT-assisted contracts.
2. The City will bring to the attention of the USDOT Office of the Inspector General any false, fraudulent, or dishonest conduct in connection with the Title VI Program.
3. If a firm uses, or attempts to use, false, fraudulent, or deceitful statements or representations in order to meet the Title VI requirement of the contract, the City reserves the right, under the provisions of Title VI Assurances, to report such actions to the USDOT or its designee. The USDOT or its designee may, at its discretion, initiate suspension or debarment proceedings against the firm. The City may also pursue all means available to address such unprofessional and unethical behavior.
4. The City will consider similar action under our own legal authorities, including responsibility determinations in future contracts. A listing of regulations, provisions, and contract remedies available to us in the events of non-compliance with the Title VI Assurances by a participant in our procurement activities follows:



Attempts to Evade Title VI Requirements – Any individual(s) or firm found to have knowingly engaged or participated in any direct or indirect attempt to evade the Title VI requirements may be declared ineligible for future contracts with the City that contain federal assistance. The individual(s) or firm may be held liable to the City for any forfeiture of funds or damages caused by delay in the award or performance of the contract resulting from the firm's non-compliance.

### **Limited English Proficiency Plan**

The City's Limited English Proficiency (LEP) Plan is established based on guidance "On an effective Language Implementation Plan" expressed in Sections V and VII of the U.S. Department of Transportation's Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons [U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates].

Using the LEP guidance in 70 FR 74097 and the FTA handbook on implementing an LEP plan, the following tasks were used to address the needs of the LEP population served:

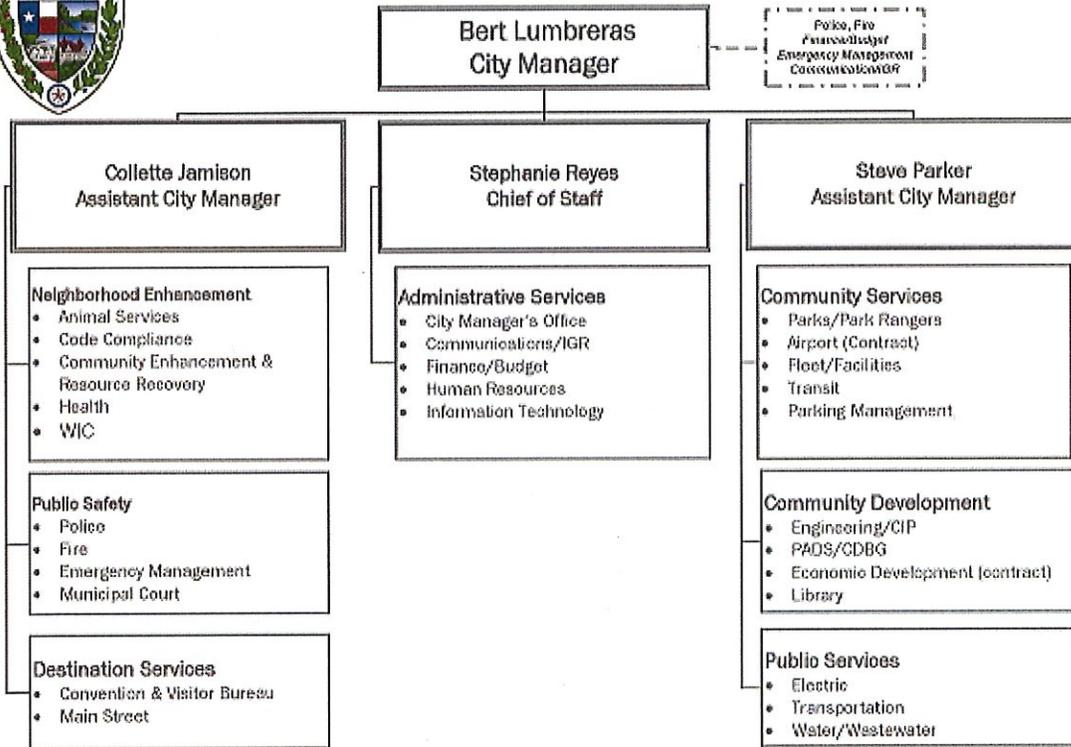
1. Identifying LEP individuals who need language assistance
2. Providing language assistance measures
3. Training staff
4. Providing notice to LEP persons of the availability of language assistance
5. Monitoring and updating the LEP plan

The LEP regulation mandates that all federal agencies and recipients of federal funding identify any need for service to those persons and households for whom English proficiency is limited. In San Marcos, Spanish is the most common foreign language spoken. The City of San Marcos and its sub-recipients routinely publish printed materials in English and Spanish (with other language translations available upon request).



# City of San Marcos Organizational Chart

The City of San Marcos





## **Title VI - Notification of Protections to the Public and Instructions on How to File a Complaint**

### **Notice to the Public:**

The City of San Marcos is committed to ensuring that no person is excluded from participation in, or denied the benefits of, its services on the basis of race, color, or national origin, as protected by Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all city programs, services and activities.

### **Instructions on Filing Title VI Complaints**

Any person who believes she or he has been aggrieved by any unlawful discriminatory practice under Title VI may file a complaint with the City of San Marcos Human Resource Department. All complaints received by the Human Resource Department are documented and are investigated in accordance with federal standards (28 CFR, Part 35 and FTA Circular 4702.1A). After the complaint is processed, a response (if requested) is sent to the customer filing the complaint and appropriate corrective action is taken.

For more information on the City of San Marcos's civil rights program and the procedures to file a complaint, or to get information in another language, customers are encouraged to contact the Human Resource Department at the number or address below. In addition, customers can obtain information by contacting the following points of services:

512-393-8065  
Texas Relay 711

Mailing Address:  
City of San Marcos Human Department Attn: Title  
VI Coordinator  
630 E Hopkins  
San Marcos, Texas 78666

Email: [TitleVICoordinator@Sanmarcostx.gov](mailto:TitleVICoordinator@Sanmarcostx.gov)



## **Título VI - Notificación de protecciones al público e instrucciones sobre cómo presentar una queja Instrucciones de presentación de quejas**

### **Aviso al público:**

La Ciudad de San Marcos se compromete a garantizar que ninguna persona sea excluida de la participación o se le nieguen los beneficios de sus servicios en base a su raza, color u origen nacional, como está protegido por el Título VI de la Ley de Derechos Civiles de 1964 , la Ley de Restauración de los Derechos Civiles de 1987, y los estatutos y reglamentos relacionados en todos los programas, servicios y actividades de la ciudad.

### **Instrucciones para presentar reclamos del Título VI**

Cualquier persona que crea que ha sido perjudicada por alguna práctica discriminatoria ilegal bajo el Título VI puede presentar una queja ante el Departamento de Recursos Humanos de la Ciudad de San Marcos. Todas las quejas recibidas por el Departamento de Recursos Humanos están documentadas y se investigan de acuerdo con las normas federales (28 CFR, Parte 35 y FTA Circular 4702.1A). Después de procesar la queja, se envía una respuesta (si se solicita) al cliente que presenta la queja y se toman las medidas correctivas apropiadas.

Para obtener más información sobre el programa de derechos civiles de la Ciudad de San Marcos y los procedimientos para presentar una queja, o para obtener información en otro idioma, se recomienda a los clientes que se comuniquen con el Departamento de Recursos Humanos al número o la dirección a continuación. Además, los clientes pueden obtener información contactando los siguientes puntos de servicios:

512-393-8065  
Texas Relay 711

Mailing Address:  
City of San Marcos Human Department Attn: Title  
VI Coordinator  
630 E Hopkins  
San Marcos, Texas 78666

Email: [TitleVICoordinator@Sanmarcostx.gov](mailto:TitleVICoordinator@Sanmarcostx.gov)



**Table 1 – Characteristics of People by Language Spoken at Home in San Marcos Texas 2012-2016**

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>

Subject	Total		Percent		San Marcos city, Texas							
	Estimate	Margin of Error	Estimate	Margin of Error	Speak English only or speak English "very well"		Percent speak English only or speak English "very well"		Speak English less than "very well"		Percent speak English less than "very well"	
					Estimate	Margin of Error	Estimate	Margin of Error	Estimate	Margin of Error	Estimate	Margin of Error
Population 5 years and over	54,953	+/-691	(X)		51,177	+/-687	93.1%	+/-1.4	3,776	+/-775	6.9%	+/-1.4
Speak only English	39,889	+/-1,253	72.6%	+/-2.3	(X)	(X)	(X)	(X)	(X)	(X)	(X)	(X)
Speak a language other than English	15,064	+/-1,323	27.4%	+/-2.3	11,288	+/-1,008	74.9%	+/-4.1	3,776	+/-775	25.1%	+/-4.1
<b>SPEAK A LANGUAGE OTHER THAN ENGLISH</b>												
Spanish	13,346	+/-1,244	24.3%	+/-2.2	10,037	+/-870	75.2%	+/-4.5	3,309	+/-779	24.8%	+/-4.5
5 to 17 years old	1,703	+/-578	3.1%	+/-1.0	1,220	+/-387	71.6%	+/-15.4	483	+/-350	28.4%	+/-15.4
18 to 64 years old	10,308	+/-865	18.8%	+/-1.5	8,159	+/-696	79.2%	+/-4.3	2,149	+/-531	20.8%	+/-4.3
65 years old and over	1,335	+/-236	2.4%	+/-0.4	658	+/-195	49.3%	+/-12.9	677	+/-217	50.7%	+/-12.9
Other Indo-European languages	725	+/-291	1.3%	+/-0.5	633	+/-265	87.3%	+/-13.6	92	+/-107	12.7%	+/-13.6
5 to 17 years old	25	+/-40	0.0%	+/-0.1	25	+/-40	100.0%	+/-63.7	0	+/-30	0.0%	+/-63.7
18 to 64 years old	668	+/-278	1.2%	+/-0.5	576	+/-252	86.2%	+/-14.7	92	+/-107	13.8%	+/-14.7
65 years old and over	32	+/-47	0.1%	+/-0.1	32	+/-47	100.0%	+/-56.3	0	+/-30	0.0%	+/-56.3
Asian and Pacific Island languages	795	+/-290	1.4%	+/-0.5	493	+/-254	62.0%	+/-17.8	302	+/-160	38.0%	+/-17.8
5 to 17 years old	66	+/-67	0.1%	+/-0.1	66	+/-67	100.0%	+/-39.2	0	+/-30	0.0%	+/-39.2
18 to 64 years old	711	+/-260	1.3%	+/-0.5	427	+/-221	60.1%	+/-18.7	284	+/-158	39.9%	+/-18.7
65 years old and over	18	+/-29	0.0%	+/-0.1	0	+/-30	0.0%	+/-75.1	18	+/-29	100.0%	+/-75.1
Other languages	198	+/-204	0.4%	+/-0.4	125	+/-100	63.1%	+/-32.1	73	+/-116	36.9%	+/-32.1
5 to 17 years old	4	+/-8	0.0%	+/-0.1	4	+/-8	100.0%	+/-100.0	0	+/-30	0.0%	+/-100.0
18 to 64 years old	183	+/-202	0.3%	+/-0.4	110	+/-98	60.1%	+/-32.1	73	+/-116	39.9%	+/-32.1
65 years old and over	11	+/-19	0.0%	+/-0.1	11	+/-19	100.0%	+/-96.0	0	+/-30	0.0%	+/-96.0

Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates



**Table 2 – Selected Economic Characteristics in San Marcos Texas 2012-2016**

Subject	San Marcos city, Texas			
	Estimate	Margin of Error	Percent	Percent Margin of Error
<b>EMPLOYMENT STATUS</b>				
Population 16 years and over	49,910	+/-710	49,910	(X)
In labor force	32,923	+/-990	66.0%	+/-1.8
Civilian labor force	32,828	+/-1,003	65.8%	+/-1.8
Employed	30,069	+/-1,079	60.2%	+/-2.0
Unemployed	2,759	+/-521	5.5%	+/-1.0
Armed Forces	95	+/-75	0.2%	+/-0.2
Not in labor force	16,987	+/-931	34.0%	+/-1.8
Civilian labor force	32,828	+/-1,003	32,828	(X)
Unemployment Rate	(X)	(X)	8.4%	+/-1.6
Females 16 years and over	26,051	+/-666	26,051	(X)
In labor force	15,727	+/-888	60.4%	+/-2.7
Civilian labor force	15,727	+/-888	60.4%	+/-2.7
Employed	14,420	+/-878	55.4%	+/-2.8
Own children of the householder under 6 years	2,831	+/-488	2,831	(X)
All parents in family in labor force	2,284	+/-459	80.7%	+/-7.1
Own children of the householder 6 to 17 years	5,173	+/-660	5,173	(X)
All parents in family in labor force	3,906	+/-560	75.5%	+/-8.9
<b>COMMUTING TO WORK</b>				
Workers 16 years and over	29,667	+/-1,047	29,667	(X)
Car, truck, or van -- drove alone	23,166	+/-1,062	78.1%	+/-2.3
Car, truck, or van -- carpoled	2,750	+/-682	9.3%	+/-2.2
Public transportation (excluding taxicab)	748	+/-275	2.5%	+/-0.9
Walked	1,436	+/-370	4.8%	+/-1.3
Other means	768	+/-199	2.6%	+/-0.7
Worked at home	799	+/-247	2.7%	+/-0.8
Mean travel time to work (minutes)	21.9	+/-1.3	(X)	(X)
<b>OCCUPATION</b>				
Civilian employed population 16 years and over	30,069	+/-1,079	30,069	(X)
Management, business, science, and arts occupations	8,440	+/-803	28.1%	+/-2.6
Service occupations	7,155	+/-901	23.8%	+/-2.8
Sales and office occupations	9,001	+/-996	29.9%	+/-3.1
Natural resources, construction, and maintenance occupations	2,464	+/-449	8.2%	+/-1.5
Production, transportation, and material moving occupations	3,009	+/-593	10.0%	+/-1.9
<b>INDUSTRY</b>				
Civilian employed population 16 years and over	30,069	+/-1,079	30,069	(X)
Agriculture, forestry, fishing and hunting, and mining	345	+/-155	1.1%	+/-0.5
Construction	1,731	+/-435	5.8%	+/-1.4



Subject	San Marcos city, Texas			
	Estimate	Margin of Error	Percent	Percent Margin of Error
Manufacturing	1,453	+/-420	4.8%	+/-1.4
Wholesale trade	715	+/-264	2.4%	+/-0.9
Retail trade	6,245	+/-832	20.8%	+/-2.6
Transportation and warehousing, and utilities	929	+/-430	3.1%	+/-1.4
Information	224	+/-92	0.7%	+/-0.3
Finance and insurance, and real estate and rental and leasing	942	+/-247	3.1%	+/-0.8
Professional, scientific, and management, and administrative and waste management services	2,095	+/-403	7.0%	+/-1.3
Educational services, and health care and social assistance	7,441	+/-608	24.7%	+/-2.1
Arts, entertainment, and recreation, and accommodation and food services	6,098	+/-864	20.3%	+/-2.7
Other services, except public administration	1,032	+/-307	3.4%	+/-1.0
Public administration	819	+/-226	2.7%	+/-0.7
<b>CLASS OF WORKER</b>				
Civilian employed population 16 years and over	30,069	+/-1,079	30,069	(X)
Private wage and salary workers	24,279	+/-1,101	80.7%	+/-1.9
Government workers	4,581	+/-586	15.2%	+/-2.0
Self-employed in own not incorporated business workers	1,132	+/-284	3.8%	+/-0.9
Unpaid family workers	77	+/-113	0.3%	+/-0.4
<b>INCOME AND BENEFITS (IN 2016 INFLATION-ADJUSTED DOLLARS)</b>				
Total households	21,421	+/-602	21,421	(X)
Less than \$10,000	3,691	+/-423	17.2%	+/-1.8
\$10,000 to \$14,999	1,676	+/-331	7.8%	+/-1.5
\$15,000 to \$24,999	3,529	+/-530	16.5%	+/-2.3
\$25,000 to \$34,999	2,848	+/-448	13.3%	+/-2.1
\$35,000 to \$49,999	2,861	+/-418	13.4%	+/-1.9
\$50,000 to \$74,999	3,217	+/-443	15.0%	+/-2.0
\$75,000 to \$99,999	1,514	+/-272	7.1%	+/-1.3
\$100,000 to \$149,999	1,287	+/-263	6.0%	+/-1.2
\$150,000 to \$199,999	448	+/-142	2.1%	+/-0.7
\$200,000 or more	350	+/-139	1.6%	+/-0.7
Median household income (dollars)	30,985	+/-1,951	(X)	(X)
Mean household income (dollars)	46,004	+/-2,931	(X)	(X)
With earnings	17,935	+/-620	83.7%	+/-2.1
Mean earnings (dollars)	46,447	+/-3,261	(X)	(X)
With Social Security	3,052	+/-314	14.2%	+/-1.4
Mean Social Security income (dollars)	17,014	+/-1,714	(X)	(X)
With retirement income	1,608	+/-221	7.5%	+/-1.1
Mean retirement income (dollars)	18,862	+/-2,833	(X)	(X)
With Supplemental Security Income	745	+/-216	3.5%	+/-1.0
Mean Supplemental Security Income (dollars)	8,526	+/-1,091	(X)	(X)
With cash public assistance income	351	+/-109	1.6%	+/-0.5
Mean cash public assistance income (dollars)	2,664	+/-1,150	(X)	(X)
With Food Stamp/SNAP benefits in the past 12 months	2,363	+/-333	11.0%	+/-1.6



Subject	San Marcos city, Texas			
	Estimate	Margin of Error	Percent	Percent Margin of Error
<b>Families</b>	8,621	+/-507	8,621	(X)
Less than \$10,000	634	+/-230	7.4%	+/-2.6
\$10,000 to \$14,999	300	+/-145	3.5%	+/-1.6
\$15,000 to \$24,999	1,391	+/-355	16.1%	+/-3.9
\$25,000 to \$34,999	875	+/-226	10.1%	+/-2.7
\$35,000 to \$49,999	1,415	+/-317	16.4%	+/-3.5
\$50,000 to \$74,999	1,606	+/-327	18.6%	+/-3.5
\$75,000 to \$99,999	985	+/-258	11.4%	+/-3.0
\$100,000 to \$149,999	884	+/-227	10.3%	+/-2.7
\$150,000 to \$199,999	297	+/-125	3.4%	+/-1.5
\$200,000 or more	234	+/-103	2.7%	+/-1.2
Median family income (dollars)	46,736	+/-3,390	(X)	(X)
Mean family income (dollars)	61,866	+/-4,673	(X)	(X)
Per capita income (dollars)	18,541	+/-1,073	(X)	(X)
<b>Nonfamily households</b>	12,800	+/-725	12,800	(X)
Median nonfamily income (dollars)	23,014	+/-2,118	(X)	(X)
Mean nonfamily income (dollars)	33,972	+/-3,997	(X)	(X)
Median earnings for workers (dollars)	14,901	+/-1,252	(X)	(X)
Median earnings for male full-time, year-round workers (dollars)	33,754	+/-3,182	(X)	(X)
Median earnings for female full-time, year-round workers (dollars)	30,556	+/-2,257	(X)	(X)
<b>HEALTH INSURANCE COVERAGE</b>				
Civilian noninstitutionalized population	56,774	+/-524	56,774	(X)
With health insurance coverage	46,334	+/-1,172	81.6%	+/-1.9
With private health insurance	38,356	+/-1,324	67.6%	+/-2.3
With public coverage	11,426	+/-1,059	20.1%	+/-1.8
No health insurance coverage	10,440	+/-1,047	18.4%	+/-1.9
Civilian noninstitutionalized population under 18 years	8,755	+/-707	8,755	(X)
No health insurance coverage	859	+/-406	9.8%	+/-4.6
Civilian noninstitutionalized population 18 to 64 years	44,138	+/-755	44,138	(X)
In labor force:	31,898	+/-995	31,898	(X)
Employed:	29,172	+/-1,074	29,172	(X)
With health insurance coverage	22,601	+/-990	77.5%	+/-2.7
With private health insurance	21,641	+/-1,023	74.2%	+/-2.9
With public coverage	1,303	+/-318	4.5%	+/-1.1
No health insurance coverage	6,571	+/-877	22.5%	+/-2.7
Unemployed:	2,726	+/-524	2,726	(X)
With health insurance coverage	2,111	+/-468	77.4%	+/-6.6
With private health insurance	1,782	+/-421	65.4%	+/-8.5
With public coverage	396	+/-190	14.5%	+/-6.3
No health insurance coverage	615	+/-201	22.6%	+/-6.6
Not in labor force:	12,240	+/-830	12,240	(X)



Subject	San Marcos city, Texas			
	Estimate	Margin of Error	Percent	Percent Margin of Error
With health insurance coverage	9,845	+/-841	80.4%	+/-3.9
With private health insurance	8,503	+/-849	69.5%	+/-4.3
With public coverage	1,747	+/-300	14.3%	+/-2.5
No health insurance coverage	2,395	+/-493	19.6%	+/-3.9
<b>PERCENTAGE OF FAMILIES AND PEOPLE WHOSE INCOME IN THE PAST 12 MONTHS IS BELOW THE POVERTY LEVEL</b>				
All families	(X)	(X)	19.3%	+/-3.8
With related children of the householder under 18 years	(X)	(X)	27.8%	+/-6.2
With related children of the householder under 5 years only	(X)	(X)	19.1%	+/-10.0
Married couple families	(X)	(X)	12.6%	+/-4.9
With related children of the householder under 18 years	(X)	(X)	19.9%	+/-8.3
With related children of the householder under 5 years only	(X)	(X)	12.3%	+/-13.4
Families with female householder, no husband present	(X)	(X)	33.7%	+/-8.1
With related children of the householder under 18 years	(X)	(X)	41.8%	+/-11.3
With related children of the householder under 5 years only	(X)	(X)	33.6%	+/-18.0
All people	(X)	(X)	35.8%	+/-3.0
Under 18 years	(X)	(X)	37.4%	+/-7.7
Related children of the householder under 18 years	(X)	(X)	37.1%	+/-7.8
Related children of the householder under 5 years	(X)	(X)	35.8%	+/-10.8
Related children of the householder 5 to 17 years	(X)	(X)	37.7%	+/-9.1
18 years and over	(X)	(X)	35.5%	+/-2.5
18 to 64 years	(X)	(X)	37.8%	+/-2.7
65 years and over	(X)	(X)	11.5%	+/-4.5
People in families	(X)	(X)	22.5%	+/-4.8
Unrelated individuals 15 years and over	(X)	(X)	50.5%	+/-3.2

Source: U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates

City of San Marcos  
Community Development Block Grant – Coronavirus Response  
(CDBG-CV)  
**2020 Public Services Application**



City of San Marcos  
Planning and Development Services Department  
630 East Hopkins  
San Marcos TX 78666  
<https://www.sanmarcostx.gov/3065/CDBG-Action-Plans>  
For more information: Carol Griffith 512.393.8147 [cgriffith@sanmarcostx.gov](mailto:cgriffith@sanmarcostx.gov)

## APPLICANT INSTRUCTIONS

*Persons with limited English proficiency may request assistance by contacting the City at 512-393-8250. (Las personas con habilidad limitada de Inglés puede solicitar la asistencia poniéndose en contacto con la Ciudad en 512-393-8250.)*

Thank you for your interest in the City of San Marcos' Community Development Block Grant - Coronavirus Response (CDBG-CV) program. The City will receive \$425,261 for immediate use upon acceptance of the City's Action Plan by the US Department of Housing and Urban Development (HUD).

Applications may be submitted by for-profit entities, non-profit organizations, government agencies, and City departments; the City is not accepting applications from individuals who need personal housing or other financial assistance. Applications should be for the creation of a program or project that provides assistance to individuals or businesses.

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 512-393-8074 or sent by e-mail to ADArequest@sanmarcostx.gov.

## APPLICATION INFORMATION

**2020 Application Period:** May 1, 2020-May 20, 2020

APPLICATION SUBMISSION DEADLINE IS MAY 20, 2020 AT 5:00 P.M.

**Submit one signed application electronically to:** Carol Griffith, [cgriffith@sanmarcostx.gov](mailto:cgriffith@sanmarcostx.gov)

Please call to verify your application has been received: Carol Griffith 512-393-8147. *I am currently teleworking; please leave a voicemail and I will be notified.*

## PROJECT ELIGIBILITY

Organizations may propose more than one program or project in separate applications.

### CDBG-CV Requirements

CDBG-CV funds must meet typical CDBG requirements and must be used to prevent, prepare for, and respond to coronavirus, which can include responding to the economic effects as well as the health impacts of the COVID-19 pandemic. Please note that it has now been determined that up to 100% of the funds can be used for Public Services.

HUD has provided the attached Quick Guide to CDBG Eligible Activities to Support Infectious Disease Response. Additional resources will continue to be posted to [www.hudexchange.info/programs/cdbg/disease/](http://www.hudexchange.info/programs/cdbg/disease/).

Proposed programs and projects will be added to the 2019-2020 CDBG Action Plan so the funds can be used as soon as possible after a required five day comment period and approval by the San Marcos City Council and HUD.

### High Priority Needs

Proposed projects must address one of the High Priority Needs stated in the 2015-2019 Consolidated Plan. It is anticipated that Economic Development will be added as a High Priority Need category through an amendment on June 2, 2020 so applications will also be accepted in that category:

- Public Services
- Economic Development
- Affordable Housing
- Public Facilities/Infrastructure/Transportation
- Clearance Activities
- Program Administration

**Not everything in these categories can be funded through CDBG.** Please refer to the Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities for descriptions of projects that can be funded through CDBG. It can be found at the following link: <https://www.hudexchange.info/resource/89/community-development-block-grant-program-cdbg-guide-to-national-objectives-and-eligible-activities-for-entitlement-communities/>

### **National Objectives**

All funded projects must also meet one of the three CDBG program National Objectives:

- Benefit low to moderate income individuals or families
- Eliminate slum or blight
- Urgent Need (such as disaster recovery)

### **City of San Marcos Human Services Funding:**

It is the City's policy to fund programs from only ONE city funding source. For example, if you apply for CDBG-CV funds for a program, you cannot apply for City of San Marcos Human Services funding for the same program.

### **USE OF FUNDS TO SUPPORT COVID-19 RESPONSE**

Organizations may propose more than one program or project in separate applications.

CDBG-CV funding is particularly geared toward supporting low-to-moderate income people who have been impacted by the COVID-19 pandemic.

For the City of San Marcos, the following programs listed in the Quick Guide may be of particular benefit:

1. Provision of assistance to private, for-profit entities when appropriate to carry out an economic development project, such as:
  - Preventing job loss caused by business closures related to social distancing by providing short-term working capital assistance to small businesses to enable retention of jobs held by low to moderate income persons.
  - Providing technical assistance, grants, loans and other financial assistance to establish, stabilize and expand microenterprises that provide medical, food delivery, cleaning and other services to support home health and quarantine.
2. Provision of new or quantifiably increased public services, such as the following.
  - Delivering meals on wheels to quarantined individuals or individuals who need to maintain social distancing due to medical vulnerabilities.
  - Providing equipment, supplies and materials necessary to carry out a public service.

Do not let this list limit your ideas, however! Please be creative! You may be in a position to know best about a need that is particularly suited to this funding. What use of these funds will have the greatest benefit for San Marcos?

### **APPLICATIONS ARE PUBLIC RECORDS**

**Once an application is submitted to the City, it becomes a public record and as such is open for public review. All or part of the application may be posted on the City's webpage and included in City Council packet materials. Please keep this in mind when submitting personal information for your staff, board, or clients.**

### **APPLICATION CALENDAR AND CITIZEN PARTICIPATION**

The City of San Marcos values the input of its citizens and offers the following opportunities to participate in the deliberation on the best uses of the CDBG-CV funding . Scheduled dates and venues are subject to change. The hearing and funding allocation may be held virtually due to the current status of the COVID-19 pandemic.

Please check the website <https://www.sanmarcostx.gov/3065/CDBG-Action-Plans> for the latest information.

- Public Hearing to review applications and receive citizen comments – **June 2, 2020 at the City Council meeting**
- Public comment period on the proposed CDBG-CV programs and projects – **June 7-13, 2020**

- City Council CDBG-CV funding allocations– **June 16, 2020 at the City Council meeting**

## FUNDING AWARDS

Submitting a complete application does not guarantee that your request will be funded. The CDBG-CV grant can fund only the actual, allowable, and reasonable costs of a proposed project, and requests for funding generally exceed the amount of funding available. Funding allocations are decided by the City Council, subject to HUD approval.

## AVAILABILITY OF FUNDS

Funds awarded for CDBG-CV will be available as soon as City Council and HUD approvals have been received and any necessary environmental review has been completed. The organization's Subrecipient Agreement with the City must be fully executed prior to the expenditure or commitment of program funds. The appropriate level of environmental review must be completed by Community Initiatives Division staff before any funds are expended or obligated. Environmental reviews typically take 45 to 60 days to complete for small construction projects and about 15 days for projects that are not likely to have a physical impact on the environment. **No reimbursement will be possible for goods purchased or contracts executed prior to meeting these requirements.**

## ORGANIZATION ELIGIBILITY REQUIREMENTS

- Organizations applying for Public Services funding can be a public or private non-profit agency, a for-profit entity, a public housing authority, a City of San Marcos department, or other government entity.
- Non-profit agencies must be established, operating agencies as evidenced through documentation required in the application. Exhibits to show tax exempt status are required.
- Faith based agencies are eligible to apply on the same basis as other non-profit organizations. However, CDBG funds cannot be used to support worship, proselytizing, or religious instruction. Religious activities must be offered separately, in time or location, from the CDBG-CV supported activity. Participation in the religious activity must be voluntary for the beneficiaries of the CDBG-CV-funded project. Projects operated by faith-based agencies must be available to all community members and not restricted to the organization's membership or congregation.

## NON-DISCRIMINATION AND ACCESSIBILITY

Each agency receiving CDBG-CV funds must

- Provide assurance that it will conduct its business in compliance with the non-discrimination requirements of the County, State, and Federal governments as applicable.
- Have Equal Opportunity in Employment policies.
- Agree to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

## FINANCIAL CAPACITY AND AUDITING REQUIREMENTS

The *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* issued by the federal Office of Management & Budget (OMB) requires that any organization that expends \$750,000 or more in federal financial assistance in a fiscal year must secure an annual audited financial statement.

The City has established the following financial statement requirements for organizations assisted with CDBG-CV program funds, based on the total assets of the applicant. The term "total assets" is defined to mean the total amount of liquid assets that is documented to be available to the Subrecipient at the time the funding is approved.

- A. CPA preparation of financial records is not required if the Subrecipient has total assets of \$15,000 or less in value;

- B. A compiled financial statement is required if Subrecipient has total assets greater than \$15,000 and less than or equal to \$100,000 in value.
- C. A reviewed financial statement is required if Subrecipient has total assets greater than \$100,000 and less than or equal to \$200,000 in value.
- D. An audited financial statement is required if Subrecipient has total assets of more than \$200,000 in value. (In an “Audited” statement a CPA provides an in-depth study of the records, organizes them into a statement, and issues an opinion to their validity.)

**Organizations receiving CDBG-CV funds must submit the required financial statement which has been prepared by a Certified Public Accountant to the City within nine months from the organization’s fiscal year end and not more than 30 days after the organization’s receipt of the statement.**

## **INSURANCE AND BONDING**

Agencies receiving CDBG-CV funding must provide Workers’ Compensation Insurance coverage for all of its employees involved in the performance of the funded project. At the time of contract signing, funded agencies must provide evidence of insurance including, but not limited to, multi-peril property and liability, worker’s compensation, automobile liability, and other coverage as deemed necessary by the City. In addition, upon funding the City of San Marcos, Officers, Employees and agents must be added as additional insured to the policy.

## **PROJECT IMPLEMENTATION SCHEDULE AND PERFORMANCE MEASUREMENT GOALS**

Performance measurement is an effective management technique that enables those who receive grant funds (Subrecipients) and the City to analyze the benefits of their investments. It is a mechanism that tracks the progression of projects and evaluates their overall effectiveness and success in meeting project goals. **One of the most important overall goals in planning a CDBG-CV project is the completion of the project in a timely manner.**

The City is monitored by HUD to ensure that the CDBG-CV grant program has benefited low-to-moderate-income families; one success measurement that the City must meet is the expenditure of its program funds in a timely manner. The City must take into account the project schedules for each project that is proposed to ensure that the overall CDBG-CV program will comply with its federally mandated timeliness ratio. Thus, it is critical that each applicant accurately forecasts the time that will be involved in completing each step of a proposed project.

**Please use the format included in this application to outline the expected Implementation Schedule for your project.** This document will be incorporated into the Subrecipient Agreement for funded projects. The City will monitor the performance of Subrecipients against the goals and performance standards established by this document. Substandard performance as determined by the City will constitute noncompliance with the Subrecipient Agreement. If action to correct such substandard performance is not taken by the Subrecipient with a reasonable period of time after notification by the City, contract suspension or termination processes may be initiated.

## **NOTES FOR ORGANIZATIONS RECEIVING FEDERAL FUNDS**

### **Subrecipient Registration Requirements:**

- Organizations receiving CDBG-CV funding (Subrecipients) must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number. If you do not have a DUNS number, go to <http://fedgov.dnb.com/webform> to register.
- Funded applicants must also have an active registration with System of Award Management (SAM). To register with SAM, go to [www.sam.gov](http://www.sam.gov) to register. You must have a DUNS number prior to registering with SAM. Subrecipients must provide proof of SAM registration prior to the execution of a Subrecipient Agreement. This is required when federal funds are being utilized. Any contractors/service providers hired for the CDBG-CV programs must also have an active registration with SAM prior to start or expenditure of funds.

## INCOME LIMITS

Income limits are established by HUD on an annual basis for the purpose of establishing CDBG-CV grant eligibility. The limits are based on household size. Income is calculated for every adult 18 and older residing in the household. HUD considers 80% and below to be low income. San Marcos CDBG-CV Area Median Income (AMI) Limits are based on the Median Family Income for the Austin/Round Rock Metropolitan Statistical Area (MSA). The current Median Family Income for the Austin-Round Rock MSA is \$97,600 which became effective April 8, 2020. The 2020 limits are expected to be released by HUD in the next few months.

<b>Family Size</b>	<b>1 Person</b>	<b>2 Person</b>	<b>3 Person</b>	<b>4 Person</b>	<b>5 Person</b>	<b>6 Person</b>	<b>7 Person</b>	<b>8 Person</b>
80% AMI	\$54,700	\$62,500	\$70,300	\$78,100	\$84,350	\$90,600	\$96,850	\$103,100

## PUBLIC SERVICES PROGRAM OR ACTIVITY ELIGIBILITY

### ELIGIBLE PUBLIC SERVICE ACTIVITIES (24 CFR 570.201(E))

“Public Services” are non-construction social service activities in the community that benefit low- to moderate-income citizens. At least 51% of all program clients must be City of San Marcos residents and have a total family income that does not exceed 80% of the area median income as established by HUD for San Marcos.

CDBG-CV regulations allow the use of grant funds for a wide range of public service activities including, but not limited to:

- After school / child care
- Education programs
- Health services
- Recreation services
- Crime prevention, public safety
- Senior citizens services
- Homeless persons services
- Job Training
- Substance abuse programs

See the attached Quick Guide for additional information.

### ELIGIBLE EXPENSES

Eligible expenses include but are not limited to labor, supplies, and materials as well as operation and maintenance of the portion of a facility in which the public service is located. This includes the lease of a facility, equipment, and other property needed for the public service and costs incurred for telephone services, postage, and computer use or access. Time sheets will be required to document salary costs. Travel and training expenses may be authorized by the City on a case-by-case basis.

### INELIGIBLE EXPENSES

CDBG-CV funds may not be used to pay for food or meals for staff, fund raising, entertainment, alcoholic beverages, deposits on equipment, incentives to clients (such as gift cards or raffle prizes), or late fees or penalties. Costs of organized fund raising are not allowable. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property that is not an integral, structural fixture is generally ineligible.

### CLIENT INCOME VERIFICATION OPTIONS:

To be eligible for CDBG-CV assistance, a public service project must serve low-to-moderate income persons. Income limits are updated annually, usually in the spring. The City will post the new limits on its website when they become available and distribute the new limits to all Subrecipient organizations.

The type of income verification needed is determined by the project and the clients served; HUD allows each project to select one of three definitions of “income” to be used in calculating a potential client’s eligibility to be considered low/mod. The project must use the same definition for all applicants. The primary difference in the definitions is the treatment of assets. City staff will work closely with all agencies that are selected for funding to determine which income definition should be used.

Documentation of the benefit to low and moderate income level persons is required of every project funded.

**1. Limited Clientele:** The public service activities must be offered to a particular group of low and moderate income residents in the entire community. Agencies will collect income data and demographic data for each recipient in the program as either Client Based or Presumed Benefit.

- Client Based:** Activities will be offered to all residents of a particular group of low-and-moderate income San Marcos residents. Income verification and residency are required along with other client statistics.
- Presumed Benefit:** Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit a population in which at least 51% of the population is low-to-moderate income. Individual income verification is not required, although residency and other client statistics must be collected. The Presumed Benefit categories are:

a. Elderly persons (62 or older)	e. Battered spouses
b. Homeless persons	f. Abused children
c. Persons living with AIDS	g. Migrant farm workers
d. Illiterate persons (includes non-English speakers)	h. Severely disabled adults (Census Bureau definition)

Persons are classified as having a severe disability if they (a) used a wheel-chair or had used another special aid for six months or longer; (b) are unable to perform one or more “functional activities” or need assistance with an ADL or IADL; (c) are prevented from working at a job or doing housework; or (d) have a selected condition included autism, cerebral palsy, Alzheimer’s disease, senility or dementia, or mental retardation. Also, persons who are under 65 years of age and who are covered by Medicare or who receive SSI are considered to have a severe disability.

For purposes of this definition, the term “functional activities” includes seeing, hearing, having one’s speech understood, lifting and carrying, walking up a flight of stairs, and walking. An ADL is an “activity of daily living” which includes getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating, and toileting. An IADL is an “instrumental activity of daily living” and includes going outside the home, keeping track of money or bills, preparing meals, doing light housework and using the telephone.

**2. Nature and Location:** Activities must be of such nature and in such location that it may reasonably be concluded that the activity’s clientele will primarily be low/mod income persons. For example, a day care center that is designed to serve residents of a public housing complex would qualify under this category. Individual income verification would not be required, although residency and other client statistics would be required. HUD must approve this method of income verification.

**3. Area Benefit:** An activity which is available to benefit all of the residents of a defined area which is primarily residential and where at least 51% of the residents are L/M income persons. This rarely applies to public service projects.

## SUPPLEMENTAL ITEM CHECKLIST

### CDBG-CV PROGRAM

**DUE DATE: MAY 20, 2020**

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**Submit one copy of the following items:**

**Required:**

- Board of Directors list including position/title on board.
- Contact numbers for Board Chair or President and Treasurer.
- Resolution or Board Minutes showing approval to submit an application and designation of person who will sign documents on behalf of the organization.
- Organization Chart
- Articles of Incorporation
- Bylaws
- Tax Exempt Determination Letter (for non-profit organizations)
- Organization's Current Budget (2019-2020) and Proposed Budget for next fiscal year
- Most Recent audit or CPA prepared review.
- Description of employees, board members, volunteers who will work with the project
- Non-discrimination Policy Statement

**If applicable:**

- Fee schedule or structure for the project proposed for funding
- Copy of program application if one is used to select beneficiaries
- Analysis of program or service expansion if this is not a new service.
- Description of how beneficiaries will be selected (if not by application form)
- Description of how applicant income will be determined if there are direct beneficiaries
- Detailed explanation of any lawsuits, judgments, or bankruptcy proceedings
- Job description for new positions expected to be filled using CDBG-CV funding

**CITY OF SAN MARCOS**  
**2020 CDBG-CV PUBLIC SERVICES APPLICATION**



**Due Date: May 20, 2020**

**I. APPLICANT CONTACT INFORMATION**

Applicant Organization: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address, if different from mailing address: \_\_\_\_\_

Contact E-Mail Address: \_\_\_\_\_ Web Address: \_\_\_\_\_

Who is authorized to execute program documents? \_\_\_\_\_

**II. APPLICATION SUMMARY INFORMATION**

Project Name: \_\_\_\_\_

Amount of CDBG-CV Funds Requested: \_\_\_\_\_

\_\_\_\_\_

Project Location: \_\_\_\_\_

Will all CDBG-CV funds for this project be expended by July 15, 2021?     Yes     No

If "No", what percent is expected to be completed by that date? \_\_\_\_\_

### **III. PROJECT DESCRIPTION**

#### **PROGRAM SUMMARY**

Briefly summarize the program for which CDBG-CV funding has been requested.

#### **USE OF FUNDS**

How will the funds be used?

#### **COVID-19 PANDEMIC IMPACT:**

Summarize how this project directly addresses an impact from the current COVID-19 pandemic:

**ACCOMPLISHMENTS**

Once the project is completed, how can its success be measured?

**TYPE OF PUBLIC SERVICE** (choose all that apply)

- |   |   |
|---|---|
| <input type="checkbox"/> 05A Senior Services                      | <input type="checkbox"/> 05B Handicapped Services                   |
| <input type="checkbox"/> 05C Legal Services                       | <input type="checkbox"/> 05D Youth Services                         |
| <input type="checkbox"/> 05E Transportation Services              | <input type="checkbox"/> 05F Substance Abuse Services               |
| <input type="checkbox"/> 05G Battered and Abused Spouses Services | <input type="checkbox"/> 05H Employment Training                    |
| <input type="checkbox"/> 05I Crime Awareness                      | <input type="checkbox"/> 05J Fair Housing Activities                |
| <input type="checkbox"/> 05K Tenant/Landlord Counseling           | <input type="checkbox"/> 05L Child Care Services                    |
| <input type="checkbox"/> 05M Health Services                      | <input type="checkbox"/> 05N Abused and Neglected Children Services |
| <input type="checkbox"/> 05O Mental Health Services               | <input type="checkbox"/> 05P Screening for Lead Paint/Lead Hazards  |
| <input type="checkbox"/> 05Q Subsistence Payments                 | <input type="checkbox"/> 05R Homeownership Assistance (Not Direct)  |
| <input type="checkbox"/> Other: _____                             |   |

**PROGRAM INFORMATION**

1. Program eligibility (please select one):
  - a. \_\_\_\_\_ This is a new program.
  - b. \_\_\_\_\_ This is an existing program that: (select one of the following)  
\_\_\_\_\_ Has previously received CDBG funding and the amount requested for this year is the same or less than previous funding; or  
\_\_\_\_\_ will expand to serve more beneficiaries or to provide more services if the CDBG-CV funding as requested is approved. *Please attach an analysis that details how the program or service will be expanded, how many new beneficiaries will be served by the expansion, and how this number was determined.*
2. Programs receiving funding from the City at this time (during the current program year):
  - a. How much CDBG funding was awarded? \_\_\_\_\_
  - b. Is this program receiving any other City of San Marcos sources? \_\_\_\_\_
  - c. If yes, how much was received and from what source? \_\_\_\_\_
3. Is there a fee to clients to participate in the program? \_\_\_\_\_ Yes    \_\_\_\_\_ No  
*If yes, please provide fee structure.*
4. Describe the days and hours of operation of the program: \_\_\_\_\_  
\_\_\_\_\_

**IV. PROGRAM BENEFICIARIES**

*Applicant must be able to document that at least 51% of the beneficiaries have an annual income that is at or below 80% of the Area Median Income and are San Marcos residents.*

**A. PRESUMED BENEFIT:** See definition above of “Presumed Benefit”.

1. Will all of the program’s beneficiaries in a Presumed Benefit Category?  Yes or  No

If “yes”, list the categories: \_\_\_\_\_

2. How many persons in each presumed category are proposed to be assisted if funding is received?

Abused Children	Elderly Persons	Battered Spouses	Homeless Persons	Severely Disabled Adults	Illiterate Adults	Persons living with AIDS

3. If this program was carried out the previous full program year (10/1 – 9/30), how many persons were served in each presumed category:

Abused Children	Elderly Persons	Battered Spouses	Homeless Persons	Severely Disabled Adults	Illiterate Adults	Persons living with AIDS

**B. BENEFICIARIES WHO ARE NOT CONSIDERED “PRESUMED”**

1. How many persons are proposed to be assisted if funding is received? \_\_\_\_\_

If this program was carried out the previous program year (10/1 – 9/30), how many persons were served?  
\_\_\_\_\_

2. What percentage of persons proposed to be assisted are expected to be low/mod? \_\_\_\_\_

3. What percentage of persons proposed to be assisted are expected to be San Marcos residents? \_\_\_\_\_

4. How do you propose to document the income of the beneficiaries? (check all that apply)

Evidence that the child is approved for free or reduced lunch

Evidence that the family lives in housing sponsored by the Housing Authority

Evidence that the family is WIC approved

Income documentation using one of the 3 HUD approved methods

Self-certification, with income verification required of 20% of certifications

Other, describe: \_\_\_\_\_

## VI. LINE ITEM BUDGET

Please use the following format to present your proposed line item budget. Secured funds are funds on-hand, pledged, or awarded. Following the Line Item Budget, please complete the Supplemental Budget Form – Use of Other Resources. Funds and costs, as outlined on the Sources and Uses of Funds form, may **not** be spent or incurred prior to a contract award date from the CDBG-CV Program. Supporting documentation may be attached as an Appendix.

Expense Category	Total Program Budget	CDBG-CV Portion	Other Funding Source	Other Funds Amount
<b>Personnel Services</b>				
Salaries				
Fringe Benefits				
<b>Supplies</b>				
Office Supplies				
Program Supplies				
Client Materials				
<b>Operating</b>				
Training				
Insurance				
Utilities/Rent/Mortgage				
<b>Other (please specify)</b>				
<b>Total</b>				

Please provide an explanation for any unusual budget expenditures listed in the line item budget above.

**VII. PROJECTED IMPLEMENTATION SCHEDULE WITH PERFORMANCE GOALS**

**Projected Start Date:**

\_\_\_\_\_

**Projected Completion Date:**

\_\_\_\_\_

<b>Activity Description</b>	<b>Start Month/Year</b>	<b>End Month/Year</b>	<b>Performance Measurement Goal</b>
<i>Example: Hiring New Staff Member</i>	<i>October 2019</i>	<i>December 2019</i>	<i>Employment process complete</i>

## VIII. ORGANIZATION INFORMATION

### REQUIRED ATTACHMENTS

Organizational Chart

Articles of Incorporation

Proof of Tax Exempt status

Board Minutes and Resolution authorizing application submittal and specifying who will sign documents. *(The organization's governing board must approve the submittal of this funding application and designate a person who is authorized to execute program documents.)*

A listing of key staff and employees who will work directly with the proposed program, their primary job duties, and other pertinent information relating to your proposed project.

If CDBG-CV funds will be used to hire new personnel, please provide a brief job description of the proposed position(s).

### BACKGROUND INFORMATION

1. Organization Type:

501(c) Non-Profit Corporation     Public Corporation     Government Entity

Other: \_\_\_\_\_

2. Name and title of Board of Directors chair or president: \_\_\_\_\_

3. How many years has your organization been in business? \_\_\_\_\_

4. Organization's Taxpayer Identification Number (EIN): \_\_\_\_\_

5. Organization's Dun and Bradstreet DUNS Number: \_\_\_\_\_

6. Is organization currently registered in the federal System for Award Management (SAM)?  Yes  No

### FINANCIAL INFORMATION

1. What is the date of your fiscal year end? \_\_\_\_\_

2. Does your organization have a purchasing policy?  Yes  No

3. Has your organization currently or within the past five years had any litigation that is pending or has been resolved?  
 Yes  No

*If "Yes", please attach a summary of the litigation and its status; including any outstanding judgments.*

4. Has your organization filed a petition for bankruptcy or has a petition for bankruptcy been filed against your organization?  Yes  No

*If "Yes", please attach an explanation that includes the current status.*

5. During the last fiscal year did your organization spend \$750,000 or more in Federal financial assistance?  
 Yes  No

6. What level of financial review does your organization obtain from an independent source? Select from the following options:

Single Audit

Audited Financial Statement

Reviewed Financial Statement

Compiled Financial Statement

No independent review

Other (describe):

7. What period was covered by your most recent financial review? \_\_\_\_\_
8. Has your organization received City of San Marcos funding in the past two years?  Yes  No  
*If yes, please attach a short summary of the purpose and amount of City funding.*

**PERSONNEL AND POLICIES**

1. Name and Title of your chief administrator \_\_\_\_\_  
 Number of years in this position? \_\_\_\_\_
2. Total number of current employees at all locations \_\_\_\_\_
3. Total number of current employees who will be involved in this project \_\_\_\_\_
4. Total number of new employees expected to be hired for the project \_\_\_\_\_
5. Does your organization have a personnel policy manual?  Yes  No  
 Does it include a procedure for filing grievances?  Yes  No  
 Does it include a non-discrimination clause?  Yes  No
6. Does your organization maintain a written code or standards of conduct that governs the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds?  
 Yes  No
7. Separation of duties for financial transactions regarding this project (respond with job title):
  - a. Who will approve payment of incurred expenses? \_\_\_\_\_
  - b. Who will actually prepare the payment check? \_\_\_\_\_
  - c. Who will sign checks paying project expenses? \_\_\_\_\_
  - d. Who posts the transaction to your financial records? \_\_\_\_\_
  - e. Who reconciles monthly bank statements? \_\_\_\_\_

**ACCESSIBILITY OF PROGRAMS AND SERVICES**

1. Are all facilities to be served by the program ADA Accessible?  Yes  No
2. Do you have a Section 504 (ADA) Self-Evaluation on file?  Yes  No
3. How will you provide services to persons with Limited English proficiency? \_\_\_\_\_  
 \_\_\_\_\_

**INSURANCE, BONDING, AND WORKER'S COMPENSATION**

1. Does your organization have liability insurance coverage?  Yes  No
2. If yes, in what amount? \_\_\_\_\_
3. Does your organization pay worker's compensation in accordance with Federal and state laws?  
 Yes  No  N/A
4. Does your organization have fidelity bond coverage for principal staff members who handle the organization's accounts?  Yes  No
5. Will vehicles owned by the organization be used in conjunction with the proposed project?  
 Yes  No
6. If yes, what level of liability insurance is maintained on the vehicles? \_\_\_\_\_

## **IX. CONFLICTS OF INTEREST (24 CFR 570.611; 24 CFR 85.36; AND 24 CFR 84.42)**

Two sets of conflict of interest provisions apply to activities carried out with CDBG-CV funding. The first set, applicable to the procurement of goods and services by subrecipients (*funded applicants*), is the procurement regulation found in the *Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards as codified in Title 2, Part 200 of the Code of Federal Regulations*. The second set of provisions is located at 24 CFR 570.611(a)(2).

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

1. Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:
  - An employee, officer, or agent of the subrecipient;
  - Any member of an employee's, officer's, or agent's immediate family;
  - An employee's, agent's, or officer's partner; or
  - An organization which employs or is about to employ any of the persons listed in the preceding sections.
2. Require that employees, agents, and officers of the subrecipient neither solicit nor accept gratuities, favors, or anything of value from contractors or parties to sub-agreements. However, subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
3. Provide for disciplinary actions to be applied for any violation of such standards by employees, agents or officers of the subrecipient.

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

- The requirement applies to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, a designated public agency, or a subrecipient, and to their immediate family members and business partners.
- The requirement applies to such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.
- Upon written request, exceptions may be granted by HUD on a case-by-case basis.

**CONFLICT OF INTEREST QUESTIONNAIRE**

*NOTE: For the purpose of this form, a "covered person" includes any person who is an employee, agent, consultant, officer or elected or appointed official of the City of San Marcos, your organization, or any designated public agency.*

Name of Organization: \_\_\_\_\_

1. Does your organization maintain a written code or standards of conduct that governs the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds?

Yes \_\_\_\_\_ No \_\_\_\_\_ If "No" is checked, please explain how you will comply with this requirement:

\_\_\_\_\_

2. Are any of your Board Members or employees that are responsible for carrying out this project or members of their immediate families or their business associates also:

a. Employed by the City of San Marcos? Yes \_\_\_\_\_ No \_\_\_\_\_

b. Members of or closely related to members of the San Marcos City Council? Yes \_\_\_\_\_ No \_\_\_\_\_

c. Members of or closely related to an employee of the City of San Marcos? Yes \_\_\_\_\_ No \_\_\_\_\_

d. Current beneficiaries or related to beneficiaries of the project for which funds are requested?

Yes \_\_\_\_\_ No \_\_\_\_\_

e. Paid providers of goods or services to the program or having other financial interest in the program or related to such individuals? Yes \_\_\_\_\_ No \_\_\_\_\_

3. For **each** relationship described above, please answer the following questions: (attach additional page if necessary)

a. Name of employee or official: \_\_\_\_\_

b. Is this person receiving or likely to receive taxable income from your organization?

Yes \_\_\_\_\_ No \_\_\_\_\_

c. Is your organization receiving or likely to receive taxable income from or at the direction of the employee or official AND the taxable income is not from the City of San Marcos?

Yes \_\_\_\_\_ No \_\_\_\_\_

d. Is your organization affiliated with a corporation or other business entity in which the employee or official serves as an officer or director, or holds an ownership interest of 10% or more?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Describe any other affiliation or business relationship that might cause a conflict of interest with respect to CDBG-CV funds and activities.

5. Will any of your organization's employees, officers, board members, or members of their immediate family or business partners have a financial interest in any contract, subcontract, or agreement regarding CDBG-CV funded activities?

Yes \_\_\_\_\_ No \_\_\_\_\_. *If yes, please attach an explanation.*

## X. APPLICANT ASSURANCES AND CERTIFICATIONS

The applicant hereby assures and certifies with respect to this project or program, by the submission of this application, that the following are true statements:

1. It possesses legal authority to apply for the grant and to finance the proposed request; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards as codified in Title 2, Part 200 of the Code of Federal Regulations (UAR) and agrees to adhere to the accounting principles and procedures required therein, utilizing adequate internal controls and maintaining necessary source documentation for all costs incurred.
3. If it expends \$750,000 or more of federal funds in a fiscal year, it will comply with the Single Audit Act of 1984.
4. It will comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards, and Executive Order 11990, relating to protection of wetlands. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, and approved December 31, 1976. Section 102(a).
5. It will have sufficient funds available or the ability to obtain the non-federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
6. It will give the City and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
7. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the City that funds have been approved and that the project will be performed to completion with reasonable diligence.
8. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
9. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646), which provides for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs.
10. It will comply with the provisions of the Hatch Act, which limit the political activity of employees.
11. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act as they apply.
12. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the city/federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.
13. It will assist the city/federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.).

14. It will comply with Texas Civil Statutes, Article 5996a, by insuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
15. It will insure that all information collected, assembled or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Texas Civil Statutes, Article 6252-17a, unless otherwise expressly provided by law.
16. It will conduct and administer the program in conformity with the Fair Housing Act (42 USC Section 3901 et. Seq.) and that it will affirmatively further fair housing.
17. It will minimize displacement of persons as a result of activities assisted with CDBG-CV funds. In the event that displacement of residential dwellings will occur in connection with a grant-assisted project, it will follow a residential anti-displacement and relocation assistance plan as specified by the City of San Marcos.
18. It certifies that it is not now, nor has it ever been, on the Federal List of Debarred Contractors.
19. It will not attempt to recover any capital costs of public improvements assisted in whole or in part with such funds by assessing any amount against properties owned and occupied by persons of LMI, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless (a) such funds are used to pay the proportion of such fee or assessment that related to the capital costs of such public improvements that are financed from revenue sources other than such funds; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, applicant certifies that it lacks sufficient funds under this contract to comply with the requirements of clause (a).
20. It agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart J and subpart K of these regulations, except that (1) the Agency does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) Agency does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. Agency also agrees to comply with all other applicable Federal, State, and local laws, regulations, and policies governing the funds provided. Agency further agrees to utilize funds available to supplement rather than supplant funds otherwise available. Agency shall comply with all applicable Federal laws, regulations, and requirements, which include compliance with the provisions of the HCD Act and all rules, regulations, guidelines, and circulars promulgated by the various Federal departments, agencies, administrations, and commissions relating to the CDBG-CV Program. The applicable laws and regulations include, but are not limited to:
  - 24 CFR Part 570;
  - 24 CFR Parts 84 and 85;
  - The Davis-Bacon Fair Labor Standards Act;
  - The Contract Work Hours and Safety Standards Act of 1962;
  - Copeland "Anti-Kickback" Act of 1934;
  - Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
  - Section 3 of the Housing and Urban Development Act of 1968;
  - Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
  - Non-discrimination in employment, established by Executive Order 11246 (as amended by Executive Orders 11375 and 12086);
  - Section 504 of the Rehabilitation Act of 1973 Uniform Federal Accessibility Standards;
  - The Architectural Barriers Act of 1968;
  - The Americans with Disabilities Act (ADA) of 1990;
  - The Age Discrimination Act of 1975, as amended;

- National Environmental Policy of 1969 (42 USC 4321 et seq.) as amended;
- Lead Based paint regulations established in 24 CFR Parts 35, 570.608, and 24 CFR 982.401;
- Asbestos guidelines established in CPD Notice 90-44;
- HUD Environmental Criteria and Standards (24 CFR Part 51);
- The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39
- Flood Disaster Protection Act of 1973;
- Colorado House Bill 06-1023 and 06-1043;
- Procurement Standards (2 CFR 200.322);
- Rights to Inventions Made Under a Contract or Agreement (37 CFR 401.2 (a));
- Energy Efficiency (2 CFR Part 200 Appendix II); and
- Recycling (2 CFR Part 200 Appendix II).

**CERTIFICATIONS REGARDING LOBBYING:**

21. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.
22. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form – “Disclosure Form to Report Lobbying”, in accordance with its instructions.
23. The undersigned 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 that all subrecipients shall certify and disclose accordingly.
24. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

**GENERAL CERTIFICATIONS:**

25. The information, exhibits, and schedules contained in this application are true and accurate statements and represent fairly the financial condition of our organization;
26. Our organization is eligible to receive federal funding and has not been placed in a debarred or otherwise ineligible status under the provisions of CFR Part 24;
27. Our organization prohibits discrimination in accordance with Title VI of the Civil Rights Act of 1964; and,
28. Our governing body has duly authorized submission of this document. If funded, we agree to comply with the procedures outlined in the “Playing by the Rules” handbook that will be supplied by the City of San Marcos.

I, the duly authorized representative of the applicant organization, certify that the foregoing statements are true to the best of my knowledge and belief:

**CERTIFIED BY:**

Signature: \_\_\_\_\_ Date Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization Name: \_\_\_\_\_

## Quick Guide to CDBG Eligible Activities to Support Infectious Disease Response

March 19, 2020

Grantees should coordinate with local health authorities before undertaking any activity to support state or local pandemic response. Grantees may use Community Development Block Grant (CDBG) funds for a range of eligible activities that prevent and respond to the spread of infectious diseases such as the coronavirus disease 2019 (COVID-19).

### Examples of Eligible Activities to Support Infectious Disease Response

<i>For more information, refer to applicable sections of the Housing and Community Development Act of 1974 (for State CDBG Grantees) and CDBG regulations (for Entitlement CDBG grantees).</i>	
<b>Buildings and Improvements, Including Public Facilities</b>	
Acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements. <i>See section 105(a)(2) (42 U.S.C. 5305(a)(2)); 24 CFR 570.201(c).</i>	Construct a facility for testing, diagnosis, or treatment.
	Rehabilitate a community facility to establish an infectious disease treatment clinic.
	Acquire and rehabilitate, or construct, a group living facility that may be used to centralize patients undergoing treatment.
Rehabilitation of buildings and improvements (including interim assistance). <i>See section 105(a)(4) (42 U.S.C. 5305(a)(4)); 24 CFR 570.201(f); 570.202(b).</i>	Rehabilitate a commercial building or closed school building to establish an infectious disease treatment clinic, e.g., by replacing the HVAC system.
	Acquire, and quickly rehabilitate (if necessary) a motel or hotel building to expand capacity of hospitals to accommodate isolation of patients during recovery.
	Make interim improvements to private properties to enable an individual patient to remain quarantined on a temporary basis.
<b>Assistance to Businesses, including Special Economic Development Assistance</b>	
Provision of assistance to private, for-profit entities, when appropriate to carry out an economic development project. <i>See section 105(a)(17) (42 U.S.C. 5305(a)(17)); 24 CFR 570.203(b).</i>	Provide grants or loans to support new businesses or business expansion to create jobs and manufacture medical supplies necessary to respond to infectious disease.
	Avoid job loss caused by business closures related to social distancing by providing short-term working capital assistance to small businesses to enable retention of jobs held by low- and moderate-income persons.
Provision of assistance to microenterprises. <i>See section 105(a)(22) (42 U.S.C. 5305(a)(22)); 24 CFR 570.201(o).</i>	Provide technical assistance, grants, loans, and other financial assistance to establish, stabilize, and expand microenterprises that provide medical, food delivery, cleaning, and other services to support home health and quarantine.

<b>Public Services (Capped at 15 Percent of the Grant, With Some Exceptions)<sup>1</sup></b>	
Provision of new or quantifiably increased public services.  <i>See section 105(a)(8) (42 U.S.C. 5305(a)(8)); 24 CFR 570.201(e).</i>	Carry out job training to expand the pool of health care workers and technicians that are available to treat disease within a community.
	Provide testing, diagnosis or other services at a fixed or mobile location.
	Increase the capacity and availability of targeted health services for infectious disease response within existing health facilities.
	Provide equipment, supplies, and materials necessary to carry-out a public service.
	Deliver meals on wheels to quarantined individuals or individuals that need to maintain social distancing due to medical vulnerabilities.
<b>Planning, Capacity Building, and Technical Assistance</b>	
States only: Planning grants and planning only grants.  <i>See section 105(a)(12).</i>	Grant funds to units of general local government may be used for planning activities in conjunction with an activity, they may also be used for planning only as an activity. These activities must meet or demonstrate that they would meet a national objective. These activities are subject to the State’s 20 percent administration, planning and technical assistance cap.
States only: use a part of to support TA and capacity building.  <i>See section 106(d)(5) (42 U.S.C. 5306(d)(5)).</i>	Grant funds to units of general local government to hire technical assistance providers to deliver CDBG training to new subrecipients and local government departments that are administering CDBG funds for the first time to assist with infectious disease response. This activity is subject to the State’s 3 percent administration, planning and technical assistance cap.
Entitlement only. data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans. <i>See 24 CFR 570.205.</i>	Gather data and develop non-project specific emergency infectious disease response plans.

### Planning Considerations

Infectious disease response conditions rapidly evolve and may require changes to the planned use of funds:

- CDBG grantees must amend their Consolidated Annual Action Plan when there is a change to the allocation priorities or method of distribution of funds; an addition of an activity not described in the plan; or a change to the purpose, scope, location, or beneficiaries of an activity (24 CFR 91.505).
- If the changes meet the criteria for a “substantial amendment” in the grantee’s citizen participation plan, the grantee must follow its citizen participation process for amendments (24 CFR 91.105 and 91.115).

### Resources

The Department has technical assistance providers that may be available to assist grantees in their implementation of CDBG Funds for activities to prevent or respond to the spread of infectious disease. Please contact your local CPD Field Office Director to request technical assistance from HUD staff or a TA provider.

- Submit your questions to: [CPDQuestionsAnswered@hud.gov](mailto:CPDQuestionsAnswered@hud.gov)
- COVID-19 (“Coronavirus”) Information and Resources: <https://www.hud.gov/coronavirus>
- CPD Program Guidance and Training: <https://www.hudexchange.info/program-support/>

<sup>1</sup> Section 105(a)(8) of the Housing and Community Development Act of 1974, provides a different percentage cap for some grantees.

# CITY OF SAN MARCOS

## JOB DESCRIPTION

**Job Title:** Emergency Management Recovery Specialist  
**Department:** Emergency Management  
**Salary Grade:**

**Schedule:** 8 am – 5 pm, M – F  
**FLSA Status:** Exempt  
**Date:**

### **JOB SUMMARY**

Under the direction of the Emergency Management Coordinator of the Office of Emergency Management, plans, coordinates, and manages the City's Recovery Program; drafts and prepares recovery documents; plans, conducts, and manages recovery meetings and public outreach activities, serving as the City's Recovery Specialist; and performs other EM related duties. This position will also assist in the development and maintenance of the Recovery Annex as part of the City's Comprehensive Emergency Management Plan.

### **ESSENTIAL FUNCTIONS**

1. Researches, identifies, evaluates, obtains, and manages grants related to disaster recovery. Seeks out additional grant funds for disaster recovery programs (staffing, equipment, consultants, and others) as necessary.
2. Writes, prepares, and submits disaster recovery related grants and related documentation for assigned projects in coordination with the City Manager's Grants Program Specialist; submits all required reports; secures and manages related grant funding. Monitors the implementation and related activities of recovery grant programs, as required. Coordinates submission of the required financial reports and requests for reimbursements with the City Grant Accountant.
3. Develops, implements, and administers a city-wide disaster recovery program coordinating with other governmental, business and industrial, community service, and volunteer organizations.
4. The position coordinates disaster recovery functions: individual departments; city/regional/State government agencies; and non-profit and private sector entities to assure congruence with accepted EM standards as well as compatibility with City recovery plans.
5. Leads and develops strategies for needs analysis and provides solutions for disaster recovery. Coordinates and facilitates the Disaster Recovery Taskforce; identifies, schedule, and markets appropriate training and community engagement opportunities that benefit the various aspects of disaster recovery efforts.
6. During EOC activations, provide management and leadership serving in various roles within the EOC's structure.
7. Assist the Emergency Management Coordinator with other priority projects.
8. May be required to work nights and weekends in order to meet program needs. Must be able to respond to emergencies and disasters on a 24-hour basis.
9. Performs other duties as assigned.

### **DECISION MAKING**

- Ability to manage disaster recovery grant funds and projects in accordance with federal laws and regulations.
- Ability to make decisions in emergency situations.
- Develops disaster recovery agenda, programs, grants, and contracts.

### **MINIMUM REQUIREMENTS**

- Bachelor's degree from an accredited college or university in Emergency Management, Higher Education, or closely related field.
- One (1) year of experience in Emergency Management.

The job description is not an employment agreement or contract. The activities listed above describe the general nature and level of work being performed, and do not limit any additionally assigned responsibilities and may be altered as deemed necessary by the City of San Marcos.

# **CITY OF SAN MARCOS JOB DESCRIPTION**

- Commensurate combinations of education and experience *may* be considered
- Must possess a valid Texas driver's license with an acceptable driving record required.
- Completion of the following National Incident Management System (NIMS) training courses: IS-100, IS-200, IS-700, IS-800, ICS-300, ICS-400, and FEMA's Professional Development Series (PDS) certificate.

## **PREFERRED QUALIFICATIONS**

- Three (3) years of experience working with disaster recovery programs, combined with strong and effective communication, project management, facilitation, teambuilding, collaborative planning and engagement skills, and EOC operational and leadership experience.
- Completion of E/G/L-449 ICS Curricula Train the Trainer
- Proven skills and success in program/project management, teamwork, plan development, organizing, facilitating, leading, and collaborating with various stakeholders.
- Strong written, verbal and interpersonal communication skills with demonstrated ability to effectively communicate to and with diverse range of stakeholders.
- Experience in managing a major aspect of disaster recovery, and experience in Emergency Operations Center setting is highly beneficial.

## **JOB DIMENSIONS**

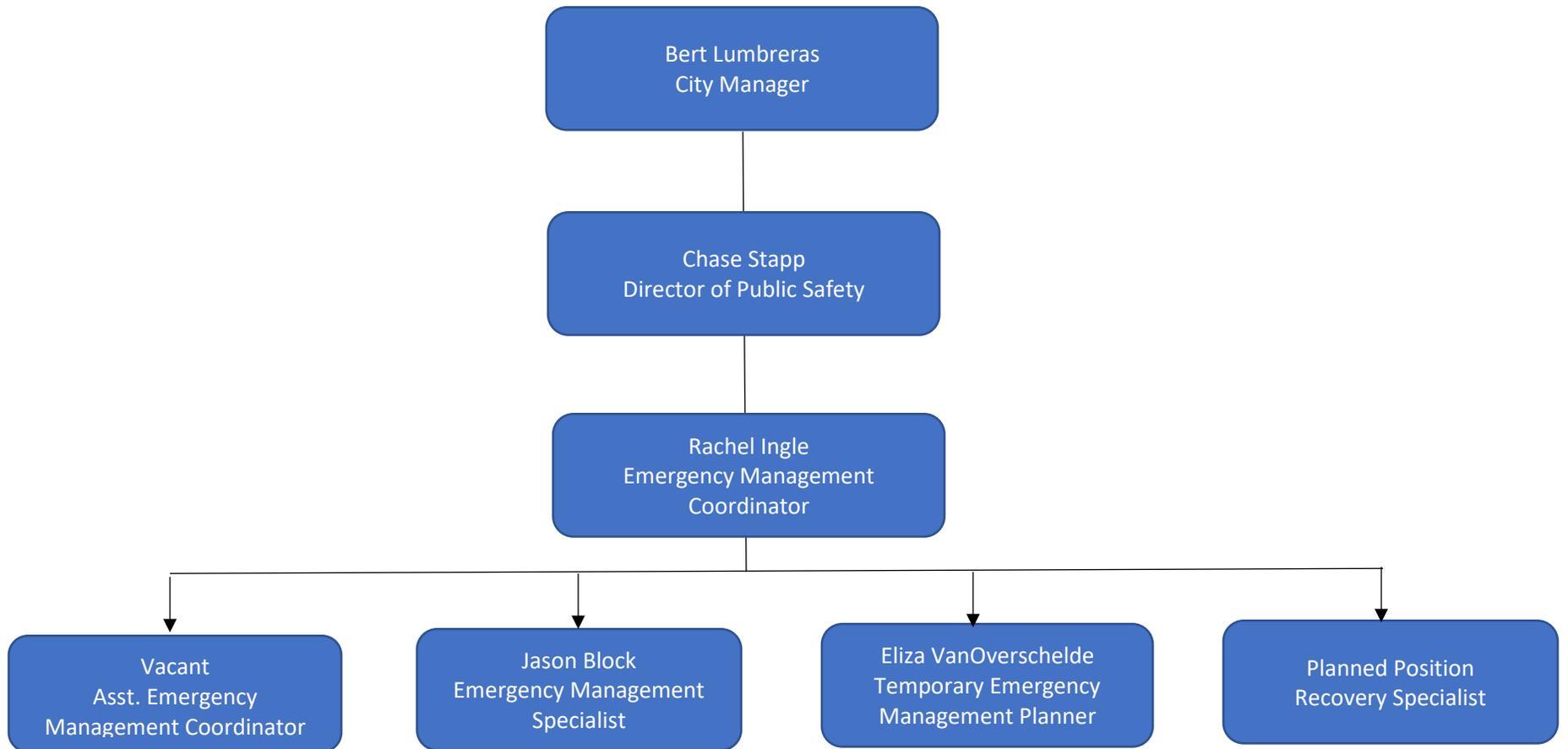
- Must be able to interpret, apply, and/or prepare grant documents, budgets, and project documentation.
- Must be proficient with basic computer operations, including Word, Excel, PowerPoint, and be able to learn and manage new software programs from the user standpoint.
- Intelligence: Requires the ability to prioritize tasks, to apply principles of rational and influence systems, utilize principles of conceptualization, and to exercise sound judgment in the interest of regulatory compliance and public safety. Requires the ability to utilize long-term planning principles and techniques.
- Numerical Aptitude: Requires the ability to add, subtract, multiply and divide; calculate decimals and percentages; interpret graphs; perform calculations involving variables and formulas.
- Interpersonal Temperament: Requires the ability to deal with people from a variety of backgrounds in both giving and receiving instructions. Requires the ability to establish effective communication with professional, technical, and support personnel. Requires the ability to provide oral presentations. Excellent customer service skills required in serving the public and the community.

## **PHYSICAL DEMANDS AND WORKING CONDITIONS**

Physical requirements include lifting up to 30 pounds occasionally. Subject to handling, vision, hearing and talking frequently; standing, sitting, walking, lifting, carrying, pushing/pulling, reaching, kneeling, bending, twisting, climbing, balancing and foot controls occasionally; crouching and crawling rarely. Tasks require prolonged periods of visual concentration.

Working conditions involve working outdoors in all weather conditions including extreme heat, humidity, cold, and precipitation. During emergencies, exposed to unsound structures, hazardous debris, and other hazards.

**City of San Marcos  
Office of Emergency Management  
Organization Chart**



City of San Marcos  
Community Development Block Grant – Coronavirus Response  
(CDBG-CV)  
**2020 Public Services Application**



City of San Marcos  
Planning and Development Services Department  
630 East Hopkins  
San Marcos TX 78666  
<https://www.sanmarcostx.gov/3065/CDBG-Action-Plans>  
For more information: Carol Griffith 512.393.8147 [cgriffith@sanmarcostx.gov](mailto:cgriffith@sanmarcostx.gov)

## APPLICANT INSTRUCTIONS

*Persons with limited English proficiency may request assistance by contacting the City at 512-393-8250. (Las personas con habilidad limitada de Inglés puede solicitar la asistencia poniéndose en contacto con la Ciudad en 512-393-8250.)*

Thank you for your interest in the City of San Marcos' Community Development Block Grant - Coronavirus Response (CDBG-CV) program. The City will receive \$425,261 for immediate use upon acceptance of the City's Action Plan by the US Department of Housing and Urban Development (HUD).

Applications may be submitted by for-profit entities, non-profit organizations, government agencies, and City departments; the City is not accepting applications from individuals who need personal housing or other financial assistance. Applications should be for the creation of a program or project that provides assistance to individuals or businesses.

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 512-393-8074 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov).

## APPLICATION INFORMATION

**2020 Application Period:** May 1, 2020-May 20, 2020

APPLICATION SUBMISSION DEADLINE IS MAY 20, 2020 AT 5:00 P.M.

**Submit one signed application electronically to:** Carol Griffith, [cgriffith@sanmarcostx.gov](mailto:cgriffith@sanmarcostx.gov)

Please call to verify your application has been received: Carol Griffith 512-393-8147. *I am currently teleworking; please leave a voicemail and I will be notified.*

## PROJECT ELIGIBILITY

Organizations may propose more than one program or project in separate applications.

### CDBG-CV Requirements

CDBG-CV funds must meet typical CDBG requirements and must be used to prevent, prepare for, and respond to coronavirus, which can include responding to the economic effects as well as the health impacts of the COVID-19 pandemic. Please note that it has now been determined that up to 100% of the funds can be used for Public Services.

HUD has provided the attached Quick Guide to CDBG Eligible Activities to Support Infectious Disease Response. Additional resources will continue to be posted to [www.hudexchange.info/programs/cdbg/disease/](http://www.hudexchange.info/programs/cdbg/disease/).

Proposed programs and projects will be added to the 2019-2020 CDBG Action Plan so the funds can be used as soon as possible after a required five day comment period and approval by the San Marcos City Council and HUD.

### High Priority Needs

Proposed projects must address one of the High Priority Needs stated in the 2015-2019 Consolidated Plan. It is anticipated that Economic Development will be added as a High Priority Need category through an amendment on June 2, 2020 so applications will also be accepted in that category:

- Public Services
- Economic Development
- Affordable Housing
- Public Facilities/Infrastructure/Transportation
- Clearance Activities
- Program Administration

**Not everything in these categories can be funded through CDBG.** Please refer to the Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities for descriptions of projects that can be funded through CDBG. It can be found at the following link: <https://www.hudexchange.info/resource/89/community-development-block-grant-program-cdbg-guide-to-national-objectives-and-eligible-activities-for-entitlement-communities/>

### **National Objectives**

All funded projects must also meet one of the three CDBG program National Objectives:

- Benefit low to moderate income individuals or families
- Eliminate slum or blight
- Urgent Need (such as disaster recovery)

### **City of San Marcos Human Services Funding:**

It is the City's policy to fund programs from only ONE city funding source. For example, if you apply for CDBG-CV funds for a program, you cannot apply for City of San Marcos Human Services funding for the same program.

### **USE OF FUNDS TO SUPPORT COVID-19 RESPONSE**

Organizations may propose more than one program or project in separate applications.

CDBG-CV funding is particularly geared toward supporting low-to-moderate income people who have been impacted by the COVID-19 pandemic.

For the City of San Marcos, the following programs listed in the Quick Guide may be of particular benefit:

1. Provision of assistance to private, for-profit entities when appropriate to carry out an economic development project, such as:
  - Preventing job loss caused by business closures related to social distancing by providing short-term working capital assistance to small businesses to enable retention of jobs held by low to moderate income persons.
  - Providing technical assistance, grants, loans and other financial assistance to establish, stabilize and expand microenterprises that provide medical, food delivery, cleaning and other services to support home health and quarantine.
2. Provision of new or quantifiably increased public services, such as the following.
  - Delivering meals on wheels to quarantined individuals or individuals who need to maintain social distancing due to medical vulnerabilities.
  - Providing equipment, supplies and materials necessary to carry out a public service.

Do not let this list limit your ideas, however! Please be creative! You may be in a position to know best about a need that is particularly suited to this funding. What use of these funds will have the greatest benefit for San Marcos?

### **APPLICATIONS ARE PUBLIC RECORDS**

**Once an application is submitted to the City, it becomes a public record and as such is open for public review. All or part of the application may be posted on the City's webpage and included in City Council packet materials. Please keep this in mind when submitting personal information for your staff, board, or clients.**

### **APPLICATION CALENDAR AND CITIZEN PARTICIPATION**

The City of San Marcos values the input of its citizens and offers the following opportunities to participate in the deliberation on the best uses of the CDBG-CV funding . Scheduled dates and venues are subject to change. The hearing and funding allocation may be held virtually due to the current status of the COVID-19 pandemic.

Please check the website <https://www.sanmarcostx.gov/3065/CDBG-Action-Plans> for the latest information.

- Public Hearing to review applications and receive citizen comments – **June 2, 2020 at the City Council meeting**
- Public comment period on the proposed CDBG-CV programs and projects – **June 7-13, 2020**

- City Council CDBG-CV funding allocations– **June 16, 2020 at the City Council meeting**

## FUNDING AWARDS

Submitting a complete application does not guarantee that your request will be funded. The CDBG-CV grant can fund only the actual, allowable, and reasonable costs of a proposed project, and requests for funding generally exceed the amount of funding available. Funding allocations are decided by the City Council, subject to HUD approval.

## AVAILABILITY OF FUNDS

Funds awarded for CDBG-CV will be available as soon as City Council and HUD approvals have been received and any necessary environmental review has been completed. The organization’s Subrecipient Agreement with the City must be fully executed prior to the expenditure or commitment of program funds. The appropriate level of environmental review must be completed by Community Initiatives Division staff before any funds are expended or obligated. Environmental reviews typically take 45 to 60 days to complete for small construction projects and about 15 days for projects that are not likely to have a physical impact on the environment. **No reimbursement will be possible for goods purchased or contracts executed prior to meeting these requirements.**

## ORGANIZATION ELIGIBILITY REQUIREMENTS

- Organizations applying for Public Services funding can be a public or private non-profit agency, a for-profit entity, a public housing authority, a City of San Marcos department, or other government entity.
- Non-profit agencies must be established, operating agencies as evidenced through documentation required in the application. Exhibits to show tax exempt status are required.
- Faith based agencies are eligible to apply on the same basis as other non-profit organizations. However, CDBG funds cannot be used to support worship, proselytizing, or religious instruction. Religious activities must be offered separately, in time or location, from the CDBG-CV supported activity. Participation in the religious activity must be voluntary for the beneficiaries of the CDBG-CV-funded project. Projects operated by faith-based agencies must be available to all community members and not restricted to the organization’s membership or congregation.

## NON-DISCRIMINATION AND ACCESSIBILITY

Each agency receiving CDBG-CV funds must

- Provide assurance that it will conduct its business in compliance with the non-discrimination requirements of the County, State, and Federal governments as applicable.
- Have Equal Opportunity in Employment policies.
- Agree to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

## FINANCIAL CAPACITY AND AUDITING REQUIREMENTS

The *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* issued by the federal Office of Management & Budget (OMB) requires that any organization that expends \$750,000 or more in federal financial assistance in a fiscal year must secure an annual audited financial statement.

The City has established the following financial statement requirements for organizations assisted with CDBG-CV program funds, based on the total assets of the applicant. The term “total assets” is defined to mean the total amount of liquid assets that is documented to be available to the Subrecipient at the time the funding is approved.

- A. CPA preparation of financial records is not required if the Subrecipient has total assets of \$15,000 or less in value;

- B. A compiled financial statement is required if Subrecipient has total assets greater than \$15,000 and less than or equal to \$100,000 in value.
- C. A reviewed financial statement is required if Subrecipient has total assets greater than \$100,000 and less than or equal to \$200,000 in value.
- D. An audited financial statement is required if Subrecipient has total assets of more than \$200,000 in value. (In an “Audited” statement a CPA provides an in-depth study of the records, organizes them into a statement, and issues an opinion to their validity.)

**Organizations receiving CDBG-CV funds must submit the required financial statement which has been prepared by a Certified Public Accountant to the City within nine months from the organization’s fiscal year end and not more than 30 days after the organization’s receipt of the statement.**

## **INSURANCE AND BONDING**

Agencies receiving CDBG-CV funding must provide Workers’ Compensation Insurance coverage for all of its employees involved in the performance of the funded project. At the time of contract signing, funded agencies must provide evidence of insurance including, but not limited to, multi-peril property and liability, worker’s compensation, automobile liability, and other coverage as deemed necessary by the City. In addition, upon funding the City of San Marcos, Officers, Employees and agents must be added as additional insured to the policy.

## **PROJECT IMPLEMENTATION SCHEDULE AND PERFORMANCE MEASUREMENT GOALS**

Performance measurement is an effective management technique that enables those who receive grant funds (Subrecipients) and the City to analyze the benefits of their investments. It is a mechanism that tracks the progression of projects and evaluates their overall effectiveness and success in meeting project goals. **One of the most important overall goals in planning a CDBG-CV project is the completion of the project in a timely manner.**

The City is monitored by HUD to ensure that the CDBG-CV grant program has benefited low-to-moderate-income families; one success measurement that the City must meet is the expenditure of its program funds in a timely manner. The City must take into account the project schedules for each project that is proposed to ensure that the overall CDBG-CV program will comply with its federally mandated timeliness ratio. Thus, it is critical that each applicant accurately forecasts the time that will be involved in completing each step of a proposed project.

**Please use the format included in this application to outline the expected Implementation Schedule for your project.** This document will be incorporated into the Subrecipient Agreement for funded projects. The City will monitor the performance of Subrecipients against the goals and performance standards established by this document. Substandard performance as determined by the City will constitute noncompliance with the Subrecipient Agreement. If action to correct such substandard performance is not taken by the Subrecipient with a reasonable period of time after notification by the City, contract suspension or termination processes may be initiated.

## **NOTES FOR ORGANIZATIONS RECEIVING FEDERAL FUNDS**

### **Subrecipient Registration Requirements:**

- Organizations receiving CDBG-CV funding (Subrecipients) must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number. If you do not have a DUNS number, go to <http://fedgov.dnb.com/webform> to register.
- Funded applicants must also have an active registration with System of Award Management (SAM). To register with SAM, go to [www.sam.gov](http://www.sam.gov) to register. You must have a DUNS number prior to registering with SAM. Subrecipients must provide proof of SAM registration prior to the execution of a Subrecipient Agreement. This is required when federal funds are being utilized. Any contractors/service providers hired for the CDBG-CV programs must also have an active registration with SAM prior to start or expenditure of funds.

## INCOME LIMITS

Income limits are established by HUD on an annual basis for the purpose of establishing CDBG-CV grant eligibility. The limits are based on household size. Income is calculated for every adult 18 and older residing in the household. HUD considers 80% and below to be low income. San Marcos CDBG-CV Area Median Income (AMI) Limits are based on the Median Family Income for the Austin/Round Rock Metropolitan Statistical Area (MSA). The current Median Family Income for the Austin-Round Rock MSA is \$97,600 which became effective April 8, 2020. The 2020 limits are expected to be released by HUD in the next few months.

<b>Family Size</b>	<b>1 Person</b>	<b>2 Person</b>	<b>3 Person</b>	<b>4 Person</b>	<b>5 Person</b>	<b>6 Person</b>	<b>7 Person</b>	<b>8 Person</b>
80% AMI	\$54,700	\$62,500	\$70,300	\$78,100	\$84,350	\$90,600	\$96,850	\$103,100

## PUBLIC SERVICES PROGRAM OR ACTIVITY ELIGIBILITY

### ELIGIBLE PUBLIC SERVICE ACTIVITIES (24 CFR 570.201(E))

“Public Services” are non-construction social service activities in the community that benefit low- to moderate-income citizens. At least 51% of all program clients must be City of San Marcos residents and have a total family income that does not exceed 80% of the area median income as established by HUD for San Marcos.

CDBG-CV regulations allow the use of grant funds for a wide range of public service activities including, but not limited to:

- After school / child care
- Education programs
- Health services
- Recreation services
- Crime prevention, public safety
- Senior citizens services
- Homeless persons services
- Job Training
- Substance abuse programs

See the attached Quick Guide for additional information.

### ELIGIBLE EXPENSES

Eligible expenses include but are not limited to labor, supplies, and materials as well as operation and maintenance of the portion of a facility in which the public service is located. This includes the lease of a facility, equipment, and other property needed for the public service and costs incurred for telephone services, postage, and computer use or access. Time sheets will be required to document salary costs. Travel and training expenses may be authorized by the City on a case-by-case basis.

### INELIGIBLE EXPENSES

CDBG-CV funds may not be used to pay for food or meals for staff, fund raising, entertainment, alcoholic beverages, deposits on equipment, incentives to clients (such as gift cards or raffle prizes), or late fees or penalties. Costs of organized fund raising are not allowable. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property that is not an integral, structural fixture is generally ineligible.

### CLIENT INCOME VERIFICATION OPTIONS:

To be eligible for CDBG-CV assistance, a public service project must serve low-to-moderate income persons. Income limits are updated annually, usually in the spring. The City will post the new limits on its website when they become available and distribute the new limits to all Subrecipient organizations.

The type of income verification needed is determined by the project and the clients served; HUD allows each project to select one of three definitions of “income” to be used in calculating a potential client’s eligibility to be considered low/mod. The project must use the same definition for all applicants. The primary difference in the definitions is the treatment of assets. City staff will work closely with all agencies that are selected for funding to determine which income definition should be used.

Documentation of the benefit to low and moderate income level persons is required of every project funded.

**1. Limited Clientele:** The public service activities must be offered to a particular group of low and moderate income residents in the entire community. Agencies will collect income data and demographic data for each recipient in the program as either Client Based or Presumed Benefit.

- Client Based:** Activities will be offered to all residents of a particular group of low-and-moderate income San Marcos residents. Income verification and residency are required along with other client statistics.
- Presumed Benefit:** Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit a population in which at least 51% of the population is low-to-moderate income. Individual income verification is not required, although residency and other client statistics must be collected. The Presumed Benefit categories are:

a. Elderly persons (62 or older)	e. Battered spouses
b. Homeless persons	f. Abused children
c. Persons living with AIDS	g. Migrant farm workers
d. Illiterate persons (includes non-English speakers)	h. Severely disabled adults (Census Bureau definition)

Persons are classified as having a severe disability if they (a) used a wheel-chair or had used another special aid for six months or longer; (b) are unable to perform one or more “functional activities” or need assistance with an ADL or IADL; (c) are prevented from working at a job or doing housework; or (d) have a selected condition included autism, cerebral palsy, Alzheimer’s disease, senility or dementia, or mental retardation. Also, persons who are under 65 years of age and who are covered by Medicare or who receive SSI are considered to have a severe disability.

For purposes of this definition, the term “functional activities” includes seeing, hearing, having one’s speech understood, lifting and carrying, walking up a flight of stairs, and walking. An ADL is an “activity of daily living” which includes getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating, and toileting. An IADL is an “instrumental activity of daily living” and includes going outside the home, keeping track of money or bills, preparing meals, doing light housework and using the telephone.

**2. Nature and Location:** Activities must be of such nature and in such location that it may reasonably be concluded that the activity’s clientele will primarily be low/mod income persons. For example, a day care center that is designed to serve residents of a public housing complex would qualify under this category. Individual income verification would not be required, although residency and other client statistics would be required. HUD must approve this method of income verification.

**3. Area Benefit:** An activity which is available to benefit all of the residents of a defined area which is primarily residential and where at least 51% of the residents are L/M income persons. This rarely applies to public service projects.

**SUPPLEMENTAL ITEM CHECKLIST**

**CDBG-CV PROGRAM**

**DUE DATE: MAY 20, 2020**

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**Submit one copy of the following items:**

**Required:**

- Board of Directors list including position/title on board.
- Contact numbers for Board Chair or President and Treasurer.
- Resolution or Board Minutes showing approval to submit an application and designation of person who will sign documents on behalf of the organization.
- Organization Chart
- N/A Articles of Incorporation
- Bylaws
- Tax Exempt Determination Letter (for non-profit organizations)
- Organization's Current Budget (2019-2020) and Proposed Budget for next fiscal year
- Most Recent audit or CPA prepared review.
- Description of employees, board members, volunteers who will work with the project
- Non-discrimination Policy Statement

**If applicable:**

- Fee schedule or structure for the project proposed for funding
- Copy of program application if one is used to select beneficiaries
- Analysis of program or service expansion if this is not a new service.
- Description of how beneficiaries will be selected (if not by application form)
- Description of how applicant income will be determined if there are direct beneficiaries
- Detailed explanation of any lawsuits, judgments, or bankruptcy proceedings
- Job description for new positions expected to be filled using CDBG-CV funding

**CITY OF SAN MARCOS**  
**2020 CDBG-CV PUBLIC SERVICES APPLICATION**



**Due Date: May 20, 2020**

**I. APPLICANT CONTACT INFORMATION**

Applicant Organization: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Physical Address, if different from mailing address: \_\_\_\_\_

Contact E-Mail Address: \_\_\_\_\_ Web Address: \_\_\_\_\_

Who is authorized to execute program documents? \_\_\_\_\_

**II. APPLICATION SUMMARY INFORMATION**

Project Name: \_\_\_\_\_

Amount of CDBG-CV Funds Requested: \_\_\_\_\_

\_\_\_\_\_

Project Location: \_\_\_\_\_

Will all CDBG-CV funds for this project be expended by July 15, 2021?     Yes     No

If "No", what percent is expected to be completed by that date? \_\_\_\_\_

### III. PROJECT DESCRIPTION

#### PROGRAM SUMMARY

Briefly summarize the program for which CDBG-CV funding has been requested.

Texas State University has partnered with Katerra, an American technology-driven offsite construction company, on developing a portable sample collecting station for the COVID-19 pandemic. The station will provide the residents of San Marcos with a quick, easy, and safe way to collect the samples. For a month now, a multi-disciplinary team of faculty and staff from Engineering, Engineering Technology, Clinical Laboratory Science, Star Park, and the Materials Application Research Center have been collaborating on a prototype COVID-19 pandemic collection station. The design team members, Dr. Spencer and Dr. Khaleghian, have been working with the design team of Katerra on the project to develop a flexible sample collecting station that is not just suitable for the current FDA guidelines (nasal swab), but can be easily adopted to the potential guidelines in the future, as well as, a vaccination station. Katerra's modular architecture was selected for the station with the intent of research on the best systems that would be applicable for its intent. The project was decomposed into combinations of different modules consisting of: station layout, air conditioning/ventilating system, communication system, sample collecting mechanism, sample drop mechanism, sample storage system, sanitizing mechanism, station doors, and power system. While combining the best solutions for these modules, several concepts were developed, discussed, and scored by the whole team with particular emphasis on the contributions of the medical experts. It was decided to move forward with the best concepts in two phases. In the first phase, a working prototype will be developed with the combination of "must have", and "cost-effective"

#### USE OF FUNDS

How will the funds be used?

As it was explained in the project summary part, the proposed project has two phases and a functional prototype will be developed by the end of each phase; for the phase one, a cost-effective sample collection prototype consist of all "must have" modules, considering all safety guidelines, will be developed for excessive testing and evaluations, The estimated cost for the phase one prototype is \$9,750. Another more automatized version of sample collecting station will be develop by the second phase. The goal is to minimize the human interaction as much as possible in the second phase prototype to reduce the required sample collecting time, also to promote the safety for both patients and operators. Some of the features that will be included/investigate in the second phase are the automatic sample collecting mechanism instrumented with face recognition algorithms, automated sanitizing mechanism (Automatic spray system/UV light system), online appointment system (website/app), automatic sample tubes' label printing system (hardware & software), automated sample drop/storage mechanism, etc. The estimated cost of the second phase prototype is \$20,000. The money will be used for research, equipment, and utilities. Two trained staff members will be hired for the sample collection process with the pay rate of \$18/hr for 8 months (September 2020 – May 2021). The total asking amount for the trained staffs is \$50,688.

#### COVID-19 PANDEMIC IMPACT:

Summarize how this project directly addresses an impact from the current COVID-19 pandemic:

As understood by the team, having more people tested will help us to understand the number of of infected people and possibly develop an effective model to reduce the spread of the virus. More testing is definitely the key component in dealing with this pandemic and our desire to open schools and local businesses safely.

The main goal of this project is to provide the City of San Marcos and the Texas State University campus with working, portable pandemic collection stations that can be utilized for the entire community without barriers in accessibility due to age, gender, physical, economic or any other barrier. This project encompasses the design and construction of both a Phase 1 and 2 modular collection station as discussed above. These will be constructed by Katerra with review and consultation with the whole team and additional experts as required. These stations can be set up and broken down in 2-3 hours, relocated in needed areas, and are capable of sample collection in a safe, fast, and easy manner. With all the design features and automated mechanism, it will be safe for both patients and operators, can be adopted to the potential future FDA testing guidelines (e.g. saliva, blood, etc.), and can be repurposed easily to a vaccination station in the future.

## ACCOMPLISHMENTS

Once the project is completed, how can its success be measured?

Through the course of the project, monthly progress report will be submitted, reflecting the up-to-date status of the project, followed by two comprehensive reports, including all the detail design documentations and justifications, equipment list and their instruction manuals, and BOM, at the end of each phase. Moreover, a demo of the developed prototypes will be given to the city of San Marcos officials and they will have access to the prototypes for further evaluations.

## TYPE OF PUBLIC SERVICE (choose all that apply)

- |   |   |
|---|---|
| <input type="checkbox"/> 05A Senior Services                      | <input type="checkbox"/> 05B Handicapped Services                   |
| <input type="checkbox"/> 05C Legal Services                       | <input type="checkbox"/> 05D Youth Services                         |
| <input type="checkbox"/> 05E Transportation Services              | <input type="checkbox"/> 05F Substance Abuse Services               |
| <input type="checkbox"/> 05G Battered and Abused Spouses Services | <input type="checkbox"/> 05H Employment Training                    |
| <input type="checkbox"/> 05I Crime Awareness                      | <input type="checkbox"/> 05J Fair Housing Activities                |
| <input type="checkbox"/> 05K Tenant/Landlord Counseling           | <input type="checkbox"/> 05L Child Care Services                    |
| <input checked="" type="checkbox"/> 05M Health Services           | <input type="checkbox"/> 05N Abused and Neglected Children Services |
| <input type="checkbox"/> 05O Mental Health Services               | <input type="checkbox"/> 05P Screening for Lead Paint/Lead Hazards  |
| <input type="checkbox"/> 05Q Subsistence Payments                 | <input type="checkbox"/> 05R Homeownership Assistance (Not Direct)  |
| <input type="checkbox"/> Other: _____                             |   |

**PROGRAM INFORMATION**

1. Program eligibility (please select one):
  - a.  This is a new program.
  - b.  This is an existing program that: (select one of the following)
    - Has previously received CDBG funding and the amount requested for this year is the same or less than previous funding; or
    - will expand to serve more beneficiaries or to provide more services if the CDBG-CV funding as requested is approved. *Please attach an analysis that details how the program or service will be expanded, how many new beneficiaries will be served by the expansion, and how this number was determined.*
2. Programs receiving funding from the City at this time (during the current program year):
  - a. How much CDBG funding was awarded? \_\_\_\_\_
  - b. Is this program receiving any other City of San Marcos sources? <sup>No</sup> \_\_\_\_\_
  - c. If yes, how much was received and from what source? \_\_\_\_\_
3. Is there a fee to clients to participate in the program?  Yes  No  
*If yes, please provide fee structure.*
4. Describe the days and hours of operation of the program: \_\_\_\_\_  
8 am - 5 pm M-F  
\_\_\_\_\_

## IV. PROGRAM BENEFICIARIES

*Applicant must be able to document that at least 51% of the beneficiaries have an annual income that is at or below 80% of the Area Median Income and are San Marcos residents.*

**A. PRESUMED BENEFIT:** See definition above of "Presumed Benefit".

1. Will all of the program's beneficiaries in a Presumed Benefit Category?  Yes or  No

If "yes", list the categories: All community

2. How many persons in each presumed category are proposed to be assisted if funding is received?

Abused Children	Elderly Persons	Battered Spouses	Homeless Persons	Severely Disabled Adults	Illiterate Adults	Persons living with AIDS
<b>All</b>	<b>All</b>	<b>All</b>	<b>All</b>	<b>All</b>	<b>All</b>	<b>All</b>

3. If this program was carried out the previous full program year (10/1 – 9/30), how many persons were served in each presumed category:

Abused Children	Elderly Persons	Battered Spouses	Homeless Persons	Severely Disabled Adults	Illiterate Adults	Persons living with AIDS

**B. BENEFICIARIES WHO ARE NOT CONSIDERED "PRESUMED"**

1. How many persons are proposed to be assisted if funding is received? All community

If this program was carried out the previous program year (10/1 – 9/30), how many persons were served?

\_\_\_\_\_

2. What percentage of persons proposed to be assisted are expected to be low/mod? San Marcos %

3. What percentage of persons proposed to be assisted are expected to be San Marcos residents? 100%

4. How do you propose to document the income of the beneficiaries? (check all that apply)

Evidence that the child is approved for free or reduced lunch

Evidence that the family lives in housing sponsored by the Housing Authority

Evidence that the family is WIC approved

Income documentation using one of the 3 HUD approved methods

Self-certification, with income verification required of 20% of certifications

Other, describe:

This pandemic collection facility if open to all residents of the City of San Marcos and does not discriminate on any level.

## VI. LINE ITEM BUDGET

Please use the following format to present your proposed line item budget. Secured funds are funds on-hand, pledged, or awarded. Following the Line Item Budget, please complete the Supplemental Budget Form – Use of Other Resources. Funds and costs, as outlined on the Sources and Uses of Funds form, may **not** be spent or incurred prior to a contract award date from the CDBG-CV Program. Supporting documentation may be attached as an Appendix.

Expense Category	Total Program Budget	CDBG-CV Portion	Other Funding Source	Other Funds Amount
<b>Personnel Services</b>				
Salaries	\$39,600	\$39,600		
Fringe Benefits	\$11,088	\$11,088		
<b>Supplies</b>				
Office Supplies				
Program Supplies				
Client Materials				
<b>Operating</b>				
Training				
Insurance				
Utilities/Rent/Mortgage				
<b>Other (please specify)</b>				
Phase 1 - Building Shell	\$9,750	\$9,750		
Phase 2 - Building add'l features	\$20,000	\$20,000		
Indirect Costs	\$25,091	\$25,091		
<b>Total</b>	<b>\$105,529</b>	<b>\$105,529</b>		

Please provide an explanation for any unusual budget expenditures listed in the line item budget above.

Please see the “Use of Fund” for more detail about 1st and 2nd phases budget justification. Two trained staff members will be hired to collect the samples. They will work 8AM-5PM M-F from September 2020 (once the second phase prototype was completed) to May 2021 with the pay rate of \$18/hr. The total asking amount for the trained staffs is \$25,344 \* 2 = \$50,688. At the high capacity 90 tests/day/booth will be done, currently CPL charges \$90/test, THE TESTING COSTS IS NOT INCLUDED IN THE OVERALL ASKED BUDGET.

Indirect costs calculated on salary and fringe only at the rate of 49.5%.

## VII. PROJECTED IMPLEMENTATION SCHEDULE WITH PERFORMANCE GOALS

**Projected Start Date:**

06/20/2020

**Projected Completion Date:**

05/15/2021

<b>Activity Description</b>	<b>Start Month/Year</b>	<b>End Month/Year</b>	<b>Performance Measurement Goal</b>
<i>Example: Hiring New Staff Member</i>	<i>October 2019</i>	<i>December 2019</i>	<i>Employment process complete</i>
Developing the 1st Phase prototype	June 2020	mid-July 2020	the first phase prototype is fabricated
Developing the 2nd phase prototype	mid-July 2020	mid-August 2020	fully functional second phase prototype is completed
Hiring two new trained staff member	mid-July 2020	mid-August 2020	Employment process complete
Sample Collecting Process	September 2020	June 2021	Sample collecting is completed





## **IX. CONFLICTS OF INTEREST (24 CFR 570.611; 24 CFR 85.36; AND 24 CFR 84.42)**

Two sets of conflict of interest provisions apply to activities carried out with CDBG-CV funding. The first set, applicable to the procurement of goods and services by subrecipients (*funded applicants*), is the procurement regulation found in the *Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards as codified in Title 2, Part 200 of the Code of Federal Regulations*. The second set of provisions is located at 24 CFR 570.611(a)(2).

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

1. Require that no employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the firm selected for an award:
  - An employee, officer, or agent of the subrecipient;
  - Any member of an employee's, officer's, or agent's immediate family;
  - An employee's, agent's, or officer's partner; or
  - An organization which employs or is about to employ any of the persons listed in the preceding sections.
2. Require that employees, agents, and officers of the subrecipient neither solicit nor accept gratuities, favors, or anything of value from contractors or parties to sub-agreements. However, subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.
3. Provide for disciplinary actions to be applied for any violation of such standards by employees, agents or officers of the subrecipient.

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

- The requirement applies to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, a designated public agency, or a subrecipient, and to their immediate family members and business partners.
- The requirement applies to such persons during their tenure and for a period of one year after leaving the grantee or subrecipient organization.
- Upon written request, exceptions may be granted by HUD on a case-by-case basis.

**CONFLICT OF INTEREST QUESTIONNAIRE**

NOTE: For the purpose of this form, a "covered person" includes any person who is an employee, agent, consultant, officer or elected or appointed official of the City of San Marcos, your organization, or any designated public agency.

Name of Organization: Texas State University

1. Does your organization maintain a written code or standards of conduct that governs the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds?

Yes  No  If "No" is checked, please explain how you will comply with this requirement:  
As employees of Texas State University, the staff will adhere to all codes and standards as set forth by employer.

2. Are any of your Board Members or employees that are responsible for carrying out this project or members of their immediate families or their business associates also:

- a. Employed by the City of San Marcos? Yes  No
- b. Members of or closely related to members of the San Marcos City Council? Yes  No
- c. Members of or closely related to an employee of the City of San Marcos? Yes  No
- d. Current beneficiaries or related to beneficiaries of the project for which funds are requested?  
Yes  No
- e. Paid providers of goods or services to the program or having other financial interest in the program or related to such individuals? Yes  No

3. For each relationship described above, please answer the following questions: (attach additional page if necessary)

- a. Name of employee or official: \_\_\_\_\_
- b. Is this person receiving or likely to receive taxable income from your organization?  
Yes  No
- c. Is your organization receiving or likely to receive taxable income from or at the direction of the employee or official AND the taxable income is not from the City of San Marcos?  
Yes  No
- d. Is your organization affiliated with a corporation or other business entity in which the employee or official serves as an officer or director, or holds an ownership interest of 10% or more?  
Yes  No

4. Describe any other affiliation or business relationship that might cause a conflict of interest with respect to CDBG-CV funds and activities.  
N/A

5. Will any of your organization's employees, officers, board members, or members of their immediate family or business partners have a financial interest in any contract, subcontract, or agreement regarding CDBG-CV funded activities?  
Yes  No . If yes, please attach an explanation.

## X. APPLICANT ASSURANCES AND CERTIFICATIONS

The applicant hereby assures and certifies with respect to this project or program, by the submission of this application, that the following are true statements:

1. It possesses legal authority to apply for the grant and to finance the proposed request; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards as codified in Title 2, Part 200 of the Code of Federal Regulations (UAR) and agrees to adhere to the accounting principles and procedures required therein, utilizing adequate internal controls and maintaining necessary source documentation for all costs incurred.
3. If it expends \$750,000 or more of federal funds in a fiscal year, it will comply with the Single Audit Act of 1984.
4. It will comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards, and Executive Order 11990, relating to protection of wetlands. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, and approved December 31, 1976. Section 102(a).
5. It will have sufficient funds available or the ability to obtain the non-federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
6. It will give the City and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
7. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the City that funds have been approved and that the project will be performed to completion with reasonable diligence.
8. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
9. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646), which provides for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs.
10. It will comply with the provisions of the Hatch Act, which limit the political activity of employees.
11. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act as they apply.
12. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the city/federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.
13. It will assist the city/federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.).

14. It will comply with Texas Civil Statutes, Article 5996a, by insuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
15. It will insure that all information collected, assembled or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Texas Civil Statutes, Article 6252-17a, unless otherwise expressly provided by law.
16. It will conduct and administer the program in conformity with the Fair Housing Act (42 USC Section 3901 et. Seq.) and that it will affirmatively further fair housing.
17. It will minimize displacement of persons as a result of activities assisted with CDBG-CV funds. In the event that displacement of residential dwellings will occur in connection with a grant-assisted project, it will follow a residential anti-displacement and relocation assistance plan as specified by the City of San Marcos.
18. It certifies that it is not now, nor has it ever been, on the Federal List of Debarred Contractors.
19. It will not attempt to recover any capital costs of public improvements assisted in whole or in part with such funds by assessing any amount against properties owned and occupied by persons of LMI, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless (a) such funds are used to pay the proportion of such fee or assessment that related to the capital costs of such public improvements that are financed from revenue sources other than such funds; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, applicant certifies that it lacks sufficient funds under this contract to comply with the requirements of clause (a).
20. It agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart J and subpart K of these regulations, except that (1) the Agency does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) Agency does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. Agency also agrees to comply with all other applicable Federal, State, and local laws, regulations, and policies governing the funds provided. Agency further agrees to utilize funds available to supplement rather than supplant funds otherwise available. Agency shall comply with all applicable Federal laws, regulations, and requirements, which include compliance with the provisions of the HCD Act and all rules, regulations, guidelines, and circulars promulgated by the various Federal departments, agencies, administrations, and commissions relating to the CDBG-CV Program. The applicable laws and regulations include, but are not limited to:
  - 24 CFR Part 570;
  - 24 CFR Parts 84 and 85;
  - The Davis-Bacon Fair Labor Standards Act;
  - The Contract Work Hours and Safety Standards Act of 1962;
  - Copeland "Anti-Kickback" Act of 1934;
  - Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
  - Section 3 of the Housing and Urban Development Act of 1968;
  - Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
  - Non-discrimination in employment, established by Executive Order 11246 (as amended by Executive Orders 11375 and 12086);
  - Section 504 of the Rehabilitation Act of 1973 Uniform Federal Accessibility Standards;
  - The Architectural Barriers Act of 1968;
  - The Americans with Disabilities Act (ADA) of 1990;
  - The Age Discrimination Act of 1975, as amended;

- National Environmental Policy of 1969 (42 USC 4321 et seq.) as amended;
- Lead Based paint regulations established in 24 CFR Parts 35, 570.608, and 24 CFR 982.401;
- Asbestos guidelines established in CPD Notice 90-44;
- HUD Environmental Criteria and Standards (24 CFR Part 51);
- The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39
- Flood Disaster Protection Act of 1973;
- Colorado House Bill 06-1023 and 06-1043;
- Procurement Standards (2 CFR 200.322);
- Rights to Inventions Made Under a Contract or Agreement (37 CFR 401.2 (a));
- Energy Efficiency (2 CRF Part 200 Appendix II); and
- Recycling (2 CFR Part 200 Appendix II).

**CERTIFICATIONS REGARDING LOBBYING:**

21. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.
22. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form – “Disclosure Form to Report Lobbying”, in accordance with its instructions.
23. The undersigned 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 that all subrecipients shall certify and disclose accordingly.
24. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

**GENERAL CERTIFICATIONS:**

25. The information, exhibits, and schedules contained in this application are true and accurate statements and represent fairly the financial condition of our organization;
26. Our organization is eligible to receive federal funding and has not been placed in a debarred or otherwise ineligible status under the provisions of CFR Part 24;
27. Our organization prohibits discrimination in accordance with Title VI of the Civil Rights Act of 1964; and,
28. Our governing body has duly authorized submission of this document. If funded, we agree to comply with the procedures outlined in the “Playing by the Rules” handbook that will be supplied by the City of San Marcos.

I, the duly authorized representative of the applicant organization, certify that the foregoing statements are true to the best of my knowledge and belief:

**CERTIFIED BY:** Kay Beauchamp  
 Signature: Kay Beauchamp (May 20, 2020 16:42 CDT) Date Signed: 5/20/2020  
 Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Organization Name: \_\_\_\_\_

## Quick Guide to CDBG Eligible Activities to Support Infectious Disease Response

March 19, 2020

Grantees should coordinate with local health authorities before undertaking any activity to support state or local pandemic response. Grantees may use Community Development Block Grant (CDBG) funds for a range of eligible activities that prevent and respond to the spread of infectious diseases such as the coronavirus disease 2019 (COVID-19).

### Examples of Eligible Activities to Support Infectious Disease Response

<i>For more information, refer to applicable sections of the Housing and Community Development Act of 1974 (for State CDBG Grantees) and CDBG regulations (for Entitlement CDBG grantees).</i>	
<b>Buildings and Improvements, Including Public Facilities</b>	
Acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements. <i>See section 105(a)(2) (42 U.S.C. 5305(a)(2)); 24 CFR 570.201(c).</i>	Construct a facility for testing, diagnosis, or treatment.
	Rehabilitate a community facility to establish an infectious disease treatment clinic.
	Acquire and rehabilitate, or construct, a group living facility that may be used to centralize patients undergoing treatment.
Rehabilitation of buildings and improvements (including interim assistance). <i>See section 105(a)(4) (42 U.S.C. 5305(a)(4)); 24 CFR 570.201(f); 570.202(b).</i>	Rehabilitate a commercial building or closed school building to establish an infectious disease treatment clinic, e.g., by replacing the HVAC system.
	Acquire, and quickly rehabilitate (if necessary) a motel or hotel building to expand capacity of hospitals to accommodate isolation of patients during recovery.
	Make interim improvements to private properties to enable an individual patient to remain quarantined on a temporary basis.
<b>Assistance to Businesses, including Special Economic Development Assistance</b>	
Provision of assistance to private, for-profit entities, when appropriate to carry out an economic development project. <i>See section 105(a)(17) (42 U.S.C. 5305(a)(17)); 24 CFR 570.203(b).</i>	Provide grants or loans to support new businesses or business expansion to create jobs and manufacture medical supplies necessary to respond to infectious disease.
	Avoid job loss caused by business closures related to social distancing by providing short-term working capital assistance to small businesses to enable retention of jobs held by low- and moderate-income persons.
Provision of assistance to microenterprises. <i>See section 105(a)(22) (42 U.S.C. 5305(a)(22)); 24 CFR 570.201(o).</i>	Provide technical assistance, grants, loans, and other financial assistance to establish, stabilize, and expand microenterprises that provide medical, food delivery, cleaning, and other services to support home health and quarantine.

<b>Public Services (Capped at 15 Percent of the Grant, With Some Exceptions)<sup>1</sup></b>	
Provision of new or quantifiably increased public services.  <i>See section 105(a)(8) (42 U.S.C. 5305(a)(8)); 24 CFR 570.201(e).</i>	Carry out job training to expand the pool of health care workers and technicians that are available to treat disease within a community.
	Provide testing, diagnosis or other services at a fixed or mobile location.
	Increase the capacity and availability of targeted health services for infectious disease response within existing health facilities.
	Provide equipment, supplies, and materials necessary to carry-out a public service.
	Deliver meals on wheels to quarantined individuals or individuals that need to maintain social distancing due to medical vulnerabilities.
<b>Planning, Capacity Building, and Technical Assistance</b>	
States only: Planning grants and planning only grants.  <i>See section 105(a)(12).</i>	Grant funds to units of general local government may be used for planning activities in conjunction with an activity, they may also be used for planning only as an activity. These activities must meet or demonstrate that they would meet a national objective. These activities are subject to the State’s 20 percent administration, planning and technical assistance cap.
States only: use a part of to support TA and capacity building.  <i>See section 106(d)(5) (42 U.S.C. 5306(d)(5)).</i>	Grant funds to units of general local government to hire technical assistance providers to deliver CDBG training to new subrecipients and local government departments that are administering CDBG funds for the first time to assist with infectious disease response. This activity is subject to the State’s 3 percent administration, planning and technical assistance cap.
Entitlement only. data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans. <i>See 24 CFR 570.205.</i>	Gather data and develop non-project specific emergency infectious disease response plans.

### Planning Considerations

Infectious disease response conditions rapidly evolve and may require changes to the planned use of funds:

- CDBG grantees must amend their Consolidated Annual Action Plan when there is a change to the allocation priorities or method of distribution of funds; an addition of an activity not described in the plan; or a change to the purpose, scope, location, or beneficiaries of an activity (24 CFR 91.505).
- If the changes meet the criteria for a “substantial amendment” in the grantee’s citizen participation plan, the grantee must follow its citizen participation process for amendments (24 CFR 91.105 and 91.115).

### Resources

The Department has technical assistance providers that may be available to assist grantees in their implementation of CDBG Funds for activities to prevent or respond to the spread of infectious disease. Please contact your local CPD Field Office Director to request technical assistance from HUD staff or a TA provider.

- Submit your questions to: [CPDQuestionsAnswered@hud.gov](mailto:CPDQuestionsAnswered@hud.gov)
- COVID-19 (“Coronavirus”) Information and Resources: <https://www.hud.gov/coronavirus>
- CPD Program Guidance and Training: <https://www.hudexchange.info/program-support/>

<sup>1</sup> Section 105(a)(8) of the Housing and Community Development Act of 1974, provides a different percentage cap for some grantees.

TEXAS  STATE  
UNIVERSITY  
SAN MARCOS  
*The rising STAR of Texas*

January 9, 2015

To Whom It May Concern:

RE: Tax Exempt Status of Texas State University

Government entities are frequently asked to provide a determination letter to prove their status as a tax-exempt or charitable entity. For example, applications for grants from a private foundation or a charitable organization may require this information as part of the application process. The IRS issues a governmental information letter that describes the Federal tax exemption of government entities and cites applicable IRS Code sections related to the receipt of nontaxable contributions.

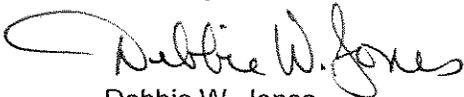
Attached is a letter received from the IRS dated July 23, 2007, and addressed to Texas State University, stating that instrumentalities of a political subdivision are exempt from Federal tax under section 115 of the Internal Revenue Code.

According to Internal Revenue Code Section 115, the income of States, municipalities, or any political subdivision thereof, is not considered taxable gross income for Federal tax purposes.

The Internal Revenue Code requires that the exempt purpose of state colleges and universities include all of the purposes and functions described in Code Section 501(c)(3), and therefore Texas State University may receive nontaxable contributions from activities which are directly related to its educational and research mission.

Texas State University is a member of the Texas State University System and is a public university of higher education as recognized by Texas Education Code, Chapter 61.003. As such, it is a political subdivision of the State of Texas.

Sincerely,



Debbie W. Jones  
Director of Payroll and Tax Compliance  
Texas State University

Attachments

Internal Revenue Service

Date: July 23, 2007

TEXAS STATE UNIVERSITY SAN MARCOS  
JC KELLAM BLDG RM 520  
SAN MARCOS TX 78666

Department of the Treasury  
P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:  
Jeff Seibert 17-16715  
Customer Service Representative  
Toll Free Telephone Number:  
877-829-5500  
Federal Identification Number:  
74-6002248

Dear Sir or Madam:

This is in response to your request of July 23, 2007, regarding your organization's federal tax status.

Our records indicate that your organization may be a governmental instrumentality or a political subdivision of a state.

No provision of the Internal Revenue Code imposes a tax on the income of governmental units (such as states and their political subdivisions). Therefore, it has been the position of the Service that income of governmental units is not generally subject to federal income taxation. If, however, an entity is not itself a governmental unit (or an "integral part" thereof), its income will be subject to tax unless an exclusion or exemption applies.

One exclusion is provided by section 115(1) of the Code, which excludes from gross income:  
"...income derived from ... the exercise of any essential governmental function and accruing to a State or any political subdivision thereof ..."

Your organization's income may not be subject to tax, either because the organization is a governmental unit (or an "integral part" thereof), or because the income is excluded under section 115. In addition, your organization may also be eligible to receive charitable contributions, which are deductible for federal income, estate, and gift tax purposes. Also, your organization is probably exempt from many federal excise taxes.

Your organization may obtain a letter ruling on its status under section 115 by following the procedures specified in Rev. Proc. 2002-1 or its successor.

Your organization may also qualify for exemption from federal income tax as an organization described in section 501(c)(3) of the Code. If the organization is an entity separate from the state, county, or municipal government, and if it does not have powers or purposes inconsistent with exemption (such as the power to tax or to exercise enforcement of regulatory powers), your organization would qualify under section 501(c)(3). To apply for exemption, complete Form 1023 and pay the required user fee.

74-6002248

Sometimes governmental units are asked to provide proof of their status as part of a grant application. If your organization is applying for a grant from a private foundation, the foundation may be requesting certain information from your organization because of the restrictions imposed by the Code on such foundations. One such restriction imposes a tax on private foundations that make any "taxable expenditures." Under section 4945(d) and (h) of the Code, "taxable expenditures" include (1) any grant to an organization (unless excepted), unless the foundation exercises "expenditure responsibility" with respect to the grant; and (2) any expenditure for non-charitable purposes. Under section 4942 of the Code, private foundations must also distribute certain amounts for charitable purposes each year--"qualifying distributions"--or incur a tax on the undistributed amount. "Qualifying distributions" include certain amounts paid to accomplish charitable purposes.

Private foundation grants to governmental units for public or charitable purposes are not taxable expenditures under these provisions, regardless of whether the foundation exercises "expenditure responsibility." Under section 53.4945-5(a)(4)(ii) of the Foundation and Similar Excise Tax Regulations, expenditure responsibility is not required for grants for charitable purposes to governmental units (as defined in section 170(c)(1) of the code). Similarly, grants to governmental units for public purposes are "qualifying distributions", under section 53.4942(a)-3(a) of the regulations; and, if they are for charitable purposes, will not be taxable expenditures, under section 53.4945-6(a) of the regulations. Most grants to governmental units will qualify as being for Charitable (as well as public) purposes.

Because of these restrictions, some private foundations require grant applicants to submit a letter from the Service determining them to be exempt under section 501(c)(3) and classified as a non-private foundation. Such a letter, or an underlying requirement that a grantee be a public charity, is not legally required to be relieved from the restrictions described above, when the prospective grantee is a governmental unit and the grant is for qualifying (public or charitable) purposes.

We believe this general information will be of assistance to your organization. This letter, however, is not a ruling and may not be relied on as such. If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,

Michele M. Sullivan, Oper. Mgr.  
Accounts Management Operations 1

# ANNUAL FINANCIAL REPORT

for the fiscal year ended August 31, 2019



MEMBER THE TEXAS STATE UNIVERSITY SYSTEM

Texas State University, to the extent not in conflict with federal or state law, prohibits discrimination or harassment on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or expression.



# Annual Financial Report

for the fiscal year ended August 31, 2019

for

# Texas State University

## Message from the President



Dr. Denise M. Trauth

I am pleased to present our 2019 Annual Financial Report which demonstrates the continued financial strength of Texas State University.

The university's achievements this year reflect an institution rich in diversity with strong academic programs, world-class research,

and a culture of excellence.

Our distinguished and dedicated faculty and staff make Texas State one of the top public universities in Texas, and our more than 38,000 primarily traditional students make us one of the largest universities in the nation.

Our faculty take the responsibility of nurturing students and cultivating character seriously. We value inclusion, ethical behavior, honesty, integrity, diligence, courage, compassion, fairness, civility, and respect. Our extensive list of distinguished alumni include captains of industry, generals of the armed forces, creative geniuses, ambassadors, legislators, and the only President of the United States to ever graduate from a university in Texas. These alumni stand as testimony to the university's proud legacy and the list of 200,000 Texas State alumni continues to grow with each passing year.

In fact, we attracted the largest freshman class in our history this year, with over 6,200 students, for the seventh consecutive year, while also producing the largest number of graduates in our history, with over 8,700 students. Those graduates go into the world with the added good fortune of having been a part of a university with a rising national profile. Our excellence in research is reflected not only in the quality and growth of our master's and doctoral programs, but also in our total research expenditures, which grew from under \$10 million in 2005 to more than \$60 million this past year.

It is not a coincidence that our research activities have increased substantially, that philanthropic giving continues to be strong, that first-time enrollment continues to climb, that we are adding degree programs in high-demand disciplines, and that Texas State continues to be recognized for our accomplishments. Rather, we are reaping what we have sown through a very deliberate planning process and a lot of hard work from every corner of the university.

I am proud of our world-class academic community, and I invite you to study this document and learn more about Texas State University, the Rising Star of Texas.

Sincerely,  
Denise M. Trauth  
President

## From the Vice President for Finance and Support Services



Mr. Eric Algoe

### Financial Strength

Texas State University continues to flourish on many fronts. Even a cursory review of this Annual Financial Report demonstrates as much: the University's Net Position grew again this year, increasing by more than \$18 million and remaining over \$1.5 billion; the

University's net investment in capital assets increased by more than \$50 million; and the University's combined endowments stand at more than \$200 million. Financially sound as we are, however, we understand that the true measure of a university's strength comes from the stature of our academic programs, the measure of the knowledge we create and impart, and our people. Texas State is strong on all those fronts.

### Growth in Diversity, Enrollment, Research, and Quality

Students want to be at Texas State. This is evidenced by the impressive trend of student enrollment growth over the past several decades and our record-setting and highly qualified freshman class in the Fall of 2019 of over 6,200 students. With more than 38,000 students enrolled this fall semester, we rank among the largest universities in the country.

We are especially proud of the fact that Texas State's student body's demographics mirror those of the state of Texas itself in terms of diversity across every conceivable measure: with an incredibly wide variety of backgrounds, our students come from across the state, every state in the country, and dozens of countries around the world. Texas

State University is a minority-majority institution and is well positioned to best serve the future youth of the state of Texas and the nation. While the size and diversity of our student body soars, measures of our academic strength also continue to improve with very strong retention and graduation rates and some of the best and brightest students in the country applying to be Bobcats each year.

### The Campuses of Yesterday, Today, and Tomorrow

From the first building at Texas State in 1899, our beloved Old Main in San Marcos, to our first building in Round Rock, Avery Hall, to the cutting-edge laboratories, collaboration spaces, and innovation zones that we are designing and building today. Our facilities make a statement about who we are as a University and who we intend to be in the future. We continue to invest heavily in our classroom and research facilities. Our Science, Technology, and Advanced Research (STAR) Park is a center for fostering and commercializing innovation and continues to grow.

We are particularly excited about new academic programs that have recently launched or that will be launching in the coming year. Those include new Bachelor of Science in Civil Engineering, a new Master of Science in Respiratory Therapy, a new Master of Science in Engineering, new doctoral programs in Anthropology and Computer Science, and five new Master's degrees in the College of Business.

In short, Texas State University continues to be financially sound, growing in stature and quality, and continues to move towards National Research University recognition through careful planning and management.

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## About Texas State University

Texas State University is an Emerging Research and Hispanic-Serving University located in the burgeoning Austin-San Antonio corridor. Serving student needs in both San Marcos and Round Rock, it is the largest university in The Texas State University System and among the largest in the state. Texas State's more than 38,000 students choose from 98 undergraduate, 91 master's, and 14 doctoral programs offered by 10 colleges (Applied Arts, The Emmett and Miriam McCoy College of Business Administration, Education, Fine Arts and Communication, Health Professions, Honors, Liberal Arts, Science and Engineering, The Graduate College, and the University College). With a diverse campus community, Texas State is one of the top 12 producers of Hispanic baccalaureate graduates in the nation. Research and creative activities have led to growing success in attracting external support.

*Texas State University is accredited by the Commission on Colleges (COC) of the Southern Association of Colleges and Schools (SACS), the regional accrediting organization for 11 states in the southeastern United States, including Texas.*

MORE THAN  
**\$60**  
 MILLION  
 IN RESEARCH  
 AND DEVELOPMENT  
 EXPENDITURES

98 undergraduate  
 91 master's  
 14 doctoral programs

★  
 MORE THAN  
**38,000**  
 STUDENTS  
 FROM  
 across Texas and  
 around the world

16 MEN'S AND WOMEN'S TEAMS  
 COMPETE AT THE  
 NCAA DIVISION I LEVEL

23 CAMPUS RESIDENCE HALLS  
 AND APARTMENTS



exceptional  
undergraduate  
experience

## Our Mission

Texas State University is a doctoral-granting, student-centered institution dedicated to excellence and innovation in teaching, research, including creative expression, and service. The university strives to create new knowledge, to embrace a diversity of people and ideas, to foster cultural and economic development, and to prepare its graduates to participate fully and freely as citizens of Texas, the nation, and the world.

## Our Shared Values

In pursuing our mission, the faculty, staff, and students of Texas State University are guided by a shared collection of values:

- Teaching and learning based on research, student involvement, and the free exchange of ideas in a supportive environment;
- Research and creative activities that encompass the full range of academic disciplines — research with relevance, from the sciences to the arts, from the theoretical to the applied;
- The cultivation of character, integrity, honesty, civility, compassion, fairness, respect, and ethical behavior in all members of our university community;
- A diversity of people and ideas, a spirit of inclusiveness, a global perspective, and a sense of community as essential conditions for campus life;
- A commitment to service and leadership for the public good;
- Responsible stewardship of our resources and environment; and
- Continued reflection and evaluation to ensure that our strengths as a community always benefit those we serve.

**The Texas State University System Board of Regents**

<b>Name</b>	<b>Member's City (Texas)</b>	<b>Term Expires</b>
William F. Scott, Chairman	Nederland	2025
David Montagne, Vice Chairman	Beaumont	2021
Charlie Amato	San Antonio	2025
Duke Austin	Houston	2023
Garry Crain	The Hills	2023
Dr. Veronica Muzquiz Edwards	San Antonio	2021
Don Flores	El Paso	2025
Nicki Harle	Baird	2023
Alan L. Tinsley	Madisonville	2021
Katey McCall, Student Regent	Orange	2020

**The Texas State University System - Senior Administrative Officials**

Brian McCall, Ph.D.	Chancellor
Mr. Daniel Harper	Vice Chancellor for Finance

**University Administration - Key Officers**

Dr. Denise M. Trauth	President
Dr. Eugene J. Bourgeois	Provost and Vice President for Academic Affairs
Mr. Eric Algoe	Vice President for Finance and Support Services
Dr. Barbara Breier	Vice President for University Advancement
Mr. Ken Pierce	Vice President for Information Technology
Dr. Joanne Smith	Vice President for Student Affairs
Dr. Larry Teis	Director, Department of Athletics
Dr. Lisa Lloyd	Vice President for University Administration
Dr. Ronald Johnson	Presidential Fellow
Mr. Darryl J. Borgonah	Associate Vice President for Financial Services

## Innovation in Ingram Hall

A new and exciting presence on Texas State University's San Marcos Campus opened its doors in fall 2018: Bruce and Gloria Ingram Hall.

Ingram Hall — the university's largest academic building — is an innovative addition to the College of Science and Engineering and Texas State as a whole. The new building is full of features to enhance learning and research across disciplines. Large and small classrooms, labs and offices accommodate the growing college. New equipment, facilities and design strategies provide opportunities to push boundaries.

The new home of the College of Science and Engineering was made possible through the generosity of Bruce and Gloria Ingram, longtime university supporters.



## Student-Focused Spaces

Ingram Hall is designed to support active discovery in science and engineering. The building features classrooms that are set up to facilitate group discussions and hands-on, experimental learning. This is especially important for introductory core courses — the goal is to make these classes, traditionally taught as lectures, more interactive. In the active-learning classrooms, the instructor does not lecture from the front of the room. Rather, there's a workstation in the center from which the instructor can explain foundational concepts before the students take the lead. Round tables seating up to nine people make conversation easy, with student talk shifting organically among the whole table or within smaller subgroups. There's space for the instructor and assistants to drop in for guidance while moving around the room.

Ingram Hall's student-driven learning thrives outside the classroom as well. The new building now houses the Collaborative Learning Center, a computer lab and tutoring space for all the academic areas within the college. Alongside the formal spaces for classes and tutoring, Ingram Hall boasts a coffee bar, a general study area, a variety of alcoves and “huddles” for small group work, and outdoor seating areas.

## Cultivating Collaboration in the Lab

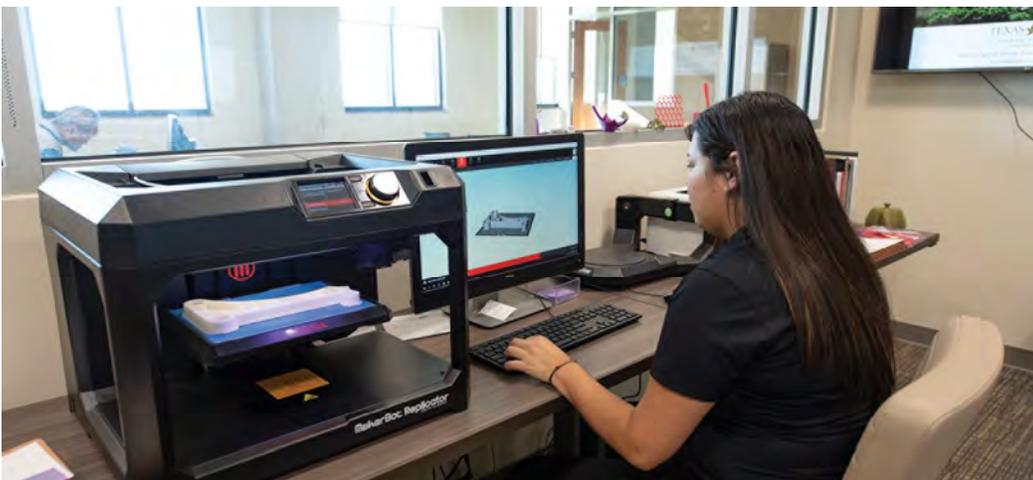
In Ingram Hall's double-wide lab spaces, researchers interested in similar ideas can work on their projects side by side and get insights from each other. This is exemplified on the building's fifth floor, which is dedicated to microbiology, cell biology and environmental engineering. A large common area in the center of the labs is designed so that faculty can converse over lunch and graduate students can make valuable connections.

The laboratories are world-class facilities. All nine of the fifth-floor labs have a Biosafety Level 2 clearance. This clearance level means that researchers have the capacity to work safely with infectious agents. The labs' plant growth chambers allow researchers to control all aspects of the growing environment. This highly controlled growth is vital to genetic research, in order to separate the effects of environmental factors from the effects of changes in the genes. Some of the labs have controls for water quality and flow, or darkrooms to view fluorescent signals from specially prepared specimens.

## Creating a Community of Makers

One of Ingram Hall's new features is a 6,000-square-foot makerspace, located behind glass walls at the building's main entrance. The makerspace encourages students to take their creative ideas and turn them into reality.

The makerspace includes large and small 3D printers, soldering stations, laser cutters and engravers, metal and plastic mills, a large water jet table, tools for welding and shaping sheet metal, a woodworking shop and more. Much of the equipment is straight off an industrial production floor; the extent of metalworking tools sets Texas State's makerspace apart from facilities at other universities.



# Independent Certified Public Accountant's Review Report



## Montemayor Britton Bender PC CERTIFIED PUBLIC ACCOUNTANTS

Board of Regents and Management  
Texas State University

### INDEPENDENT ACCOUNTANT'S REVIEW REPORT

We have reviewed the accompanying financial statements of the proprietary activities of Texas State University (Texas State), which comprise the statement of net position as of 31 August 2019 and 31 August 2018, and the related statement of revenues, expenses, and changes in net position, the related statement of cash flows, and the related matrix of operating expenses reported by function for each year then ended. A review includes primarily applying analytical procedures to management's financial data and making inquiries of management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

#### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America, and the Texas Comptroller of Public Accounts' *Reporting Requirements for Annual Financial Reports of State Agencies and Universities*; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

#### Accountant's Responsibility

Our responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements for them to be in accordance with accounting principles generally accepted in the United States of America and the Texas Comptroller of Public Accounts' *Reporting Requirements for Annual Financial Reports of State Agencies and Universities*. We believe that the results of our procedures provide a reasonable basis for our conclusion.

2525 WALLINGWOOD DRIVE  
BUILDING 1, SUITE 200  
AUSTIN, TEXAS 78746  
PHONE: 512.442.0380  
FAX: 512.442.0817  
[www.montemayor.team](http://www.montemayor.team)



Accountant's Conclusion

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America, and the Texas Comptroller of Public Accounts' *Reporting Requirements for Annual Financial Reports of State Agencies and Universities*.

Montgomery Britton Bender PC

20 February 2020  
Austin, Texas

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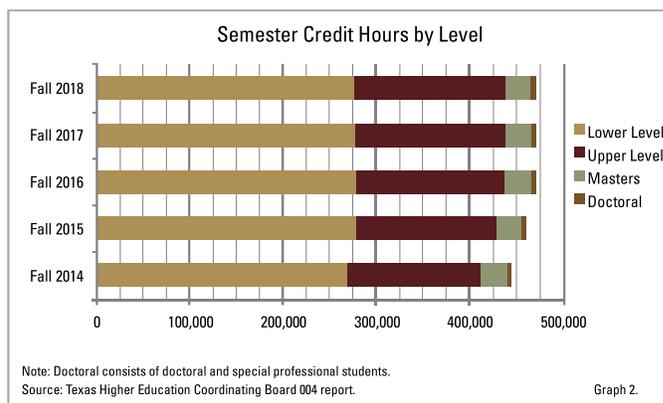
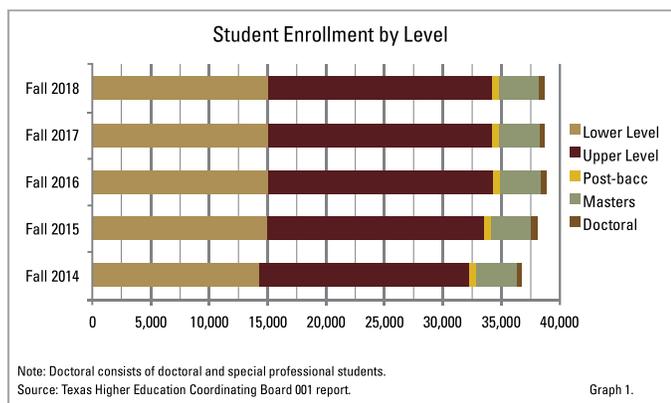
The following is Management's Discussion and Analysis (MD&A) of Texas State University's (University) financial performance for the fiscal year ended August 31, 2019. The information presented here should be considered in conjunction with other areas of the financial section of this report as well as information presented in the letters of transmittal in the introductory section.

## FINANCIAL HIGHLIGHTS

- The net position of Texas State was \$1.536 billion at August 31, 2019, an increase of \$18.3 million or 1.2%, in fiscal year 2019.
- Tuition and Fees revenue, net of discounts, grew by \$6 million or 2.2% as a result of increases in designated tuition as well as increases in the student center and orientation fees.
- During fiscal year 2019 overall student enrollment fell slightly to 38,661 in Fall 2018 which is down 0.09% below 38,694 in Fall of 2017.

### Student Enrollment

Following a period of strong growth, overall student enrollment has been steady for the past three years. The first graph Student Enrollment by Level reflects all students by level of study as a headcount, and the second graph Semester Credit Hours by Level reflects course load at the various levels of study.



Source: Texas Higher Education Coordinating Board (THECB) Texas Higher Education Enrollments

## OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the Texas State financial presentation, which consists of the fund financial statements for enterprise funds and notes to the financial statements. Collectively, this information presents the net position available for university operations as of August 31, 2019 with comparative information as of August 31, 2018, and summarizes any changes in net position for the same. The information available in each of these sections is summarized as follows:

### Fund Financial Statements

All funds over which the university exercises fiscal control and responsibility are presented as of August 31, 2019 and for the year then ended with comparative data presented for August 31, 2018. The operations of each fund are accounted for with a self-balancing set of accounts that comprise its assets, liabilities, revenues and expenses. As a special-purpose government engaged only in business-type activities, the funds are presented in a single enterprise fund column for financial reporting purposes. Three primary financial statements are presented with supporting schedules. The three primary statements are described below.

The **Statement of Net Position** reflects the assets, deferred outflows of resources, liabilities, and deferred inflows of resources of the University, using the accrual basis of accounting, and presents the financial position of the University at a specified time. Assets, plus deferred outflows of resources, less liabilities, less deferred inflows

# Management's Discussion and Analysis

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of resources, equals net position, which is one indicator of the University's current financial condition. The changes in net position that occur over time indicate improvement or deterioration in the University's financial condition

The **Statement of Revenues, Expenses, and Changes in Net Position** presents the University's revenue and expense activity, categorized as operating and nonoperating. Revenues and expenses are recognized when earned or incurred, regardless of when cash is received or paid.

The **Statement of Cash Flows** provides information about the University's financial results by reporting the major sources and uses of cash and cash equivalents. This statement will assist in evaluating the University's ability to generate net cash flows, its ability to meet its financial obligations as they come due, and its need for external financing. Cash flows from operating activities show the net cash used by the operating activities of the University. Cash flows from capital financing activities include all plant funds and related long-term debt activities. Cash flows from investing activities show the net source and use of cash related to purchasing or selling investments, and earning income on those investments. Cash flows from noncapital financing activities include those activities not covered in other sections.

## Notes to the Financial Statements

The notes to the financial statements are an integral part of the financial statements and provide additional information that is essential to a full understanding of the data provided in the fund financial statements.

- The relationship that Texas State University has with the Texas State University System (TSUS) and the State of Texas is described in Note 1-Summary of Significant Accounting Policies under the "Reporting Entity" heading.
- The relationship that Texas State University has with component units is described in Note 1 under the "Reporting Entity" heading as well as in Note 11 The Financial Reporting Entity.
- Bonded Indebtedness issued by the System on behalf of Texas State is described in Note 5 Bonded Indebtedness and in Note 14 Subsequent Events.
- Activity and balances related to Pension and Other Post-Employment Benefit liabilities are reported by the System. This is described in Note 1 under the Measurement Focus, Basis of Accounting and Basis of Presentation heading.
- Capital Asset information such as historical costs and accumulated depreciation or amortization is presented in Note 2 Capital Assets.

## Required Supplementary Information

Required supplementary information consists of this Management's Discussion and Analysis which is prepared in accordance with Governmental Accounting Standards Board (GASB) Statement 34-*Basic Financial Statements- and Management's Discussion and Analysis- for State and Local Governments*.

## FINANCIAL ANALYSIS

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### Statement of Net Position

The Statement of Net Position indicates an increase in net position to \$1.536 billion in 2019 over \$1.517 billion in 2018, representing a 1.2% increase. The Investment in Capital Assets, Net of Related Debt increased \$50 million, or 4.8%, and unrestricted net position increased \$6 million, or 1.7%. Total assets increased \$14.8 million, or 0.8% primarily attributable to an overall increase in capital assets. There was a major shift from current to non-current assets due to construction project completions as well as a move into less liquid investment categories which was done to maximize investment earning potential. Total liabilities decreased \$3.5 million, or -1.2%, in 2019 as a result of liquidation of prior year-end accruals of large construction related payments which were partially offset by an increase in unearned revenues of \$6.3 million.

Texas State continues to implement capital improvements to upgrade facilities. Approximately \$50.4 million in capital commitments have been entered into or were outstanding as of year-end for the construction and renovation of various facilities. These projects are in various stages of completion. The capital projects are being funded in part by bond proceeds. TSUS issues debt through the Revenue Financing System on behalf of the University and reports that debt in the TSUS financial statements. Details about debt outstanding are described in Note 5 Bonded Indebtedness and in Note 14 Subsequent Events. A portion of

# Management's Discussion and Analysis

Annual Financial Report for the fiscal year ended August 31, 2019

the debt outstanding represents tuition revenue bonds (TRBs) historically funded by the Texas Legislature through General Revenue appropriations. For the fiscal years ended August 31, 2019 and 2018, the institution was appropriated \$17,387,991.00 and \$18,740,277.00, respectively, for TRB debt service. Texas State expects future Legislative appropriations to meet debt service requirements for TRBs.

<b>Statement of Net Position-Condensed</b>				
	<b>2019</b>	<b>2018</b>	<b>Dollar Change</b>	<b>Percentage Change</b>
<b>Assets</b>				
Cash and Investments	\$ 573,860,380.89	\$ 606,576,332.04	\$ -32,715,951.15	-5.4%
Receivables	71,846,343.21	70,854,763.17	991,580.04	1.4
Legislative Appropriations	60,536,553.55	64,784,007.00	-4,247,453.45	-6.6
Capital Assets, Net	1,084,507,373.68	1,034,459,431.25	50,047,942.43	4.8
Other Assets	42,742,031.65	41,995,555.09	746,476.56	1.8
<b>Total Assets</b>	<b>\$1,833,492,682.98</b>	<b>\$1,818,670,088.55</b>	<b>\$ 14,822,594.43</b>	<b>0.8%</b>
<b>Liabilities</b>				
Payables	\$ 65,001,665.08	\$ 74,818,423.07	\$ -9,816,757.99	-13.1%
Unearned Revenues	218,000,269.74	211,716,158.31	6,284,111.43	3.0
Employees Compensable Leave-Current	7,626,579.19	7,496,438.12	160,893.43	1.3
Employees Compensable Leave- Non-Current	4,968,086.10	4,937,333.74	30,752.36	0.6
Other Liabilities	2,346,233.74	2,495,250.36	-149,016.62	-6.0
<b>Total Liabilities</b>	<b>\$ 297,942,833.85</b>	<b>\$301,463,603.60</b>	<b>-3,520,769.75</b>	<b>-1.2%</b>
<b>Net Position</b>				
Invested in Capital Assets, Net of Debt	\$1,084,507,373.68	\$1,034,459,431.25	\$ 50,047,942.43	4.8%
Restricted Net Position	94,885,288.27	132,581,624.60	-37,696,336.33	-28.4
Unrestricted Net Position	356,157,187.18	350,165,429.10	5,991,758.08	1.7
<b>Total Net Position</b>	<b>\$1,535,549,849.13</b>	<b>\$1,517,206,484.95</b>	<b>18,343,364.18</b>	<b>1.2%</b>



# Management's Discussion and Analysis

## Statement of Revenues, Expenses and Changes in Net Position

The Statement of Revenues, Expenses and Changes in Net Position reflects an Increase in Net Position for the year ended August 31, 2019 of \$18.3 million as compared to an increase of \$27.2 million for the year ended 2018. Tuition and Fees revenue, net of discounts, grew by \$6 million or 2.2% as a result of increases in designated tuition as well as increases in the student center and orientation fees. Auxiliary Sales decreased 4.7% primarily due to outsourcing of bookstore management. Operating expenses increased by 1.9% largely attributable to expensed furnishings for completed construction projects. Additional depreciation of \$4.9M was incurred, \$3M of which is for recently completed buildings: Willow Hall on the Round Rock Campus, and Ingram Hall on main campus.

Statement of Revenues, Expenses and Changes in Net Position-Condensed				
	2019	2018	Dollar Change	Percentage Change
<b>Revenues (Operating and Non-Operating)</b>				
Tuition and Fees, Net	\$ 280,579,713.62	\$ 274,549,787.80	\$ 6,029,925.82	2.2%
Grant Revenue	143,304,388.87	139,157,859.10	4,146,529.77	3.0
Auxiliary and Other Sales Goods, Services	100,658,557.46	105,621,491.05	-4,962,933.59	-4.7
Legislative Revenue	135,040,413.79	135,599,921.76	-559,507.97	-0.4
Investment Income	18,383,925.33	15,413,169.71	2,970,755.62	19.3
Other Revenues	10,473,508.66	11,734,359.45	-1,260,850.79	-10.7
<b>Total Revenues</b>	<b>\$ 688,440,507.73</b>	<b>\$ 682,076,588.87</b>	<b>\$ 6,363,918.86</b>	<b>0.9%</b>
<b>Expenses (Operating and Non-Operating)</b>				
Operating Expenses	\$ 582,884,988.06	\$ 571,990,953.00	\$ 10,894,035.06	1.9%
Depreciation and Amortization	61,111,778.45	56,224,770.27	4,887,008.18	8.7
Non-Operating Expenses	1,910,102.11	205,400.09	1,704,702.02	829.9
<b>Total Expenses</b>	<b>\$ 645,906,868.62</b>	<b>\$ 628,421,123.36</b>	<b>\$ 17,485,745.26</b>	<b>2.8%</b>
<b>Income/(Loss) before Other Revenues, Expenses, Gains/(Losses) and Transfers</b>	<b>\$ 42,533,639.11</b>	<b>\$ 53,655,465.51</b>	<b>\$ -11,121,826.40</b>	<b>-20.7%</b>
<b>Other Revenues, Expenses, Gains/(Losses) and Transfers</b>				
HEF Appropriation and Transfers, Net	\$ 15,310,375.58	\$ 13,956,253.00	\$ 1,354,122.58	9.7
Additions to Permanent & Term Endowments	441,999.25	1,464,321.37	-1,022,322.12	-69.8
Other Gains/(Losses) and Transfers	\$ -39,942,649.76	\$ -41,878,842.07	\$ 1,936,192.31	-4.6
<b>Total Other Revenue, (Expenses), Gains/(Losses) and Transfers</b>	<b>\$ -24,190,274.93</b>	<b>\$ -26,458,267.70</b>	<b>\$ 2,267,992.77</b>	<b>-8.6%</b>
<b>Change in Net Position</b>	<b>\$ 18,343,364.18</b>	<b>\$ 27,197,197.81</b>	<b>\$ -8,853,833.63</b>	<b>-32.6%</b>
Beginning Net Position	1,517,206,484.95	1,490,009,287.14	27,197,197.81	1.8%
<b>Ending Net Position</b>	<b>\$ 1,535,549,849.13</b>	<b>\$ 1,517,206,484.95</b>	<b>\$ 18,343,364.18</b>	<b>1.2%</b>

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# Texas State University

## Statement of Net Position

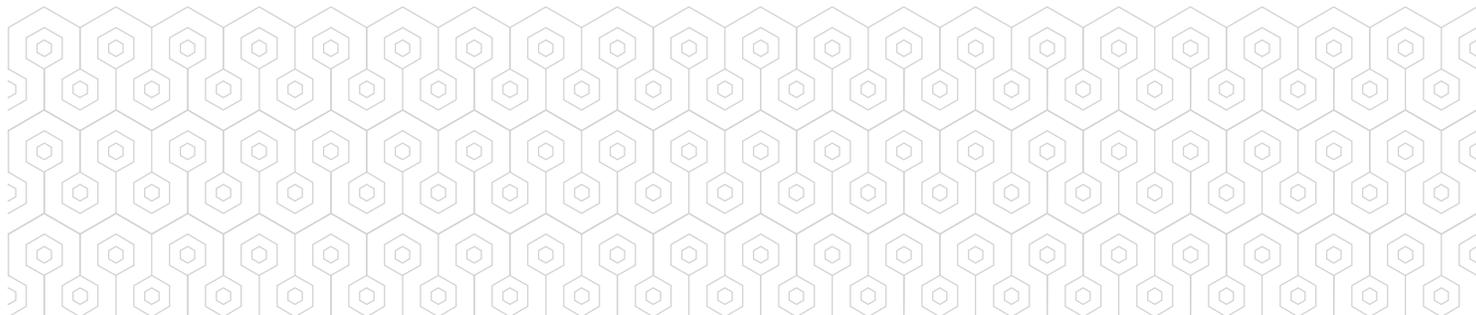
	<b>Enterprise Funds</b>	
	<b>2019</b>	<b>2018</b>
<b>ASSETS AND DEFERRED OUTFLOWS</b>		
Current Assets:		
Unrestricted Cash and Cash Equivalents:		
Cash on Hand	\$ 49,265.92	\$ 53,099.77
Cash in Bank (Note 3)	2,958,250.49	8,821,458.59
Cash in Transit/Reimbursement from Treasury	825,646.44	2,138,739.11
Cash in State Treasury	22,243,000.30	28,347,192.49
Cash Equivalents (Note 3)	197,211,452.63	289,195,613.05
Restricted Cash and Cash Equivalents:		
Cash in Bank (Note 3)	5,025.42	9,780.30
Cash Equivalents (Note 3)	34,108,854.35	74,391,867.67
Legislative Appropriations	60,536,553.55	64,784,007.00
Net Receivables (Note 1)		
Federal	8,075,589.67	8,514,936.90
Interest and Dividends	21,923.59	23,764.34
Student Accounts	49,336,709.99	45,916,180.03
Gifts Receivable - Pledges	1,468,342.89	2,045,522.36
Investment Trades	-	59,495.31
Other	5,329,220.33	6,365,260.87
Due From Other Agencies (Note 8)	2,887,229.41	2,621,366.89
Consumable Inventories	841,940.45	833,747.52
Merchandise Inventories	166,533.92	2,312,066.54
Prepaid Items	41,733,557.28	38,849,741.03
Loans and Contracts	3,245,519.82	3,454,249.71
Total Current Assets	<u>\$ 431,044,616.45</u>	<u>\$ 578,738,089.48</u>
Non-Current Assets:		
Restricted:		
Gifts Receivable - Pledges	\$ 1,364,168.66	\$ 1,742,030.71
Investments (Note 3)	41,627,499.25	41,615,037.84
Loans and Contracts	117,638.85	111,956.05
Investments (Note 3)	274,831,386.09	162,003,543.22
Capital Assets, Non-Depreciable (Note 2)	122,277,127.31	199,965,280.53
Capital Assets, Net of Accumulated Depreciation (Note 2)	962,053,781.53	834,177,296.78
Intangible Assets, Net of Accumulated Amortization (Note 2)	176,464.84	316,853.94
Total Non-Current Assets	<u>\$ 1,402,448,066.53</u>	<u>\$ 1,239,931,999.07</u>
Total Assets	<u>\$ 1,833,492,682.98</u>	<u>\$ 1,818,670,088.55</u>
<b>DEFERRED OUTFLOWS</b>		
Derivative Hedging Instrument Assets	\$ -	\$ -
Deferred Outflows of Resources	-	-
Total Deferred Outflows	<u>\$ -</u>	<u>\$ -</u>
Total Assets and Deferred Outflows	<u>\$ 1,833,492,682.98</u>	<u>\$ 1,818,670,088.55</u>



	<b>Enterprise Funds</b>	
	<b>2019</b>	<b>2018</b>
<b>LIABILITIES AND DEFERRED INFLOWS</b>		
Current Liabilities:		
Accounts Payable	\$ 49,120,450.75	\$ 58,215,673.67
Investment Trades	-	114,194.97
Accrued Payroll	15,743,559.15	15,881,459.98
Unearned Revenues	218,000,269.74	211,716,158.31
Due to Other Agencies (Note 8)	137,655.18	607,094.45
Employees' Compensable Leave (Note 4)	7,626,579.19	7,496,438.12
Funds Held for Others	2,302,787.56	2,464,364.58
Other Current Liabilities	43,446.18	30,885.78
Total Current Liabilities	<u>\$ 292,974,747.75</u>	<u>\$ 296,526,269.86</u>
Non-Current Liabilities:		
Employees' Compensable Leave (Note 4)	<u>\$ 4,968,086.10</u>	<u>\$ 4,937,333.74</u>
Total Non-Current Liabilities	<u>\$ 4,968,086.10</u>	<u>\$ 4,937,333.74</u>
Total Liabilities	<u>\$ 297,942,833.85</u>	<u>\$ 301,463,603.60</u>
<b>DEFERRED INFLOWS</b>		
Derivative Hedging Instrument Liabilities	\$ -	\$ -
Deferred Inflows of Resources	-	-
Total Deferred Inflows	<u>\$ -</u>	<u>\$ -</u>
Total Liabilities and Deferred Inflows	<u>\$ 297,942,833.85</u>	<u>\$ 301,463,603.60</u>
<b>NET POSITION</b>		
Invested in Capital Assets, Net of Related Debt	\$ 1,084,507,373.68	\$ 1,034,459,431.25
Restricted for:		
Capital Projects	31,145,978.32	69,262,966.15
Funds Held as Permanent Investments:		
Non-Expendable	20,954,428.60	20,297,054.60
Expendable (Note 13)	21,403,604.08	23,399,506.23
Other	21,018,659.66	19,622,097.62
Unrestricted	<u>356,519,804.79</u>	<u>350,165,429.10</u>
Total Net Position	<u>\$ 1,535,549,849.13</u>	<u>\$ 1,517,206,484.95</u>

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

See Independent Certified Public Accountant's Review Report.



# Texas State University

## Statement of Revenues, Expenses, and Changes in Net Position

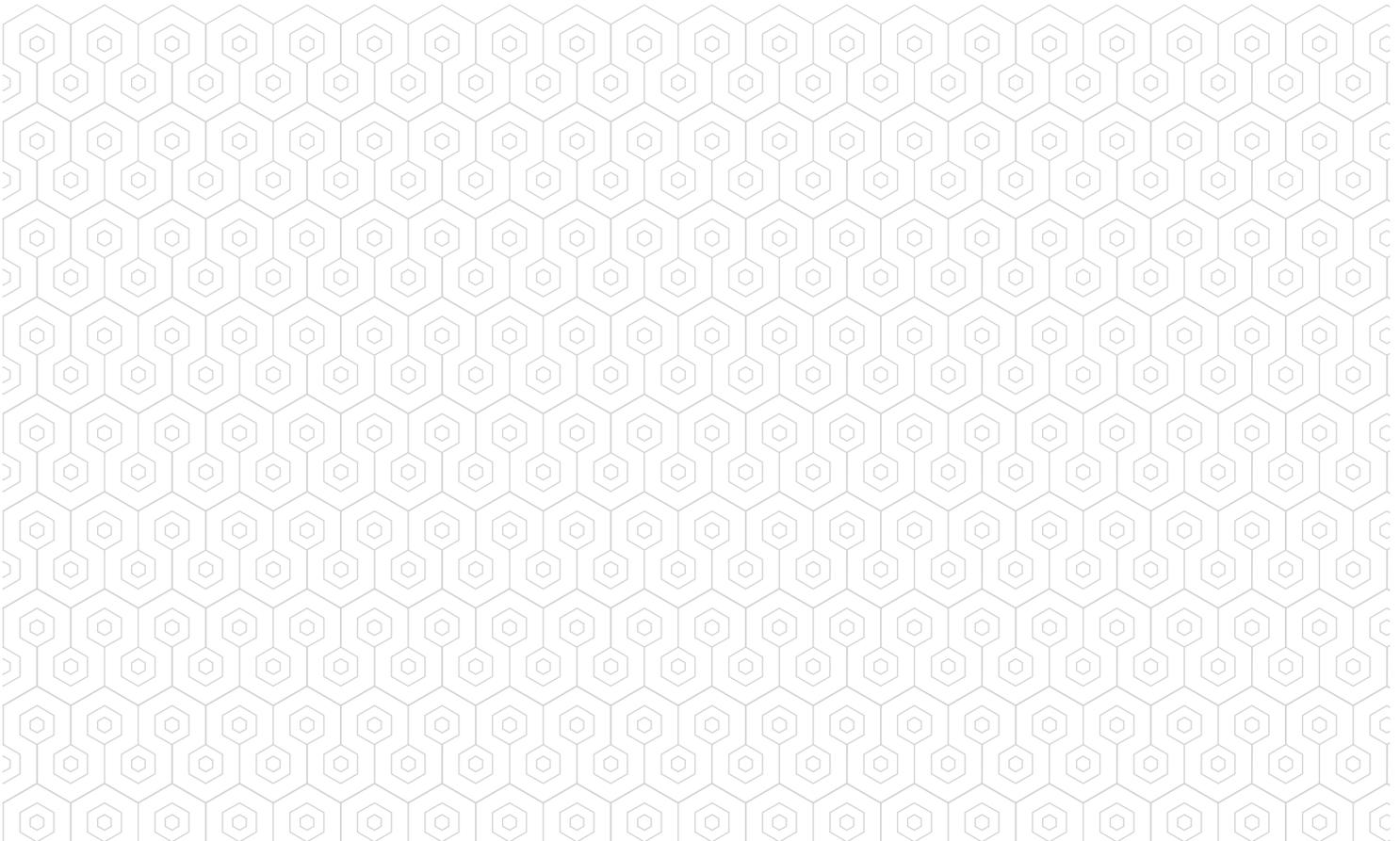
	<b>Enterprise Funds</b>	
	<b>2019</b>	<b>2018</b>
<b>OPERATING REVENUES</b>		
Sales of Goods and Services:		
Tuition and Fees	\$ 390,579,057.38	\$ 378,416,582.41
Discounts and Allowances (Note 1)	(109,999,343.76)	(103,866,794.61)
Auxiliary Enterprises	86,184,422.47	90,911,500.04
Other Sales of Goods and Services	14,474,134.99	14,709,991.01
Federal Revenue-Operating	34,151,653.95	34,493,230.80
Federal Pass Through Revenue	3,288,010.00	3,146,813.54
State Grant Revenue	2,175,378.22	3,445,074.20
State Grant Pass Through Revenue	31,536,220.58	31,843,510.44
Other Grants & Contracts	6,311,254.02	5,705,403.36
Other Operating Revenue	738,834.93	837,467.00
Total Operating Revenues	<u>\$ 459,439,622.78</u>	<u>\$ 459,642,778.19</u>
<b>OPERATING EXPENSES</b>		
Instruction	\$ 218,093,235.91	\$ 210,470,386.68
Research	57,341,069.47	56,450,775.39
Public Service	4,241,082.57	3,495,895.19
Academic Support	50,899,995.07	49,358,724.62
Student Services	35,946,568.48	34,995,200.15
Institutional Support	36,799,539.01	34,615,114.76
Operation and Maintenance of Plant	44,013,673.57	46,460,521.14
Scholarship and Fellowships	55,532,937.63	58,401,901.11
Auxiliary Enterprises	80,016,886.35	77,742,433.96
Depreciation and Amortization	61,111,778.45	56,224,770.27
Total Operating Expenses	<u>\$ 643,996,766.51</u>	<u>\$ 628,215,723.27</u>
Operating Income (Loss)	<u>\$ (184,557,143.73)</u>	<u>\$ (168,572,945.08)</u>
<b>NONOPERATING REVENUES (EXPENSES)</b>		
Legislative Revenue	\$ 109,079,130.00	\$ 110,234,948.00
Additional Appropriations	25,961,283.79	25,364,973.76
Federal Grant - Non Exchange	60,559,257.10	59,455,571.76
State Pass Through - Non Exchange	5,282,615.00	1,068,255.00
Gifts, Pledges, and Donations	9,030,607.82	10,679,354.24
Investment Income	22,399,682.33	12,149,421.79
Gain (Loss) on Sales of Capital Assets	(62,724.13)	(1,210,331.09)
Net Increase (Decrease) in Fair Value of Investments	(4,015,757.00)	3,263,747.92
Other Nonoperating Revenues	766,790.04	1,427,869.30
Other Nonoperating Expenses	(1,910,102.11)	(205,400.09)
Total Nonoperating Revenues (Expenses)	<u>\$ 227,090,782.84</u>	<u>\$ 222,228,410.59</u>
Income (Loss) before Other Revenues, Expenses, Gains, Losses and Transfers	<u>\$ 42,533,639.11</u>	<u>\$ 53,655,465.51</u>



	<b>Enterprise Funds</b>	
	<b>2019</b>	<b>2018</b>
<b>OTHER REVENUES, EXPENSES, GAINS, LOSSES, AND TRANSFERS</b>		
HEF Appropriation Revenue	\$ 37,162,755.00	\$ 37,162,755.00
Additions to Permanent and Term Endowments	441,999.25	1,464,321.37
Transfers From Other Governmental Agencies (Note 8)	2,034,933.81	773,671.00
Transfers To Other Governmental Agencies (Note 8)	(41,977,583.57)	(42,652,513.07)
Legislative Transfers-In (Note 8)	1,386,066.00	1,342,275.00
Legislative Transfers-Out (Note 8)	(23,238,445.42)	(24,548,777.00)
Total Other Revenues, Expenses, Gains/Losses and Transfers	<u>\$ (24,190,274.93)</u>	<u>\$ (26,458,267.70)</u>
 Change in Net Position	 \$ 18,343,364.18	 \$ 27,197,197.81
 Net Position, September 1	 \$ 1,517,206,484.95	 \$ 1,490,009,287.14
Restatements	-	-
Net Position, September 1, as Restated	<u>\$ 1,517,206,484.95</u>	<u>\$ 1,490,009,287.14</u>
Net Position, August 31	<u>\$ 1,535,549,849.13</u>	<u>\$ 1,517,206,484.95</u>

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

See Independent Certified Public Accountant's Review Report.



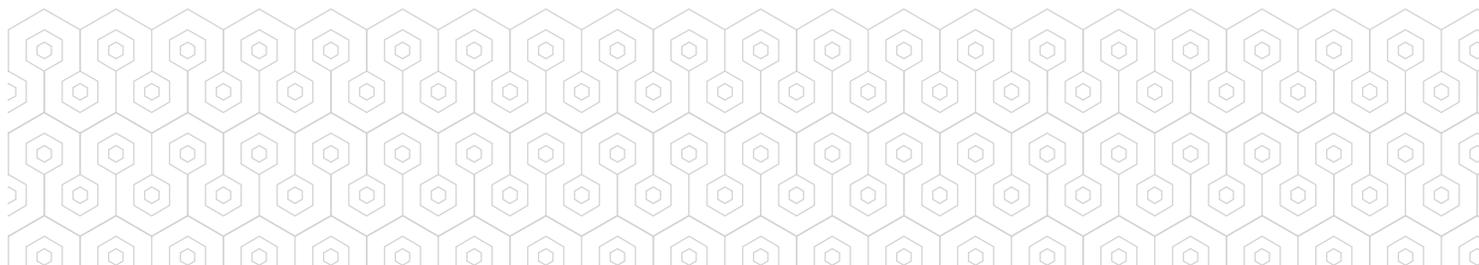
# Texas State University

## Matrix of Operating Expenses Reported by Function for the fiscal year ended August 31, 2019

Operating Expenses	Instruction	Research	Public Service	Academic Support
Cost of Goods Sold	\$ -	\$ -	\$ -	\$ -
Salaries and Wages	150,875,621.77	27,390,155.03	1,646,496.56	30,642,134.69
Payroll Related Costs	45,597,857.75	6,237,876.30	673,356.72	7,715,661.18
Professional Fees and Services	3,620,705.35	12,890,093.35	1,236,430.43	2,888,438.64
Federal Grant Pass-Through Expense	-	612,143.57	-	-
Travel	3,616,605.00	3,013,826.54	131,855.87	769,185.88
Materials and Supplies	12,661,239.08	5,207,731.35	365,203.60	6,021,852.06
Communication and Utilities	164,688.77	190,609.07	6,450.02	126,500.35
Repairs and Maintenance	650,434.21	263,953.94	58,806.58	2,293,714.79
Rentals and Leases	175,958.85	551,751.43	71,722.88	55,934.03
Printing and Reproduction	598,879.41	408,349.00	44,746.41	324,641.92
Depreciation and Amortization	-	-	-	-
Interest	641.04	698.48	21.04	583.97
Scholarships	-	-	-	-
Claims and Judgments	-	-	4,393.87	-
Other Operating Expenses	130,604.68	573,881.41	1,598.59	61,347.56
<b>Total Operating Expenses</b>	<b>\$ 218,093,235.91</b>	<b>\$ 57,341,069.47</b>	<b>\$ 4,241,082.57</b>	<b>\$ 50,899,995.07</b>

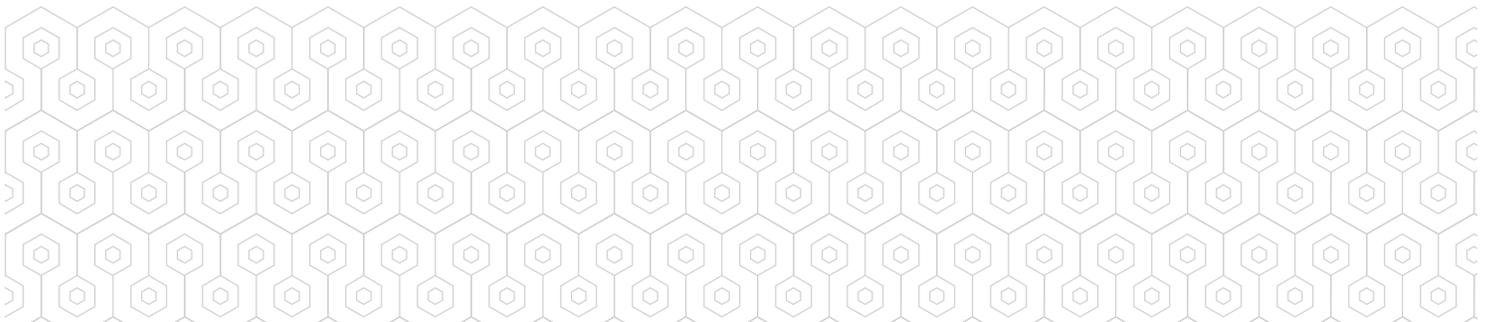
The accompanying Notes to the Financial Statements are an integral part of this financial statement.

See Independent Certified Public Accountant's Review Report.



Student Services	Institutional Support	Operation and Maintenance of Plant	Scholarships and Fellowships	Auxiliary Enterprise Expenditures	Depreciation and Amortization	Total Expenses
\$ -	\$ -	\$ -	\$ -	\$ 561,440.09	\$ -	\$ 561,440.09
20,057,911.71	24,167,507.84	14,814,220.17	-	18,183,308.76	-	287,777,356.53
5,674,001.02	6,925,995.17	5,397,947.81	-	5,667,219.93	-	83,889,915.88
4,711,953.07	1,530,681.64	4,819,003.80	-	13,321,535.96	-	45,018,842.24
-	-	-	-	-	-	612,143.57
954,620.33	497,073.16	44,675.69	-	3,324,713.60	-	12,352,556.07
3,125,740.87	983,911.68	4,546,120.19	-	25,797,394.59	-	58,709,193.42
150,588.34	604,354.14	11,872,428.48	-	9,173,923.24	-	22,289,542.41
311,997.12	1,274,285.45	2,413,100.53	-	1,810,622.64	-	9,076,915.26
199,202.95	343,494.55	63,038.58	-	866,820.47	-	2,327,923.74
641,936.30	380,117.77	42,360.44	-	249,381.68	-	2,690,412.93
-	-	-	-	-	61,111,778.45	61,111,778.45
141.60	18,042.47	777.88	-	275.57	-	21,182.05
-	-	-	55,532,937.63	-	-	55,532,937.63
85,108.68	17,511.81	-	-	1,040,969.78	-	1,147,984.14
33,366.49	56,563.33	-	-	19,280.04	-	876,642.10
<b>\$ 35,946,568.48</b>	<b>\$ 36,799,539.01</b>	<b>\$ 44,013,673.57</b>	<b>\$ 55,532,937.63</b>	<b>\$ 80,016,886.35</b>	<b>\$ 61,111,778.45</b>	<b>\$ 643,996,766.51</b>

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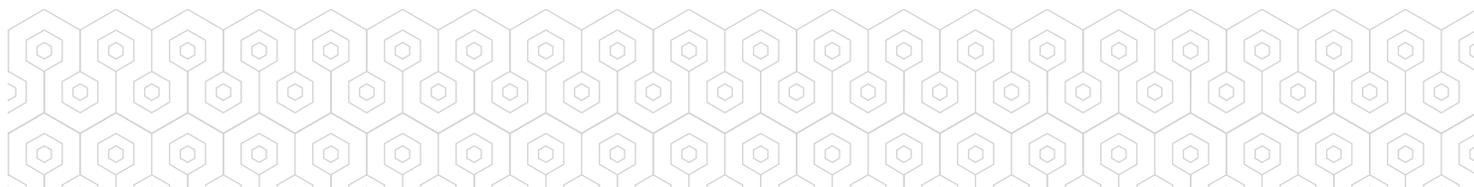
# Texas State University

## Matrix of Operating Expenses Reported by Function for the fiscal year ended August 31, 2018

Operating Expenses	Instruction	Research	Public Service	Academic Support
Cost of Goods Sold	\$ -	\$ -	\$ -	\$ -
Salaries and Wages	148,343,337.39	26,662,064.85	1,426,641.04	28,972,713.95
Payroll Related Costs	45,348,103.11	6,015,906.69	623,890.43	7,790,345.65
Professional Fees and Services	3,303,829.20	13,923,816.39	946,462.02	2,189,121.25
Federal Grant Pass-Through Expense	-	686,436.96	-	-
State Grant Pass-Through Expense	-	65,806.04	-	-
Travel	3,567,011.32	2,900,493.58	124,256.93	774,789.56
Materials and Supplies	8,604,482.10	4,442,364.66	292,362.13	6,415,932.71
Communication and Utilities	76,149.30	81,477.89	4,687.37	89,484.02
Repairs and Maintenance	384,290.53	205,028.68	3,758.00	2,656,204.65
Rentals and Leases	128,025.38	468,546.03	28,866.85	124,993.25
Printing and Reproduction	596,855.92	151,046.38	44,552.41	284,983.82
Depreciation and Amortization	-	-	-	-
Interest	122.89	362.97	18.01	342.86
Scholarships	-	-	-	-
Claims and Judgments	-	-	-	-
Other Operating Expenses	118,179.54	847,424.27	400.00	59,812.90
<b>Total Operating Expenses</b>	<b>\$ 210,470,386.68</b>	<b>\$ 56,450,775.39</b>	<b>\$ 3,495,895.19</b>	<b>\$ 49,358,724.62</b>

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

See Independent Certified Public Accountant's Review Report.



Student Services	Institutional Support	Operation and Maintenance of Plant	Scholarships and Fellowships	Auxiliary Enterprise Expenditures	Depreciation and Amortization	Total Expenses
\$ -	\$ -	\$ -	\$ -	\$ 5,246,815.88	\$ -	\$ 5,246,815.88
19,659,791.53	22,549,226.19	14,945,571.79	-	18,205,837.68	-	280,765,184.42
5,536,018.52	6,307,042.54	5,436,642.82	-	5,529,429.23	-	82,587,378.99
4,541,861.07	1,257,527.40	4,605,478.22	-	11,881,317.40	-	42,649,412.95
-	-	-	-	-	-	686,436.96
-	-	-	-	-	-	65,806.04
896,275.50	445,295.42	59,755.91	-	3,076,785.91	-	11,844,664.13
3,150,303.81	1,315,171.73	5,507,538.46	-	21,480,956.26	-	51,209,111.86
99,631.10	332,683.97	12,993,744.97	-	8,769,910.61	-	22,447,769.23
192,995.72	1,496,968.85	2,799,381.90	-	1,853,064.43	-	9,591,692.76
179,558.68	251,867.07	69,511.41	-	593,108.97	-	1,844,477.64
720,903.28	335,422.74	42,615.06	-	283,689.37	-	2,460,068.98
-	-	-	-	-	56,224,770.27	56,224,770.27
22.67	13,746.01	280.60	-	49.99	-	14,946.00
-	-	-	58,401,901.11	-	-	58,401,901.11
-	260,138.75	-	-	782,491.71	-	1,042,630.46
17,838.27	50,024.09	-	-	38,976.52	-	1,132,655.59
<b>\$ 34,995,200.15</b>	<b>\$ 34,615,114.76</b>	<b>\$ 46,460,521.14</b>	<b>\$ 58,401,901.11</b>	<b>\$ 77,742,433.96</b>	<b>\$ 56,224,770.27</b>	<b>\$ 628,215,723.27</b>



# Texas State University

## Statement of Cash Flows

	<b>Enterprise Funds</b>	
	<b>2019</b>	<b>2018</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Receipts from Customers	\$ 14,593,243.59	\$ 14,859,224.08
Proceeds from Tuition and Fees	281,597,318.29	278,273,566.44
Proceeds from Research Grants and Contracts	77,560,694.37	77,029,046.57
Proceeds from Loan Programs	9,395,298.30	9,928,579.95
Proceeds from Auxiliaries	87,120,520.30	89,991,172.94
Proceeds from Other Operating Revenues	670,375.40	778,023.48
Payments to Suppliers for Goods and Services	(152,491,847.13)	(146,338,510.13)
Payments to Employees for Salaries	(288,008,273.25)	(279,730,811.14)
Payments to Employees for Benefits	(64,125,598.20)	(62,362,347.26)
Payments for Loans Provided	(9,487,190.24)	(10,218,927.94)
Payments for Other Expenses	(62,608,967.95)	(64,171,830.99)
Net Cash Provided (Used) by Operating Activities	<u>\$ (105,784,426.52)</u>	<u>\$ (91,962,814.00)</u>
<b>CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES</b>		
Proceeds from State Appropriations	\$ 122,187,134.34	\$ 97,536,164.15
Proceeds from Gifts	10,383,631.74	11,069,541.13
Proceeds of Transfers from Other Funds	3,420,999.81	2,942,276.00
Proceeds from Grant Receipts	65,819,644.07	60,345,243.79
Proceeds from Other Noncapital Financing Activities	769,116.56	2,685,044.26
Payments for Other Noncapital Financing Uses	(7,047,817.97)	(5,633,999.88)
Net Cash Provided (Used) by Noncapital Financing Activities	<u>\$ 195,532,708.55</u>	<u>\$ 168,944,269.45</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Proceeds from Sale of Capital Assets	\$ 149,649.37	\$ 179,528.32
Proceeds from Other Financing Activities	37,162,755.00	37,162,755.00
Payments for Additions to Capital Assets	(117,830,116.54)	(156,001,432.83)
Payments of Principal on Debt Issuance	(32,357,962.68)	(32,387,703.69)
Payments of Interest on Debt Issuance	(27,924,639.42)	(29,421,431.72)
Net Cash Provided (Used) by Capital and Related Financing Activities	<u>\$ (140,800,314.27)</u>	<u>\$ (180,468,284.92)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Proceeds from Sales of Investments	\$ 180,255,861.70	\$ 74,322,446.54
Proceeds from Investment Income	30,691,546.58	8,411,392.81
Payments to Acquire Investments	(305,451,631.47)	(76,143,669.31)
Net Cash Provided (Used) by Investing Activities	<u>\$ (94,504,223.19)</u>	<u>\$ 6,590,170.04</u>
Increase (Decrease) in Cash and Cash Equivalents	\$ (145,556,255.43)	\$ (96,896,659.43)
Cash and Cash Equivalents, September 1	<u>\$ 402,957,750.98</u>	<u>\$ 499,854,410.41</u>
Cash and Cash Equivalents, August 31	<u>\$ 257,401,495.55</u>	<u>\$ 402,957,750.98</u>



	<b>Enterprise Funds</b>	
	<b>2019</b>	<b>2018</b>
<b>RECONCILIATION OF OPERATING INCOME (LOSS) TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES</b>		
Operating Income (Loss)	\$ (184,557,143.73)	\$ (168,572,945.08)
Adjustments to Reconcile Operating Income to Net Cash Provided (Used) by Operating Activities:		
Amortization and Depreciation	\$ 61,111,778.45	\$ 56,224,770.27
Operating Income and Cash Flow Categories:		
Changes in Assets and Liabilities:		
(Increase) Decrease in Receivables	\$ (1,879,772.30)	\$ (59,656.09)
(Increase) Decrease in Due from Other Agencies	(265,862.52)	(338,940.08)
(Increase) Decrease in Inventories	2,137,339.69	1,098,788.70
(Increase) Decrease in Prepaid Expenses	(2,812,383.00)	(5,180,666.46)
(Increase) Decrease in Loans & Contracts	203,047.09	(49,988.25)
(Increase) Decrease in State Appropriations	16,960,161.81	16,300,524.63
Increase (Decrease) in Payables	(2,519,256.77)	4,475,094.68
Increase (Decrease) in Due to Other Funds	(469,439.27)	42,559.21
Increase (Decrease) in Unearned Revenue	6,284,111.43	3,206,897.37
Increase (Decrease) in Compensated Absence Liability	130,141.07	(49,491.32)
Increase (Decrease) in Benefits Payable	(107,148.47)	940,238.42
Total Adjustments	<u>\$ 78,772,717.21</u>	<u>\$ 76,610,131.08</u>
Net Cash Provided (Used) by Operating Activities	<u>\$ (105,784,426.52)</u>	<u>\$ (91,962,814.00)</u>
<b>NON-CASH TRANSACTIONS</b>		
Net Change in the Fair Value of Investments	\$ (4,015,757.00)	\$ 3,264,071.67
Donation of Capital Assets	\$ 39,600.00	\$ 1,258,952.14
Gain (Loss) on Sale of Capital Assets	\$ (212,373.50)	\$ (1,389,859.41)

The accompanying Notes to the Financial Statements are an integral part of this financial statement.

See Independent Certified Public Accountant's Review Report.



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## Alumni and Future Student Welcome Center Opens

The new Alumni and Future Student Welcome Center inside the LBJ Student Center celebrated its opening in August 2019. The Welcome Center is located on the third floor and was part of the \$31 million expansion project currently under way at LBJ.

The Welcome Center provides tours and information to thousands of university guests annually, and the expanded space allows staff to offer an outstanding experience to potential Bobcats and their families.

The center also doubles the office space available for the Alumni Association and gives Texas State alumni a space to gather and feel at home when they return to campus. In addition to offices, an executive conference room and main lobby, the alumni space features a state-of-the-art multipurpose room shared with the Welcome Center. During the day, it will feature multimedia presentations telling the story of Texas State to newcomers and tour groups. In the evenings, it will be available for dinners, receptions, and other events.

The remainder of the LBJ Student Center expansion is expected to be completed in spring 2020. The expansion will include a refurbished main entry lobby, a second ballroom, conference rooms, meeting spaces, shared spaces for informal student gatherings and study spaces, a new lounge area, and new mechanical, electrical, and plumbing building infrastructure systems.

## The Wittliff Collections Expand

Expansion of The Wittliff Collections at Alkek Library began in May 2019. Texas State is allocating the entire seventh floor of the library to The Wittliff, increasing its footprint from its current 20,000 square feet to more than 30,000 square feet of space and doubling its gallery space, enabling it to share more of its treasures with the public.

The Wittliff Collections include The Southwestern Writers Collection, the Southwestern & Mexican Photography Collection, the Lonesome Dove Collection, and the Texas Music Collection. The Wittliff now holds more than 500 special collections, many of which reside in the Archives and Research Center, the university's state-of-the-art, high-density storage facility located near the Science, Technology, and Advanced Research (STAR) Park, less than four miles from the San Marcos Campus. The Wittliff has physically expanded only twice in its 33 years. The new space will be a showplace that allows this internationally acclaimed research archive to bring more of its collections to light.

The expansion of The Wittliff Collections is expected to be complete in January.

Future Student Welcome Center



Lonesome Dove Gallery



Treasures Gallery



Music Gallery



# Texas State University

## Notes to the Financial Statements

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### **NOTE 1: Summary of Significant Accounting Policies**

#### **NATURE OF OPERATIONS AND HISTORY**

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Texas State University (Texas State) is a doctoral-granting, student-centered institution dedicated to excellence and innovation in teaching, research, including creative expression, and service. The university strives to create new knowledge, to embrace a diversity of people and ideas, to foster cultural and economic development, and to prepare its graduates to participate fully and freely as citizens of Texas, the nation, and the world.

The university was first authorized by the Texas legislature in 1899, and Southwest Texas State Normal School opened its doors in 1903. Over the years, the school has broadened its scope and changed its name a few times as well:

1918: Southwest Texas State Normal College	1969: Southwest Texas State University
1923: Southwest Texas State Teachers College	2003: Texas State University-San Marcos
1959: Southwest Texas State College	2013: Texas State University

Each name reflects the evolution from a small teaching institution to a major, multi-purpose university. Through the nine academic colleges, Texas State offers more than 200 undergraduate and post-graduate degrees to serve the needs of future generations of Texans.

Texas State is the only university in Texas to have graduated a U.S. president or vice president. President Johnson's memory remains alive on campus through the LBJ Student Center, the university's Lyndon Baines Johnson Distinguished Lecture Series and the LBJ Statue. Johnson returned to Texas State many times. In 1965, he returned to his alma mater to sign the Higher Education Act, which opened the doors of higher education to many who could not previously afford it.

#### **REPORTING ENTITY**

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Texas State University is a part of the legal entity and primary government of the State of Texas, and is governed by the Texas State University System (TSUS) nine-member Board of Regents appointed by the governor and confirmed by the Senate. Texas State University's financial activity is consolidated along with the remaining seven components of the system into the financial report of TSUS. The system-wide report of TSUS is further consolidated into the Comprehensive Annual Financial Report (CAFR) for the State of Texas. CAFRs for the State of Texas may be obtained from the Texas Comptroller of Public Accounts website:

<https://www.comptroller.texas.gov/transparency/reports/comprehensive-annual-financial>. Texas State University System is reported as a proprietary fund within the statewide CAFR. The State Auditor expresses an opinion on the CAFR as a whole, but not on the financial statements of individual state agencies or universities contained therein.

This financial report includes all activities and programs for which Texas State University exercises fiscal control and responsibility and includes all funds that comprise the university's financial reporting entity. The financial reporting entity consists of Texas State University's funds, as the primary government, plus any closely related entities for which the primary government is financially accountable and other organizations for which the nature and significance of their relationship would be misleading to exclude. As a result of their relationships with Texas State, the Texas State University Research Foundation and the Harold M. Freeman Educational Foundation are included in the financial statements as blended component units. Other entities are reported as affiliated organizations and are not included in the basic financial statements. For details on those organizations, refer to the Related Organizations note later in this section.

Copies of this Annual Financial Report may be obtained by contacting Texas State University, Director of Accounting, General Accounting Office, 601 University Drive, JCK 589, San Marcos, TX 78666-4684.

#### **MEASUREMENT FOCUS, BASIS OF ACCOUNTING AND BASIS OF PRESENTATION**

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Texas State University's accounts are organized on the basis of funds, each of which is considered a separate accounting entity according to governmental accounting. The operations of each fund are accounted for with a self-balancing set of accounts that comprise its assets, liabilities, revenues and expenses. As a special-purpose government engaged only in business-type activities, the funds are presented in a single enterprise fund column for financial reporting purposes. Three primary financial statements are presented with supporting schedules: the Statement of Net Position; the Statement of Revenues, Expenses, and Changes in Net Position; the Statement of Cash Flows and the

## Notes to the Financial Statements

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supporting schedule Matrix of Operating Expenses Reported by Function. Accounting principles similar to those used by private-sector businesses are applied in accounting for these funds.

The accompanying statements have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) using the economic resources measurement focus and accrual basis of accounting as prescribed by the Governmental Accounting Standards Board (GASB), with the exception of the items described below, and in accordance with state statutes and regulations. The Texas Comptroller of Public Accounts issues the *Reporting Requirements for Annual Financial Reports (AFRs) of State Agencies and Universities* for purposes of consolidation at the state-wide level. As an individual university, Texas State's AFR complies with the State Comptroller's requirements.

Certain elements of a typical stand-alone report are omitted at the individual level in accordance with the *Reporting Requirements for Annual Financial Reports (AFRs)*, because they are reported at the system level of TSUS or at the consolidated Texas Comprehensive Annual Financial Report (CAFR) level. These reporting requirements do not require components of university systems to record their portion of pension liabilities under *GASB 67 Accounting and Financial Reporting for Pensions — an amendment of GASB Statement No. 27* or their retiree healthcare liabilities under *GASB 75 Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions*. Instead the related liabilities are recorded at the system level in the TSUS report described above.

The basis of accounting determines when revenues and expenses are recognized and reported in the financial statements. Under the accrual basis, revenues are recognized when earned and expenses are recognized when the liability is incurred. The enterprise or business-type activities are financed in whole or in part by fees charged to external parties for goods or services and focus on determining operating income, changes in net position, financial position, and cash flows. Operating items are distinguished from non-operating items. Operating revenues and expenses result from providing services or producing and delivering goods in connection with the principle of ongoing operations. Operating expenses include the cost of sales and services, administrative expenses, and depreciation on capital assets. All significant inter-fund transactions have been eliminated.

### **BUDGETS, APPROPRIATIONS AND RESTRICTED RESOURCES**

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The administrative costs and capital asset outlay for the university are controlled by annual budgets approved by the university management and the TSUS Board of Regents. As a state university, Texas State University received appropriations from the state for a portion of its operations in the form of Legislative Revenue and Legislative Transfers In or Out. State appropriations are authorized biennially by the Texas legislature and approved by the governor in the General Appropriations Act. Unencumbered appropriations are generally subject to lapse 60 days after the end of the fiscal year for which they are appropriated. State appropriations represented approximately 21.2% and 21.5% of total revenues from operations for fiscal years ended August 31, 2019 and 2018, respectively. When both restricted and unrestricted resources are available for use, restricted resources are generally used first, then unrestricted resources are used as needed.

### **USE OF ESTIMATES IN THE PREPARATION OF BASIC FINANCIAL STATEMENTS**

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The preparation of financial statements and related notes to the financial statements requires management to make estimates and assumptions that affect the reported amounts for assets and liabilities at the date of the financial statements and the reported amounts for revenues and expenses during the reporting period. Actual results could differ from those estimates.

A significant estimate for scholarship discounts and allowances is made by the university. Allowances are determined by using the Alternate Method as issued by the National Association of College and University Business Officers in the *Advisory Report 2000-05*. The Alternate Method acknowledges that in reality most institutions do not post financial aid on a case-by-case basis but rather as of a certain date; therefore, institutions are allowed to use a rational, documented allocation methodology to calculate discounts and allowances. This approach is referred to as the Alternate Method. As of August 31, 2019, and 2018, this method resulted in estimates of \$109,999,343.76 and \$103,866,794.61, respectively, for the university's discounts and allowances related to tuition and fees.

### **CURRENT AND NON-CURRENT ASSETS**

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Current assets are those considered available for appropriation and expenditure within one fiscal year. Examples of expendable financial resources include cash, various receivables, and short-term investments. All other assets are considered non-current.

# Texas State University

## Notes to the Financial Statements

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### CASH AND CASH EQUIVALENTS

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Cash includes cash on hand, cash in local banks, cash in transit, and cash in the treasury. Cash equivalents are defined as short-term, highly liquid investments that are both (a) readily convertible to known amounts of cash and (b) so near maturity that the risk of changes in value due to changes in interest rates is insignificant. Only investments with an original maturity of three months or less are considered cash equivalents. TexPool, a Local Government Investment Pool, is valued at a stable \$1.00 share price and is reported at amortized cost.

### ACCOUNTS RECEIVABLE

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Accounts receivable represent amounts for student tuition and fees, grant and contract expense reimbursements, various sales and services provided to students and third parties, loans receivable, investment related transactions, and gifts receivable. Federal accounts include amounts from sponsored program activity as well as financial aid. Gifts receivable represent amounts pledged to the university by donors. Other accounts receivable include year-end revenue accruals or accounts not included in the other categories. Certain accounts are recorded net of allowances. The allowances for those accounts by receivable type and fiscal year are as follows:

Allowances by Receivable Type	2019	2018
Student Accounts	\$ 1,691,919.08	\$ 1,888,547.07
Current and Noncurrent Gift Receivables	364,078.81	351,730.04
Loans Receivables	460,385.48	545,463.09

### INVESTMENTS

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Investments are reported at fair value in the Statement of Net Position in accordance with GASB Statement Number 72, *Fair Value Measurement and Application*. Fair value is defined by GASB 72 as the “price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.”

### INVENTORIES AND PREPAID ITEMS

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Inventories, including both merchandise and consumable inventories, are valued at cost and expensed when consumed. Payments made for services benefiting periods beyond the current accounting period are recorded as prepaid items. Prepaid scholarships represent funds paid in the current fiscal year relating to the subsequent year.

### RESTRICTED ASSETS

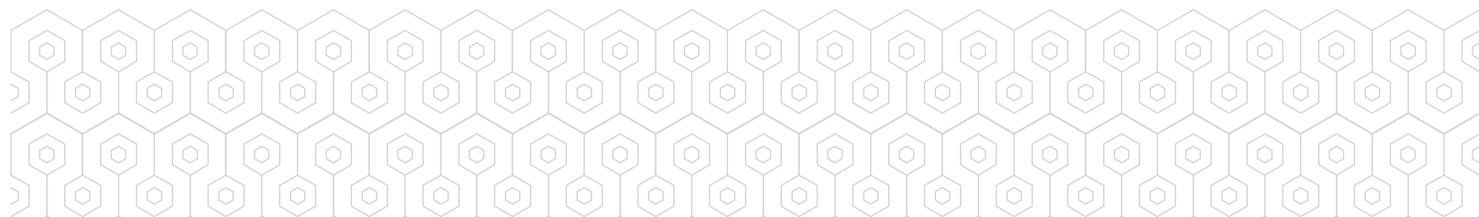
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Restricted assets represent resources that are constrained to a particular purpose, such as for endowments, academic programs or construction projects, and either externally imposed by creditors, grantors, contributors, and the like, or imposed by law through constitutional provisions or enabling legislation.

### CAPITAL ASSETS AND RELATED DEBT ACTIVITY

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Purchases of assets (a) with an estimated useful life in excess of one year and (b) that exceed the university’s capitalization thresholds are recorded as capital assets at their acquisition cost and date. Donated assets meeting the same criteria described above are recorded as capital assets at their fair market value on the acquisition date. Intangible capital assets are defined as assets that lack physical substance, are nonfinancial in nature, and have an initial useful life extending beyond a single reporting period. Routine repairs and maintenance that do not increase building values or exceed capitalization thresholds are charged to operating expenses in the year in which the expenses are incurred.



## Notes to the Financial Statements

The university's capitalization thresholds are:

<b>Asset Category</b>	<b>Capitalization Threshold</b>
Land, land improvements, and permanent land use rights	All acquisitions are capitalized
Books and materials for the university's academic and research library	All acquisitions are capitalized
Works of art and historical treasures not held for financial gain	All acquisitions are capitalized
Furniture, equipment, and vehicles	\$5,000
Buildings, building improvements, facilities, and other improvements	\$100,000
Purchased computer software and term <sup>(A)</sup> land use rights	\$100,000
Infrastructure	\$500,000
Internally generated computer software	\$1,000,000

(A) Applies only to land use rights considered to have a limited useful life.

Assets are depreciated or amortized over the estimated useful life of the asset using the straight-line method as follows:

<b>Asset Category</b>	<b>Estimated Useful Life</b>
Furniture and Equipment	4-15 years
Purchased and Internally Developed Software	5 years
Vehicles	5-10 years
Other Tangible Assets	10 years
Term Land Use Rights	10 years
Buildings, Infrastructure, and Facilities	10-30 years
Other Assets	15 years

All land, land improvements, land use rights, and works of art and historical treasures not held for financial gain are considered to have an indefinite useful life. Because these assets are inexhaustible, they are not depreciated.

Bonded indebtedness is issued by the TSUS Revenue Financing System. The Revenue Financing System is comprised of the TSUS administration and the component institutions within TSUS. Although the university must repay debt issued on its behalf, the associated bond liability is reported in total by the TSUS administration and is not included in the liabilities of the university on its financial statements. Debt service requirements reported by the TSUS administration, which are attributable to Texas State, are disclosed in Note 5 Bonded Indebtedness.

### ACCOUNTS PAYABLE

Accounts Payable represents the liability for the value of assets or services received at the Statement of Net Position date for which payment is pending.

### OTHER PAYABLES

Other payables are the accruals at year-end of expense transactions not included in any of the other payable descriptions.

### UNEARNED REVENUES

Unearned Revenues represents payments received in advance of providing goods or services.

### FUNDS HELD FOR OTHERS

Funds held for others are composed of agency funds. Agency funds are assets not owned by the university but held in custody to be used or withdrawn by the depositors at will. Agency funds resources are reflected in the university's financial records as cash and cash equivalents with a corresponding liability to the depositing organizations.

# Texas State University

## Notes to the Financial Statements

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### **NON-CURRENT LIABILITIES**

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Non-current liabilities may arise from debt issuances or other commitments with an expected liquidation date of more than one year from fiscal year end.

### **EMPLOYEES' COMPENSABLE LEAVE BALANCES**

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State employees are entitled to be paid for all unused vacation time accrued in the event of resignation, dismissal, or separation from State employment provided the employee has been continuously employed with the State for six months. An expense and liability are recorded as the benefits accrue to employees. No liability is recorded for non-vesting accumulating rights to receive sick pay benefits. Compensable leave liabilities are reported as either current or non-current in the Statement of Net Position. The current portion is that which is expected to be paid within one year. The non-current portion has an expected payment date of more than one year.

### **INVESTED IN CAPITAL ASSETS, NET OF RELATED DEBT**

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Invested in Capital Assets, Net of Related Debt consists of capital assets, net of accumulated depreciation and reduced by outstanding balances for bonds, notes, and other debt attributed to the acquisition, construction, or improvement of those assets.

### **RESTRICTED NET POSITION**

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Restricted net position consists of restricted assets less liabilities and deferred inflows of resources related to those assets. This represents resources that are constrained to a particular purpose, such as for endowments, academic programs or construction projects, and either externally imposed by creditors, grantors, contributors, and the like, or imposed by law through constitutional provisions or enabling legislation.

### **UNRESTRICTED NET POSITION**

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Unrestricted net position is the residual amount of total net position less investment in capital assets and restricted net position. Unrestricted net assets often have constraints on resources that are imposed by management but can be removed or modified. Substantially, all unrestricted net assets are designated for capital projects as well as academic and research programs and initiatives.





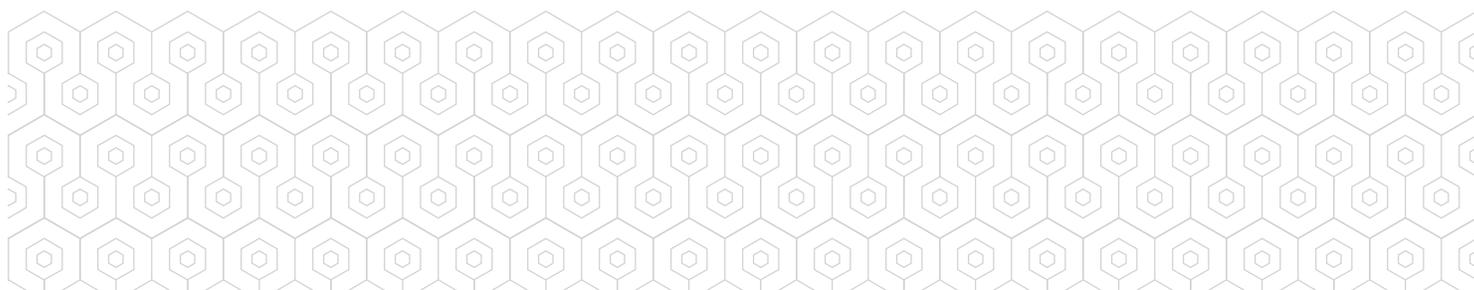
# Texas State University

## Notes to the Financial Statements

### NOTE 2: Capital Assets

Changes in capital assets for the fiscal year ended August 31, 2019 are summarized as follows:

	<u>Balance 9/1/2018</u>	<u>Adjustments</u>	<u>Completed CIP</u>
<b>Non-Depreciable Assets:</b>			
Land and Land Improvements	\$ 50,393,725.74	\$ -	\$ -
Construction in Progress	140,567,611.01	-	(175,502,737.49)
Other Assets	9,003,943.78	-	-
Total Non-Depreciable Assets	<u>\$ 199,965,280.53</u>	<u>\$ -</u>	<u>\$ (175,502,737.49)</u>
<b>Depreciable Assets:</b>			
Buildings and Building Improvements	\$ 1,076,032,028.12	\$ -	\$ 166,531,198.76
Infrastructure	81,264,818.95	-	-
Facilities & Other Improvements	163,130,711.14	-	8,971,538.73
Furniture and Equipment	80,053,047.31	-	-
Vehicle, Boats & Aircraft	9,435,015.45	-	-
Other Assets	80,182,749.32	-	-
Total Depreciable Assets at Historical Costs	<u>\$ 1,490,098,370.29</u>	<u>\$ -</u>	<u>\$ 175,502,737.49</u>
<b>Less Accumulated Depreciation for:</b>			
Buildings and Improvements	\$ (469,355,810.11)	\$ -	\$ -
Infrastructure	(36,492,800.52)	-	-
Facilities & Other Improvements	(60,611,536.77)	-	-
Furniture and Equipment	(55,805,422.67)	-	-
Vehicles, Boats & Aircraft	(5,221,378.59)	-	-
Other Assets	(28,434,124.85)	-	-
Total Accumulated Depreciation	<u>\$ (655,921,073.51)</u>	<u>\$ -</u>	<u>\$ -</u>
Depreciable Assets, Net	<u>\$ 834,177,296.78</u>	<u>\$ -</u>	<u>\$ 175,502,737.49</u>
<b>Amortizable Assets - Intangible:</b>			
Computer Software	\$ 29,143,973.15	\$ -	\$ -
Total Amortizable Assets - Intangible	<u>\$ 29,143,973.15</u>	<u>\$ -</u>	<u>\$ -</u>
<b>Less Accumulated Amortization for:</b>			
Computer Software	\$ (28,827,119.21)	\$ -	\$ -
Total Accumulated Amortization	<u>\$ (28,827,119.21)</u>	<u>\$ -</u>	<u>\$ -</u>
Amortizable Assets - Intangible, Net	<u>\$ 316,853.94</u>	<u>\$ -</u>	<u>\$ -</u>
<b>Capital Assets, Net</b>	<u><b>\$ 1,034,459,431.25</b></u>	<u><b>\$ -</b></u>	<u><b>\$ -</b></u>



## Notes to the Financial Statements

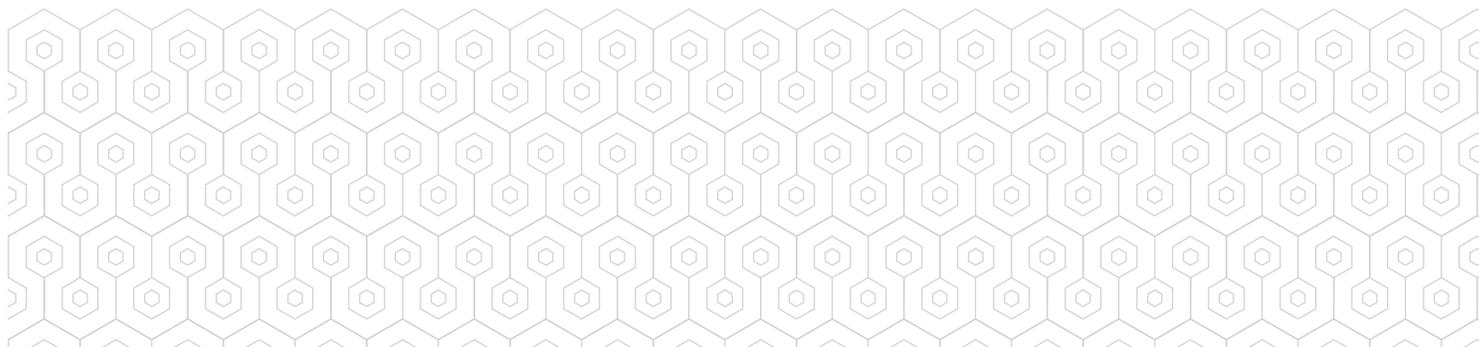
<b>Interagency Transfers In</b>	<b>Transfers Out</b>	<b>Additions</b>	<b>Deletions</b>	<b>Balance 8/31/2019</b>
\$ -	\$ -	\$ 2,114,289.13	\$ -	\$ 52,508,014.87
-	-	95,203,755.12	-	60,268,628.64
-	-	496,540.02	-	9,500,483.80
<u>\$ -</u>	<u>\$ -</u>	<u>\$ 97,814,584.27</u>	<u>\$ -</u>	<u>\$ 122,277,127.31</u>
\$ -	\$ -	\$ -	\$ (1,188,648.00)	\$ 1,241,374,578.88
-	-	-	-	81,264,818.95
-	-	-	-	172,102,249.87
10,772.18	-	5,657,426.77	(4,003,356.15)	81,717,890.11
-	-	1,290,356.63	(175,845.29)	10,549,526.79
-	-	6,776,964.56	(484,908.20)	86,474,805.68
<u>\$ 10,772.18</u>	<u>\$ -</u>	<u>\$ 13,724,747.96</u>	<u>\$ (5,852,757.64)</u>	<u>\$ 1,673,483,870.28</u>
\$ -	\$ -	\$ (38,287,683.91)	\$ 1,129,215.60	\$ (506,514,278.42)
-	-	(2,426,472.29)	-	(38,919,272.81)
-	-	(7,309,800.36)	-	(67,921,337.13)
(10,772.18)	-	(6,728,381.73)	3,842,829.46	(58,701,747.12)
-	-	(848,642.23)	175,453.73	(5,894,567.09)
-	-	(5,370,408.83)	325,647.50	(33,478,886.18)
<u>\$ (10,772.18)</u>	<u>\$ -</u>	<u>\$ (60,971,389.35)</u>	<u>\$ 5,473,146.29</u>	<u>\$ (711,430,088.75)</u>
<u>\$ -</u>	<u>\$ -</u>	<u>\$ (47,246,641.39)</u>	<u>\$ (379,611.35)</u>	<u>\$ 962,053,781.53</u>
\$ -	\$ -	\$ -	\$ (430,769.24)	\$ 28,713,203.91
<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ (430,769.24)</u>	<u>\$ 28,713,203.91</u>
\$ -	\$ -	\$ (140,389.10)	\$ 430,769.24	\$ (28,536,739.07)
<u>\$ -</u>	<u>\$ -</u>	<u>\$ (140,389.10)</u>	<u>\$ 430,769.24</u>	<u>\$ (28,536,739.07)</u>
<u>\$ -</u>	<u>\$ -</u>	<u>\$ (140,389.10)</u>	<u>\$ -</u>	<u>\$ 176,464.84</u>
<u>\$ -</u>	<u>\$ -</u>	<u>\$ 50,427,553.78</u>	<u>\$ (379,611.35)</u>	<u>\$ 1,084,507,373.68</u>

# Texas State University

## Notes to the Financial Statements

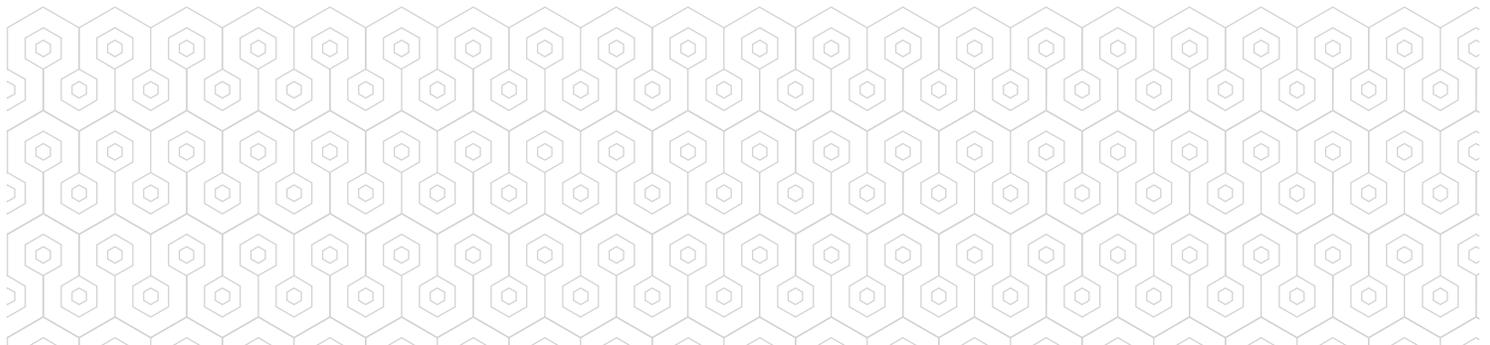
Changes in capital assets for the fiscal year ended August 31, 2018 are summarized as follows:

	<b>Balance 9/1/2017</b>	<b>Adjustments</b>	<b>Completed CIP</b>
<b>Non-Depreciable Assets:</b>			
Land and Land Improvements	\$ 45,106,337.03	\$ -	\$ -
Construction in Progress	97,317,703.69	-	(91,975,983.65)
Other Assets	8,275,851.14	-	-
Total Non-Depreciable Assets	<u>\$ 150,699,891.86</u>	<u>\$ -</u>	<u>\$ (91,975,983.65)</u>
<b>Depreciable Assets:</b>			
Buildings and Building Improvements	\$ 983,898,550.72	\$ -	\$ 91,655,985.90
Infrastructure	81,264,818.95	-	-
Facilities & Other Improvements	162,810,713.39	-	319,997.75
Furniture and Equipment	75,103,913.34	-	-
Vehicle, Boats & Aircraft	8,844,289.74	-	-
Other Assets	100,778,255.84	-	-
Total Depreciable Assets at Historical Costs	<u>\$ 1,412,700,541.98</u>	<u>\$ -</u>	<u>\$ 91,975,983.65</u>
<b>Less Accumulated Depreciation for:</b>			
Buildings and Improvements	\$ (435,951,043.45)	\$ -	\$ -
Infrastructure	(34,066,328.30)	-	-
Facilities & Other Improvements	(53,387,997.96)	-	-
Furniture and Equipment	(53,297,886.71)	-	-
Vehicles, Boats & Aircraft	(4,798,268.42)	-	-
Other Assets	(48,607,401.01)	-	-
Total Accumulated Depreciation	<u>\$ (630,108,925.85)</u>	<u>\$ -</u>	<u>\$ -</u>
Depreciable Assets, Net	<u>\$ 782,591,616.13</u>	<u>\$ -</u>	<u>\$ 91,975,983.65</u>
<b>Amortizable Assets - Intangible:</b>			
Computer Software	\$ 28,982,096.84	\$ -	\$ -
Total Amortizable Assets - Intangible	<u>\$ 28,982,096.84</u>	<u>\$ -</u>	<u>\$ -</u>
<b>Less Accumulated Amortization for:</b>			
Computer Software	\$ (28,549,299.99)	\$ -	\$ -
Total Accumulated Amortization	<u>\$ (28,549,299.99)</u>	<u>\$ -</u>	<u>\$ -</u>
Amortizable Assets - Intangible, Net	<u>\$ 432,796.85</u>	<u>\$ -</u>	<u>\$ -</u>
<b>Capital Assets, Net</b>	<b><u>\$ 933,724,304.84</u></b>	<b><u>\$ -</u></b>	<b><u>\$ -</u></b>



## Notes to the Financial Statements

<u>Interagency Transfers In</u>	<u>Interagency Transfers Out</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance 8/31/2018</u>
\$ -	\$ -	\$ 5,287,388.71	\$ -	\$ 50,393,725.74
-	-	135,225,890.97	-	140,567,611.01
-	-	728,092.64	-	9,003,943.78
<u>\$ -</u>	<u>\$ -</u>	<u>\$ 141,241,372.32</u>	<u>\$ -</u>	<u>\$ 199,965,280.53</u>
\$ -	\$ -	\$ 477,491.50	\$ -	\$ 1,076,032,028.12
-	-	-	-	81,264,818.95
-	-	-	-	163,130,711.14
-	(116,436.00)	8,731,507.17	(3,665,937.20)	80,053,047.31
-	-	936,226.71	(345,501.00)	9,435,015.45
-	-	6,792,152.08	(27,387,658.60)	80,182,749.32
<u>\$ -</u>	<u>\$ (116,436.00)</u>	<u>\$ 16,937,377.46</u>	<u>\$ (31,399,096.80)</u>	<u>\$ 1,490,098,370.29</u>
\$ -	\$ -	\$ (33,404,766.66)	\$ -	\$ (469,355,810.11)
-	-	(2,426,472.22)	-	(36,492,800.52)
-	-	(7,223,538.81)	-	(60,611,536.77)
-	116,436.00	(6,250,727.93)	3,626,755.97	(55,805,422.67)
-	-	(741,823.57)	318,713.40	(5,221,378.59)
-	-	(5,890,491.86)	26,063,768.02	(28,434,124.85)
<u>\$ -</u>	<u>\$ 116,436.00</u>	<u>\$ (55,937,821.05)</u>	<u>\$ 30,009,237.39</u>	<u>\$ (655,921,073.51)</u>
<u>\$ -</u>	<u>\$ -</u>	<u>\$ (39,000,443.59)</u>	<u>\$ (1,389,859.41)</u>	<u>\$ 834,177,296.78</u>
\$ -	\$ -	\$ 171,006.31	\$ (9,130.00)	\$ 29,143,973.15
<u>\$ -</u>	<u>\$ -</u>	<u>\$ 171,006.31</u>	<u>\$ (9,130.00)</u>	<u>\$ 29,143,973.15</u>
\$ -	\$ -	\$ (286,949.22)	\$ 9,130.00	\$ (28,827,119.21)
<u>\$ -</u>	<u>\$ -</u>	<u>\$ (286,949.22)</u>	<u>\$ 9,130.00</u>	<u>\$ (28,827,119.21)</u>
<u>\$ -</u>	<u>\$ -</u>	<u>\$ (115,942.91)</u>	<u>\$ -</u>	<u>\$ 316,853.94</u>
<u>\$ -</u>	<u>\$ -</u>	<u>\$ 102,124,985.82</u>	<u>\$ (1,389,859.41)</u>	<u>\$ 1,034,459,431.25</u>



# Texas State University

## Notes to the Financial Statements

### NOTE 3: Deposits, Investments, and Repurchase Agreements

#### Deposits

As of August 31, 2019 and 2018, the carrying amount of deposits was \$2,963,275.91 and \$8,831,238.89, respectively, as presented below:

	<u>2019</u>	<u>2018</u>
<b>Cash in Bank - Carrying Value</b>	\$ 2,963,275.91	\$ 8,831,238.89
Less: Certificates of Deposit included in carrying value and reported as Cash Equivalent	-	-
Less: Uninvested Securities Lending Cash Collateral included in carrying value and reported as Securities Lending Collateral	-	-
Less: Securities Lending CD Collateral included in carrying value and reported as Securities Lending Collateral	-	-
<b>Cash in Bank per AFR</b>	<u>\$ 2,963,275.91</u>	<u>\$ 8,831,238.89</u>
Current Assets Cash in Bank	\$ 2,958,250.49	\$ 8,821,458.59
Current Assets Restricted Cash in Bank	<u>5,025.42</u>	<u>9,780.30</u>
<b>Cash in Bank per AFR</b>	<u>\$ 2,963,275.91</u>	<u>\$ 8,831,238.89</u>

As of August 31, 2019 and 2018, the total bank balances were \$10,974,039.66 and \$14,599,743.21, respectively.

#### Investments

Texas State is authorized to invest Operating and Endowment Funds as a prudent person in obligations and instruments as defined in the Texas State University System Investment Policy.

#### TexPool Investments at Amortized Cost

Investments in TexPool Prime money market funds that maintain a stable \$1.00 share price are reported at amortized cost. TexPool Prime has a very conservative investment policy and aligns with Rule 2a-7 money-market practices. TexPool Prime invests conservatively in US Government Securities, repurchase agreements, AAA rated money market mutual funds, commercial paper, and certificates of deposit to provide a safe, efficient, and liquid investment option. The fund is rated AAAM by Standard & Poor's, the highest rating a local government investment pool can achieve. There is no penalty or limit for withdrawal, however, a courtesy one-day notification is requested for withdrawals exceeding approximately \$20 million.

TexPool Prime is one of two portfolios developed on behalf of Texas entities to provide for the creation of investment pools for public funds and to allow eligible governmental entities to jointly invest their funds in authorized investments. The TexPool Prime portfolio was created to allow for an investment alternative that incorporates into its investment framework commercial paper and certificates of deposit, as well as U.S. Treasury and U.S. government agency securities. TexPool Prime commenced operations on December 27, 2002. The Texas Treasury Safekeeping Trust Company, under the guidance of the Texas Comptroller of Public Accounts, administers the TexPool portfolios as public fund investment pools.

#### Fair Value of Investments

Texas State measures and records investments using fair value measurement guidelines in accordance with GASB Statement 72, *Fair Value Measurement and Application*. GASB 72 recognizes a three-level fair value hierarchy for inputs to valuation techniques:

- Level 1:** Quoted prices for identical investments in active markets;
  - Level 2:** Observable inputs other than quoted market prices; or,
  - Level 3:** Unobservable inputs.
- Net Asset Value:** Net Asset Value Per Share (NAVPS) method is used when there is no readily determinable fair value.



## Notes to the Financial Statements

As of August 31, 2019, the valuation of investments were:

	Fair Value Hierarchy				2019 Value
	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs	Net Asset Value	
<b>Fair Value</b>					
U.S. Government:					
U.S. Treasury Securities	\$ -	\$ 7,671,214.39	\$ -	\$ -	\$ 7,671,214.39
U.S. Government Agency Obligations	-	4,923,244.54	-	-	4,923,244.54
Corporate Obligations	-	18,047,645.02	-	-	18,047,645.02
Corporate Asset and Mortgage Backed Securities	-	9,611,492.55	-	-	9,611,492.55
Equity	82,505,894.17	-	758,564.00	-	83,264,458.17
International Equity	14,745,939.70	-	-	-	14,745,939.70
Fixed Income Money Market and Bond Mutual Fund	177,903,974.65	-	-	-	177,903,974.65
Other Commingled Funds	290,916.32	-	-	-	290,916.32
<b>Long-Term Investments</b>	<b>\$ 275,446,724.84</b>	<b>\$ 40,253,596.50</b>	<b>\$ 758,564.00</b>	<b>-</b>	<b>\$ 316,458,885.34</b>
<b>Amortized Cost</b>					
Other Commingled Funds (TexPool)					<u>\$ 231,320,306.98</u>
<b>Cash Equivalents</b>					<u>\$ 231,320,306.98</u>

As of August 31, 2018, the valuation of investments were:

	Fair Value Hierarchy				2018 Value
	Level 1 Inputs	Level 2 Inputs	Level 3 Inputs	Net Asset Value	
<b>Fair Value</b>					
U.S. Government:					
U.S. Treasury Securities	\$ 1,117,664.46	\$ 981,669.97	\$ -	\$ -	\$ 2,099,334.43
U.S. Government Agency Obligations	-	87,345.80	-	-	87,345.80
Corporate Obligations	3,558,208.81	50,349,493.18	-	-	53,907,701.99
Corporate Asset and Mortgage Backed Securities	15,378,039.57	16,268,174.28	-	-	31,646,213.85
Equity	48,006,811.46	-	-	-	48,006,811.46
International Equity	9,907,437.14	-	-	-	9,907,437.14
Fixed Income Money Market and Bond Mutual Fund	57,438,391.75	-	-	-	57,438,391.75
Other Commingled Funds	525,344.64	-	-	-	525,344.64
<b>Long-Term Investments</b>	<b>\$ 135,931,897.83</b>	<b>\$ 67,686,683.23</b>	<b>\$ -</b>	<b>-</b>	<b>\$ 203,618,581.06</b>
<b>Amortized Cost</b>					
Other Commingled Funds (TexPool)					<u>\$ 363,587,480.72</u>
<b>Cash Equivalents</b>					<u>\$ 363,587,480.72</u>

### Deposit and Investment Risk Factors

The following paragraphs describe various types of risk related to Deposits and Investments.

#### Custodial Credit Risk

Custodial credit risk for investments is the risk that, in the event of the failure of the counterparty, the University will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party. The University's investment policy limits

# Texas State University

## Notes to the Financial Statements

holding of securities by counterparties to those involved with securities lending. As of August 31, 2019, Texas State University had no investments subject to custodial credit risk.

### Credit Risk

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligations. The TSUS investment policy requires that investments in debt securities have credit ratings recognized by the agencies of Standard and Poor's, Finch, and/or Moody's. For operating, a short-intermediate term funds portfolio, average credit quality of the entire portfolio is to be greater than or equal to A-, as defined by S&P (A- by Finch, A3 for Moody's). The minimum credit quality of any investment must be investment grade at the time of purchase. Operating Long-Term funds portfolios are intended to be invested in a similar manner to Endowment funds, but no more than 20% of the global fixed income and credit may be rated below investment grade, and no more than 15% of the total Long-Term Operating Portfolio may be invested in emerging/frontier markets, a sub-set of international. An Operating Long-Term funds portfolio may only invest up to 50% of the market value of its total operating funds portfolio, exclusive of bond proceeds, in this type of investment strategy. In order to invest with managers who utilize alternative investments, Texas State must retain an investment consultant. For the endowment portfolio, a maximum of 20% of the total portfolio may be held in emerging/frontier market securities (regardless of asset type). Risk is further defined by prohibited investments and activities, and limited by maximum single purchase and maximum aggregate position percentages.

As of August 31, 2019 and 2018, the credit quality distributions for securities with credit risk exposures were as follows:

Fund Type	GAAP Fund	Investment Type	Rating	Current Standard & Poor's Rating	
				2019	2018
05	9999	U.S. Government Agency Obligations	AAA	\$ 7,671,214.39	\$ 2,099,334.43
05	9999	Corporate Obligations	AAA	-	1,183,710.55
			AA	-	3,704,504.21
05	9999	Corporate Obligations (continued)	A	\$ 4,039,617.73	\$ 19,931,812.74
			BBB	11,847,662.11	27,382,844.59
			BB	186,720.52	372,048.55
			B	-	182,692.07
			NR	50,640.00	925,591.74
05	9999	Corporate Asset and Mortgage Backed Securities	AAA	5,654,829.67	11,856,227.41
			AA	564,473.25	115,979.22
			A	-	25,086.22
			BBB	-	64,933.46
			NR	8,315,434.17	19,583,987.54
05	9999	Municipal Bonds	AA	-	87,345.80
05	9999	Miscellaneous - Preferred Securities	BBB	3,235.00	3,090.00
			BB	-	39,872.80
			NR	-	341,301.36
05	9999	International Obligations	AAA	-	59,058.60
			AA	130,148.20	-
			A	669,143.84	56,548.30
			BBB	1,075,808.92	54,972.62
			BB	47,903.70	53,918.02
			<b>Total</b>	<b>\$ 40,256,831.50</b>	<b>\$ 88,124,860.23</b>



## Notes to the Financial Statements

### Concentration of Credit Risk

Concentration of credit risk is the risk of loss attributable to the magnitude of investment in a single issuer. Investments issued or explicitly guaranteed by the U.S. Government, and investments in mutual funds, external investment pools, and other pooled investments are excluded from this disclosure requirement. Texas State University, by following the TSUS Investment Policy, limits the Operating Short-Intermediate fund for mutual funds, commingled vehicles, and registered Exchange Traded Funds (ETFs) portfolio holdings be no more than 10% of the total assets of a single fund, commingled vehicle or ETF. For Operating Short-Intermediate and Operating Long fund combined excluding pooled vehicles, mutual funds, ETFs or Managed Accounts which are multi-strategy and multi-manager products, no more than 40% of the portfolio may be invested in a single mutual fund or manager. As of August 31, 2019, Texas State University was not subject to concentration of credit risk.

### Interest Rate Risk

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. Usually, a longer maturity results in a greater degree of price volatility. The University minimizes interest rate risk on investments by managing maturities to cash flow. The bond portfolio is actively managed by Sage Advisors, under the University's review. Interest rate risk is reduced by investing in fixed income securities with varying maturities. The weighted average maturity of the entire short-intermediate term funds portfolio is to be less than or equal to 36 months. There is no maximum maturity of any single issue. Operating Long funds are intended to be invested in a similar manner to endowment funds. The long term objective of the Endowment portfolio is to preserve the intergenerational equity of the endowment while providing for appropriate current spending. All endowment funds are managed by the "prudent person standard". Although all long-term investments are subject to some interest rate risk due to various economic forces, as of August 31, 2019, Texas State University had limited the exposure to interest rate risk through asset allocation. Global fixed income/credit is intended to offset the volatility of equities, particularly during market downturns, as well as provide deflation protection.

Residential and Commercial Mortgage Backed securities (RMBS & CMBS) and Asset Backed securities (ABS) can be highly sensitive to interest rate changes, if the changes are severe enough, over a given time period. However, CMBS and ABS securities tend to be less so than RMBS securities due primarily to the nature of the collateral. Because all three sectors generate cash flows from interest and principal payments on underlying residential and commercial mortgage pools (RMBS & CMBS) as well as on outstanding credit card and auto receivables (ABS), they can be sensitive to prepayments in periods of declining interest rates and vice versa in periods of rising interest rates. Market values and durations of the University's investments at August 31, 2019, were:

Investment Type	2019		2018	
	Fair Value	Average Maturity	Fair Value	Average Maturity
U.S. Government Agency Obligations	\$ 7,671,214.39	5.8	\$ 2,099,334.43	7.00
Corporate Obligations	16,124,640.36	3.6	53,683,204.45	2.09
Corporate Asset and Mortgage Backed Securities	14,534,737.09	2.7	31,646,213.85	2.22
Municipal Bonds	0.00	0.0	87,345.80	10.42
Miscellaneous-Preferred Securities	3,235.00	1.9	384,264.16,	3.48
International Obligations	1,923,004.66	3.7	224,497.54	3.94
<b>Total</b>	<b>\$ 40,256,831.50</b>	<b>3.71</b>	<b>\$ 88,124,860.23</b>	<b>2.27</b>

### Reverse Repurchase, Securities Lending and Derivative Investing

The University did not participate in Reverse Repurchase Agreements, Securities Lending, or Derivative Investing during fiscal year 2019.

### NOTE 4: Long-Term Liabilities

#### Employees' Compensable Leave

Accrued compensable leave is the institution's liability for unpaid overtime accrued by classified employees and unused vacation time for all employees. Obligations to personnel are paid at the time of dismissal, resignation, or separation from the university, provided the employee has at least six months of continuous employment with the state. An expense and liability are recorded annually as the benefits accrue to employees. For the fiscal years ended August 31, 2019 and 2018, the accrued liability for vacation and overtime totaled \$12,594,665.29 and \$12,433,771.86, respectively. During the same periods, the university made lump sum payments totaling \$1,439,259.80 and \$1,403,168.86 for

# Texas State University

## Notes to the Financial Statements

accrued vacation and overtime to employees who separated from state service. Sick leave, the accumulation of which is unlimited, is earned at the rate of eight hours per month and paid only when an employee is off due to illness or to the estate of an employee in the event of his/her death. The maximum leave that may be paid to an employees' estate is the lesser of (a) one-half of the employees' accumulated entitlement or (b) 336 hours.

The following changes occurred in long-term liabilities during the fiscal years ended August 31, 2019 and 2018:

<b>Employees' Compensable Leave</b>	<b>2019</b>	<b>2018</b>
Balance, September 1	\$ 12,433,771.86	\$ 12,559,333.10
Additions	1,600,153.23	1,277,607.62
Reductions	<u>(1,439,259.80)</u>	<u>(1,403,168.86)</u>
<b>Balance, August 31</b>	<b><u>\$ 12,594,665.29</u></b>	<b><u>\$ 12,433,771.86</u></b>
Amounts Due Within One Year	\$ 7,626,579.19	\$ 7,496,438.12
Amounts Due Thereafter	<u>4,968,086.10</u>	<u>4,937,333.74</u>
<b>Total Due</b>	<b><u>\$ 12,594,665.29</u></b>	<b><u>\$ 12,433,771.86</u></b>

### NOTE 5: Bonded Indebtedness

All bonded indebtedness for Texas State is issued by the TSUS administration through the TSUS Revenue Financing System, of which the TSUS administration and its component institutions within are members. The Board of Regents pledged all of the funds (revenues) and balances derived or attributable to any member of the Revenue Financing System that is lawfully available to the board for payments on Parity Debt.

As the TSUS administration issues the debt, bonds payable attributable to institutions are included with the "Bonds Payable" reported by the TSUS administration. Institutions must repay debt issued on its behalf; consequently, the below debt amortization schedule is presented for informational purposes only.

<b>Year</b>	<b>Debt Service Requirements</b>		
	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
2020	\$ 33,698,987.92	\$ 26,460,488.64	\$ 60,159,476.56
2021	33,456,613.08	24,920,606.28	58,377,219.36
2022	34,689,415.54	23,372,488.92	58,061,904.46
2023	33,382,101.18	21,744,397.16	55,126,498.34
2024	33,815,000.00	20,176,909.74	53,991,909.74
2025-2029	177,585,000.00	75,859,716.70	253,444,716.70
2030-2034	121,370,000.00	38,815,966.66	160,185,966.66
2035-2039	64,330,000.00	16,220,624.10	80,550,624.10
2040-2044	35,545,000.00	4,077,894.36	39,622,894.36
2045-2047	<u>560,000.00</u>	<u>23,928.80</u>	<u>583,928.80</u>
Totals	<b><u>\$ 568,432,117.72</u></b>	<b><u>\$ 251,673,021.36</u></b>	<b><u>\$ 820,105,139.08</u></b>

A portion of the debt represents tuition revenue bonds (TRBs) historically funded by the Texas Legislature through General Revenue appropriations. For the fiscal years ended August 31, 2019 and 2018, the institution was appropriated \$17,387,991.00 and \$18,740,277.00, respectively, for TRB debt service. Texas State expects future Legislative appropriations to meet debt service requirements for TRBs.



## Notes to the Financial Statements

### NOTE 6: Leases

#### Operating Leases

Texas State has entered into various operating leases for buildings, land, and vehicles. Rental expenses for operating leases for the fiscal years ended August 31, 2019 and 2018 were \$353,725.51 and \$286,422.44, respectively.

Future minimum lease rental payments under non-cancelable operating leases having an initial term in excess of one year, as of August 31, 2019 and 2018, were as follows:

<u>Fiscal Year</u>	<u>2019</u>	<u>Fiscal Year</u>	<u>2018</u>
2020	\$ 345,169.40	2019	\$ 310,982.25
2021	238,608.75	2020	314,237.22
2022	169,747.48	2021	214,037.85
2023	158,849.13	2022	156,212.61
2024	161,485.65	2023	158,849.13
2025 - 2029	457,432.80	2024 - 2028	618,918.45
<b>Total</b>	<b>\$ 1,531,293.21</b>	<b>Total</b>	<b>\$ 1,773,237.51</b>

### NOTE 7: Pension Plans

The state established an optional retirement program (ORP) for institutions of higher education. Participation in the ORP is in lieu of participation in the Teacher Retirement System and is available to certain eligible employees. Employee member and employer contributions were as follows for the fiscal years ended August 31, 2019 and 2018:

<u>Contributions</u>	<u>2019</u>	<u>2018</u>
Member Contributions	\$ 5,581,233	\$ 5,579,850
Employer Contributions	6,002,102	6,028,233
<b>Total</b>	<b>\$ 11,583,335</b>	<b>\$ 11,608,083</b>

### NOTE 8: Interfund Activity and Transactions

Texas State experienced routine transfers with other state agencies, consistent with the activities of the fund making the transfer and as a result of various grants and contract activities. In addition to transfers, Texas State recorded assets and liabilities for future amounts due from/to other state agencies. Repayment of interagency balances will occur within one year from the date of the financial statements.

The university also experiences other interagency activity, which is classified as transfers in/out or legislative transfers in/out. These transfers pertained to the receipt of bond proceeds and debt service payments from/to TSUS. Legislative transfer activity is directly attributable to bonds authorized by the Legislature and historically funded by means of special line items in the university's General Revenue appropriations.

<u>Agency Name</u>	<u>Agency Number</u>	<u>D23 Fund</u>	<u>2019</u>		<u>2018</u>	
			<u>Due From Other State Agencies</u>	<u>Due to Other State Agencies</u>	<u>Due From Other State Agencies</u>	<u>Due to Other State Agencies</u>
Federal:						
General Land Office	305	0027	\$ -	\$ 5,634.58	\$ 30,775.99	\$ -
Texas State Library and Archives Commission	306	7999	-	-	1,454.75	-
Texas Workforce Commission	320	5026	12,581.87	-	4,441.38	-
Department of Public Safety	405	3984	556,551.96	-	190,168.14	-
Department of Agriculture	551	5026	1,748.07	-	3,447.39	-

(continued on following page)

# Texas State University

## Notes to the Financial Statements

<u>Agency Name</u>	<u>Agency Number</u>	<u>D23 Fund</u>	2019		2018	
			<u>Due From Other State Agencies</u>	<u>Due to Other State Agencies</u>	<u>Due From Other State Agencies</u>	<u>Due to Other State Agencies</u>
(continued from previous page)						
Texas Commission on Environmental Quality	582	1535	384,662.97	-	350,961.86	-
Texas Department of Transportation	601	0006	30,732.90	-	21,985.55	-
Texas A&M Engineering Extension Service	716	7999	108,699.15	2,858.77	220,657.69	84,389.00
Texas Southern University	717	7999	-	163.38	5,887.26	-
University of Texas El Paso	724	7999	18,282.80	-	-	14,857.19
Texas Tech University	733	7999	23,515.81	-	-	-
University of Texas at San Antonio	743	7999	76,099.45	-	122,144.65	-
University of Texas Health Science Center at San Antonio	745	7999	65,116.35	5,290.78	26,286.30	-
Texas Higher Education Coordinating Board	781	0001	-	-	73,800.00	311.84
Parks and Wildlife Department	802	0951	395,074.95	64.34	280,753.66	4,888.34
State:						
Governor – Fiscal	300	0421	624,857.77	-	700,556.28	-
Health and Human Services Commission	529	0001	13,313.01	-	-	28,457.93
Department of State Health Services	537	0001	478,194.40	-	480,881.29	-
Cancer Prevention and Research Institute of Texas	542	7999	-	-	67,800.47	-
University of Texas System	720	7999	-	10,594.19	-	3,094.66
Texas A&M University – Corpus Christi	760	7999	-	-	0.52	-
Texas Higher Education Coordinating Board	781	0001	1,183.29	113,049.14	304.62	470,518.75
Parks and Wildlife Department	802	0640	96,614.66	-	36,059.59	576.74
Texas Historical Commission	808	7999	-	-	2,999.50	-
<b>Total Due From / Due To</b>			<b>\$ 2,887,229.41</b>	<b>\$ 137,655.18</b>	<b>\$ 2,621,366.89</b>	<b>\$ 607,094.45</b>

<u>Agency Name</u>	<u>Agency Number</u>	<u>D23 Fund</u>	2019		2018	
			<u>Transfers In</u>	<u>Transfers Out</u>	<u>Transfers In</u>	<u>Transfers Out</u>
Comptroller – State Fiscal for Hazlewood	902	0210	\$ 1,600,001.00	\$ -	\$ 773,671.00	\$ -
Texas State University System for Debt Service and Billings	758	7999	434,932.81	41,965,204.63	-	42,594,560.48
Texas Dept of Motor Vehicles for License Plate	608	0802	-	12,378.94	-	57,952.59
<b>Total Transfers</b>			<b>\$ 2,034,933.81</b>	<b>\$ 41,977,583.57</b>	<b>\$ 773,671.00</b>	<b>\$42,652,513.07</b>



## Notes to the Financial Statements

<u>Agency Name</u>	<u>Agency Number</u>	<u>D23 Fund</u>	<u>2019</u>		<u>2018</u>	
			<u>Legislative Transfers In</u>	<u>Legislative Transfer Out</u>	<u>Legislative Transfers In</u>	<u>Legislative Transfers Out</u>
Comptroller – State Fiscal for Hazlewood	902	0001	\$ 1,386,066.00	\$ -	\$ 1,342,275.00	\$ -
Texas State University System for Debt Service	758	0001	-	23,238,445.42	-	24,548,777.00
<b>Total Legislative Transfers</b>			<b>\$ 1,386,066.00</b>	<b>\$ 23,238,445.42</b>	<b>\$ 1,342,275.00</b>	<b>\$ 24,548,777.00</b>

### NOTE 9: Contingencies and Commitments

As of August 31, 2019 and 2018, various lawsuits and claims involving Texas State were pending. While the ultimate liability with respect to litigation and other claims asserted against the university cannot be reasonably estimated at this time, such liability, to the extent not provided for by insurance or otherwise, is not likely to have a material effect on the university.

### NOTE 10: Risk Management

#### WORKERS' COMPENSATION

The state's Workers' Compensation program is administered by the State Office of Risk Management (SORM). As a participating agency, Texas State is assessed an annual charge for Workers' Compensation coverage for employees according to a set formula. The assessment for all fund sources was \$513,099.54 for the fiscal year ended August 31, 2019 and \$673,456.39 for the fiscal year ended August 31, 2018.

#### UNEMPLOYMENT COMPENSATION

The state provides an Unemployment Compensation program; actual claims are paid from several funding sources as determined by the Comptroller of Public Accounts. The Unemployment Compensation program is on a pay-as-you-go basis, in which no assets are set aside to be accumulated for the payment of claims. There were no material unemployment claims pending for the fiscal years ended August 31, 2019 and 2018.

#### PROPERTY AND OTHER INSURANCE COVERAGE

Property insurance is obtained through Alliant Insurance Services (Alliant) to include fire and flood coverage for all university buildings valued in excess of \$100,000. Texas State's other property, vehicle, and special events insurance policies are also obtained through Alliant, which is a participant in the SORM's statewide insurance program.

#### VEHICLE INSURANCE

The Texas Motor Vehicle Safety Responsibility Act (Texas Transportation Code, Chapter 601) requires that every non-governmental vehicle operated on a state highway be insured for minimum limits of liability in the amount of \$30,000/\$60,000 (bodily injury) and \$25,000 (property damage). There is coverage of \$1,000,000 combined single liability. The coverage exceeds the extent of the waivers of state immunity in the Tort Claims Act.

Auto insurance is obtained through Alliant to include liability coverage for all university-owned vehicles as well as hired and non-owned vehicles. Liability coverage is subject to a \$5,000 deductible. Vehicles rented or leased have additional comprehensive and collision coverage subject to a \$1,000 deductible.



# Texas State University

## Notes to the Financial Statements

### FOREIGN TRAVEL INSURANCE

Foreign travel accident and sickness as well as liability coverage is obtained through Alliant. This policy covers all students, faculty, and staff of the university that travel abroad for approved university business or instruction. The coverage offers out-of- country medical benefits of \$200,000, emergency medical of \$10,000, accidental death and dismemberment, emergency medical evacuation, emergency reunion, security evacuation, chaperone replacement, and war risk. The policy provides general liability coverage of \$1,000,000/\$2,000,000 and auto liability of \$1,000,000 single limit BI/PD and one accident.

### OTHER

Texas State University is exposed to a variety of civil claims resulting from the performance of its duties. It is the University's policy to periodically assess the proper combination of commercial insurance and retention of risk to cover losses to which it may be exposed. Liabilities are reported when it is both probable a loss has occurred, and the amount of that loss can be reasonably estimated. There were no liabilities outstanding as of August 31, 2019 and 2018.

<u>Claims and Judgments</u>	<u>2019</u>	<u>2018</u>
Balance, September 1	\$ -	\$ -
Increases	1,147,984.14	1,042,630.46
Decreases	(1,147,984.14)	(1,042,630.46)
<b>Balance, August 31</b>	<b>\$ -</b>	<b>\$ -</b>

### NOTE 11: The Financial Reporting Entity

Component Units are legally separate organizations for which the elected officials of the primary government are financially accountable. In addition, component units can be other organizations for which the nature and significance of their relationship with the primary government is such that exclusion would create misleading or incomplete financial statements.

### BLENDED COMPONENT UNITS

The **Texas State University Research Foundation** (Research Foundation) was formed as an independent 501(c)(3) organization on July 22, 2010. The Research Foundation was formed to support the university's mission and objectives of promoting higher education, conducting research, providing public service, and assisting in economic development in Texas. The Research Foundation is exclusively associated with the university and its fiscal year end concludes on the final day of February.

The Research Foundation is included in Texas State's financial statements as a blended component unit in accordance with GASB Statement 14 as amended by GASB Statement 39. Texas State's key business officers comprise the entirety of the Research Foundation's officers and directors, thereby enabling Texas State to impose its will on the Research Foundation.

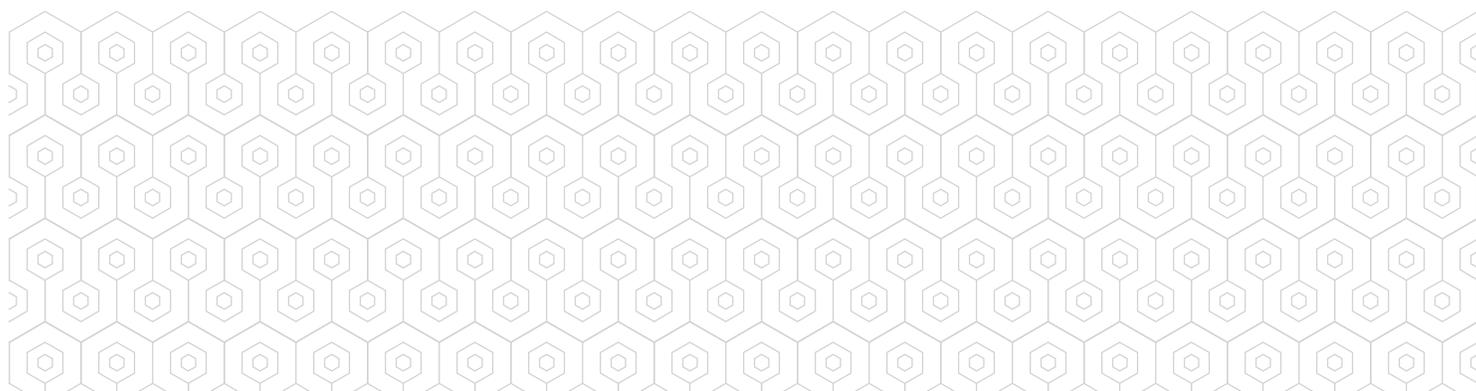
During the fiscal years ended February 28, 2019 and February 29, 2018, the Research Foundation incurred expenses in the amount of \$38,277.10 and \$68,688.74, respectively. Condensed financial information appears below. Separate financial statements may be obtained by contacting Texas State University, Director of Accounting, General Accounting Office, 601 University Drive, JCK 589, San Marcos, TX 78666-4684.

The **Harold M. Freeman Education Foundation** (Freeman Foundation) is a legally separate entity formed through a trust to make the use of Freeman Ranch available exclusively to Texas State. The Freeman Center is used and operated solely for farm, ranch and game management, education, and research purposes in connection with the educational activities of Texas State. There is no formal governing board for the Freeman Foundation. Texas State acts as an active co-trustee to operate the Center. Frost Bank operates as an inactive trustee to ensure the provisions of the trust are followed. Based on the Freeman Foundation's close relation to Texas State, it is included as a blended component unit. Separate financial statements are not issued by the Freeman Foundation, but condensed financial information appears below. Information about the Freeman Foundation may be obtained by contacting Texas State University, Director of Accounting, General Accounting Office, 601 University Drive, JCK 589, San Marcos, TX 78666-4684.

## Notes to the Financial Statements

### Condensed Financial Information for Blended Component Units

	<u>Research Foundation</u>	<u>Freeman Foundation</u>
<b>Condensed Statement of Net Position</b>		
<b>Assets</b>		
Current Assets	741.00	18,647.90
Capital Assets, Net		179,703.21
<b>Total Assets</b>	<b>741.00</b>	<b>198,351.11</b>
<b>Liabilities</b>		
Current Liabilities	1.00	
<b>Total Liabilities</b>	<b>1.00</b>	<b>0.00</b>
<b>Net Position</b>		
Capital Assets, Net of Related Debt		179,709.21
Restricted, Expendable		18,647.90
Unrestricted	740.00	
<b>Total Net Position</b>	<b>740.00</b>	<b>198,351.11</b>
<b>Condensed Statement of Revenues, Expenses and Changes in Net Position</b>		
Operating Revenues	38,277.10	75,314.62
Depreciation Expense		40,232.95
Operating Expenses	38,277.10	351,055.57
Operating Income/(Loss)	0.00	(315,973.90)
Non-Operating Revenues		4,244.26
Transfers In		362,152.00
<b>Change in Net Position</b>	<b>0.00</b>	<b>50,422.36</b>
<b>Net Position, Beginning</b>	<b>740.00</b>	<b>147,928.75</b>
<b>Net Position, Ending</b>	<b>740.00</b>	<b>198,351.11</b>
<b>Condensed Statement of Cash Flows</b>		
Net Cash Provided (Used) by:		
Operating Activities	(1,433.33)	(275,740.95)
Non-Capital Financing Activities		362,273.26
Capital and Related Financing Activities		(92,927.80)
Investing Activities		4,123.00
Beginning Cash Equivalents	2,174.33	20,920.39
<b>Ending Cash Equivalents</b>	<b>741.00</b>	<b>18,647.90</b>



# Texas State University

## Notes to the Financial Statements

### RELATED ORGANIZATIONS

The following affiliated foundations, while not component units, are disclosed due to their close relationship with the university. Affiliated foundations are controlled by separate boards of directors, pay their own expenses, and are not included in the basic financial statements of the university as the primary government. Instead information about their financial activities follows.

The **Texas State University Development Foundation** (Development Foundation) was formed in 1977 to support the educational, scientific, and research mission of Texas State. The Development Foundation raises and manages endowment funds designated for scholarships and other support for the university. Financial activity of the Development Foundation as of and for the years ended June 30, 2019 and 2018 was as follows:

	2019	2018
University Support	\$ 1,688,522.32	\$ 2,198,975.43
Student Scholarships	\$ 1,949,717.76	\$ 1,663,790.57
Restricted Gifts	\$ 3,532,949.15	\$ 2,392,277.99
Temporarily Restricted Gifts	\$ 2,995,146.17	\$ 1,144,669.67

The **McCoy College of Business Foundation** (Foundation) is a 501(c)(3), founded in 2004, dedicated exclusively to the support of the McCoy College of Business Administration (McCoy) at Texas State. The Foundation's Board of Directors manages its investments and determines McCoy's annual funding to support chairs, professorships, undergraduate scholarships, and graduate fellowships, as well as the development of faculty, programs, and students. Based upon estimated, unaudited figures for the fiscal years ended August 31, 2019 and 2018, the Foundation financial activity was as follows:

	2019	2018
Distributions to the University	\$ 1,027,250.00	\$ 887,750.00
New Contributions to Endowments	\$ 1,983,681.64	\$ 3,238,007.87
Assets	\$ 45,599,260.97	\$ 45,393,227.71
Liabilities	\$ 35,525.28	\$ 32,954.40

The Foundation pays its own operating expenses, including staff salaries, accounting, supplies, and auditing, which were estimated at approximately 0.4% of the assets of the Foundation for the years ended August 31, 2019 and 2018, respectively. Fees for investment management were approximately 1% of the assets each year.

The **Texas State Alumni Association's** (Association) efforts and funds are dedicated to the university, and are used to provide student scholarships, campus support, and alumni outreach or engagement activities. Financial activity as of and for the years ended August 31, 2019 and 2018 was as follows:

	2019	2018
Student Scholarships	\$ 159,300.00	\$ 177,250.00
Deposits Held in Trust at the University	\$ 142,515.38	\$ 281,440.72

Deposits held in trust at the university are considered Agency Funds in the university's financial statements.

### NOTE 12: Stewardship, Compliance, and Accountability

Texas State's administration is not aware of any non-compliance items or material violations of finance-related legal and contract provisions. Per the laws of the State of Texas, Texas State cannot spend amounts in excess of appropriations granted by the Texas Legislature and there are no deficits reported in net position.

## Notes to the Financial Statements

### NOTE 13: Donor Restricted Endowments

Net appreciation classified as restricted, expendable on the Statement of Net Position is as follows:

	<u>2019</u>	<u>2018</u>
	\$21,403,604.08	\$23,399,506.23
<b>Totals</b>	<b><u>\$21,403,604.08</u></b>	<b><u>\$23,399,506.23</u></b>

For fiscal year 2019 there was a decrease in fair value totaling (\$7,141,299.08) as opposed to the increase in fair value of \$2,564,836.65 for 2018. The amount reported as net appreciation represents net appreciation on investments of donor restricted endowments available for authorization for expenditure. Pursuant to the Uniform Prudent Management of Institutional Funds Act (Property Code Chapter 163.001), net appreciation (realized and unrealized) in the fair market value of the endowment assets in excess of historical dollar value of the gifts may be distributed to the extent prudent.

Distributions are calculated using a 60-month FMV rolling average times a 3% distribution. The individual endowments own units in a restricted investment pool and the annual distribution is allocated on a per unit basis. Changes from prior year balances for expendable and non-expendable balances were as follows:

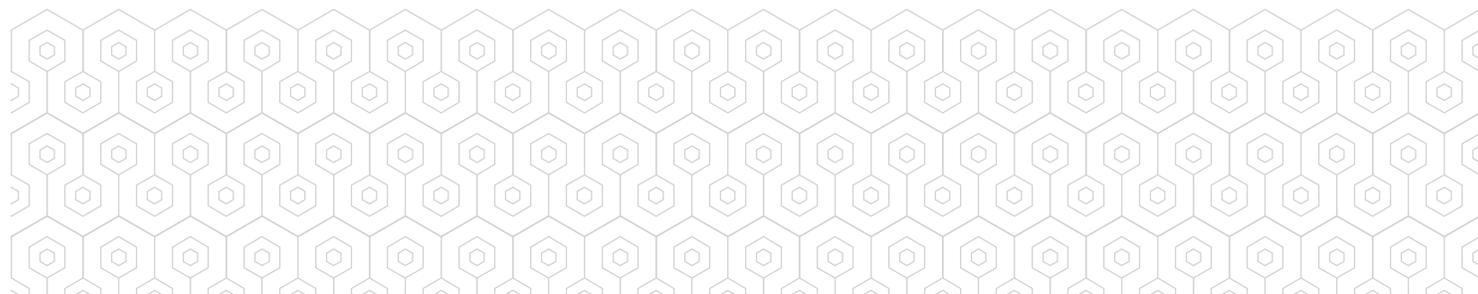
<u>True Endowment Funds</u>	<u>Increase/(Decrease)</u>		<u>Reason for Change</u>
	<u>2019</u>	<u>2018</u>	
Expendable Balances	\$ (1,995,902)	\$ 3,772,424	Fair value fluctuations, earnings, fees and distributions.
Non-Expendable Balances	645,937	1,591,836	New gifts

### NOTE 14: Subsequent Events

The Texas State University System issued tax-exempt bonds Series 2019A in the fall of 2019. The proceeds were distributed among the components of the system in December 2019, and Texas State received their portion of \$33 million. On October 24, 2019, the Revenue Financing System (RFS) priced Series 2019A, tax-exempt bonds totaling \$176,055,000 at par and including a premium of \$26,442,211. The bonds are to finance a variety of capital projects at TSUS components, refund a portion of the System's outstanding commercial paper notes, refund a portion of the System's outstanding revenue bonds, and to pay costs of issuing the bonds. The RFS will take delivery of the bonds on December 17, 2019. \$89,706,200 of the proceeds will refund outstanding commercial paper, \$71,800,231 will be used to refund outstanding revenue bonds, and \$39,957,961 will be used for capital projects. Additionally, Texas Tech University System will provide \$2,118,273 needed to defease a portion of Series 2010 bonds attributable to Angelo State University. Principal to be refunded includes \$19,280,000 from Series 2010 and \$53,185,000 from Series 2010A.

On October 24, 2019, the RFS priced Series 2019B, \$149,480,000 of taxable bonds to refund a portion of the System's outstanding debt and pay costs of issuing the bonds. The RFS will take delivery of the bonds on November 21, 2019. Principal refunded includes \$64,230,000 of Series 2011, \$14,685,000 of Series 2012, and \$59,475,000 of Series 2013.

After the delivery of the 2019A Series and refunding of the outstanding commercial paper notes, outstanding principal of bonds will be \$1,091,530,000 for the System.



## McCoy College of Business Master's Programs

The McCoy College of Business added two new master's degree programs, aimed at preparing graduates with the technical knowledge and skills essential for future business leaders: data analytics and information systems and marketing research and analysis.

The master of science in data analytics and information systems degree provides the skills required to manage and analyze data for data-driven decision-making. Graduates of this program will be capable of transforming organizational data into actionable information using data analytics and information systems skills.

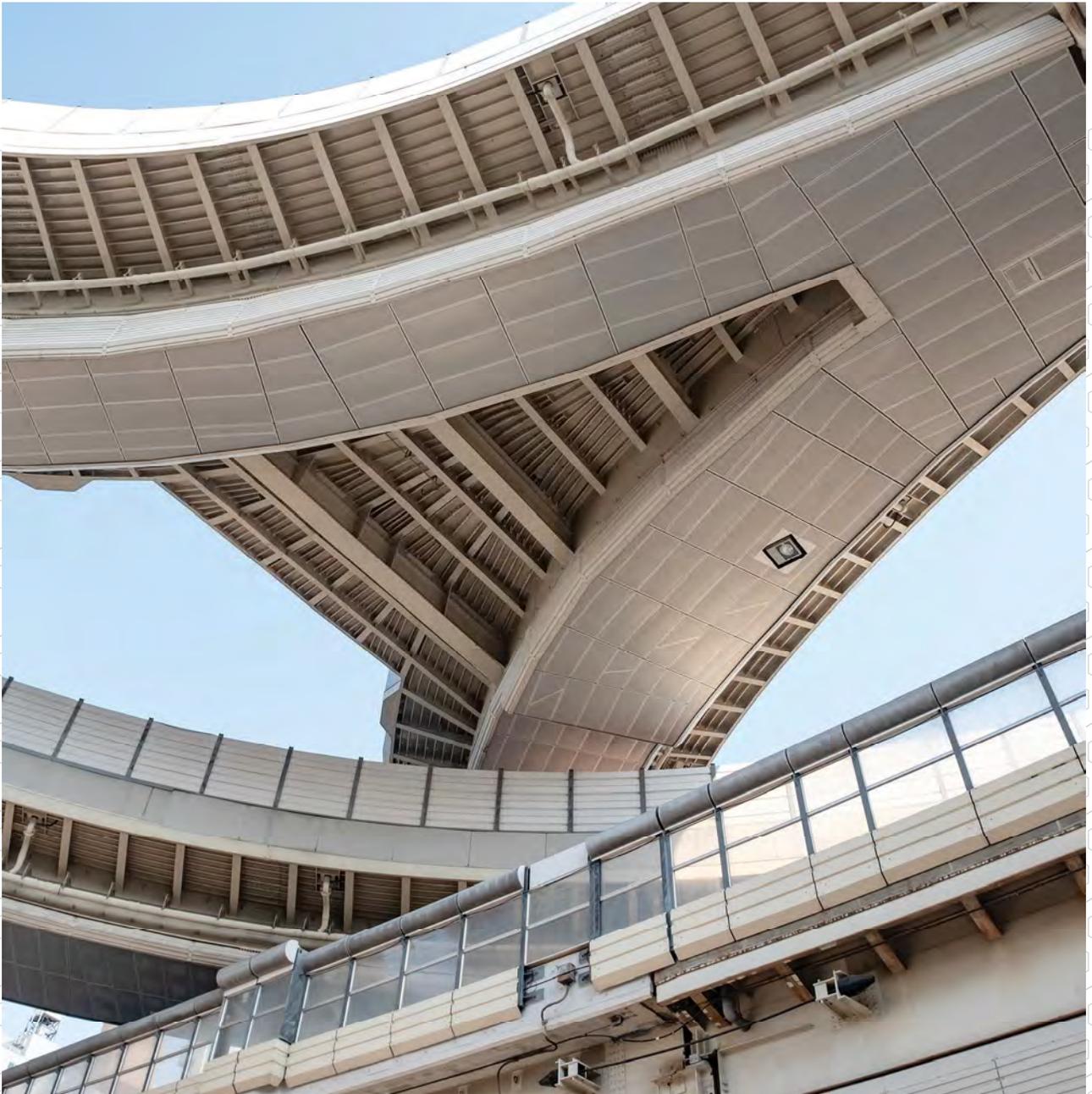
The master of science in marketing research and analysis is designed for marketing majors or marketing professionals with an interest in advanced studies to enhance their ability to excel as a marketer in today's increasingly data-driven marketplace. Students will gain skills in conducting marketing research and using analytical tools to make, analyze and communicate data-driven decisions for guiding marketing practice.



## Bachelor's in Civil Engineering

Texas State's new bachelor's degree in civil engineering is the first program of its kind in Texas, with a holistic emphasis on technology-enhanced infrastructure, including sensor systems, predictive analytics tools, digital automation, and communications.

The program will prepare students to be leaders in the design, monitoring, maintenance and management of essential infrastructure for communities around the globe.



TEXAS  STATE  
UNIVERSITY®  
*The rising STAR of Texas*

The Board of Regents holds four quarterly meetings each year. Additionally, special called meetings may be held throughout the year to address time sensitive items. Quarterly meetings are held on the campuses of the System's four-year institutions or in Austin. Special called meetings are usually conducted via conference call.

All Board of Regents meetings are open to the public and noticed in advance on the [Texas Secretary of State's website](#).

## Meeting Multimedia

**Quarterly Meeting - May 21, 2020**  
**at 1:00 p.m.**  
 The Texas State University System  
 (Virtual)  
 Austin, TX

[Board Materials](#)  
[Webcast](#)

**Quarterly Meeting - Feb. 13-14, 2020**  
 LBJ Student Center  
 Texas State University - San Marcos,  
 TX

[Board Materials](#)  
[Minutes](#)  
[02/13 Webcast](#)  
[02/14 Webcast](#)

**Quarterly Meeting - Nov. 14-15, 2019**  
 Lowman Student Center  
 Sam Houston State University -  
 Huntsville, TX

[Board Materials](#)  
[Minutes](#)  
[11/14 Webcast](#)  
[11/15 Webcast](#)

**Special Called Meeting**  
 September 26, 2019  
 The Texas State University System -  
 Austin, TX

[Board Materials](#)  
[Minutes](#)  
[Audio](#)

**Quarterly Meeting - Aug. 22-23, 2019**  
 Morgan University Center  
 Sul Ross State University - Alpine,  
 TX

[Board Materials](#)  
[Minutes](#)  
[8/22 Webcast \(Part 1\)](#)  
[8/22 Webcast \(Part 2\)](#)  
[8/23 Webcast \(Part 1\)](#)  
[8/23 Webcast \(Part 2\)](#)

## Future Board Meetings

**May 21, 2020**  
 Virtual Meeting  
[Texas State University System](#)  
 Austin, TX

**Aug. 13-14, 2020**  
[College of Osteopathic Medicine](#)  
 Sam Houston State University  
 Conroe, TX

**Nov. 19-20, 2020**  
[Mary & John Gray Library](#)  
 Lamar University  
 Beaumont, TX

## Accessibility

For special accommodations and other information about Board meeting accessibility, please read the [Accessibility](#)

The Texas State University System is governed by a nine-member Board of Regents appointed by the governor and confirmed by the Senate. Board terms are staggered so that three members of the Board are appointed every two years during the legislative session. A non-voting student regent is also appointed annually to the board for a one-year term.

## Board Links

[Board Meetings](#)

[Committee Meetings](#)

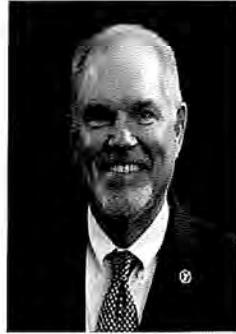
[Former Regents](#)

[Regents' Awards](#)

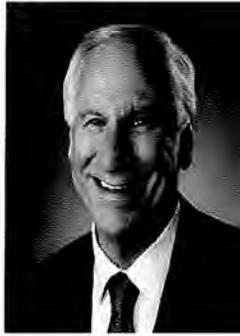
[Student Regent Application](#)



**William F. Scott**  
Chairman  
Nederland



**David Montagne**  
Vice Chairman  
Beaumont



**Charlie Amato**  
Regent  
San Antonio



**Duke Austin**  
Regent  
Houston



**Garry Crain**  
Regent  
The Hills



**Dr. Veronica Muzquiz Edwards**  
Regent  
San Antonio





# Internal Audit Annual Report Texas State University System Office of Internal Audit

Fiscal Year Ending August 31, 2019



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## **I. Compliance with Texas Government Code, Section 2102.015: Posting the Internal Audit Plan, Internal Audit Annual Report, and Other Audit information on Internet Website**

Texas Government Code Section 2102.015 requires state agencies and higher education institutions to post certain information on their internet websites. The Texas State University System (TSUS) Office of Internal Audit ensures compliance with Section 2102.015 through the following procedures:

- Posting its annual audit and compliance plan to the Office of Internal Audit webpages of the TSUS and components' websites within 30 days after formal approval by the Board of Regents ("the Board"). The Fiscal Year 2020 Audit and Compliance Plan was approved by the Board on August 22, 2019 and has been posted as required.
- Posting this *Internal Audit Annual Report for Fiscal Year 2019* to the Office of Internal Audit webpages of the TSUS and components' websites within 30 days of distributing the report to the Finance & Audit Committee of the Board.
- Including in the quarterly board materials, posted on the TSUS website, a detailed summary of the weaknesses, deficiencies, wrongdoings, or other concerns raised by audit and compliance plan projects and a detailed summary of the actions taken by management to address resultant recommendations.

The TSUS Office of Internal Audit reserves the right to not post information contained in the internal audit and compliance plan, reports, or this Internal Audit Annual Report if the information is exempt from public disclosure under Chapter 552 of the Texas Government Code.

## II. Audit and Compliance Plan for Fiscal Year 2019

The TSUS Office of Internal Audit prepares a consolidated audit and compliance plan (“the Plan”) for System Administration and its components. The following is an excerpt listing all projects included in the Plan for fiscal year 2019, amended to include the status of the projects, the report titles, report numbers (if applicable), and dates the reports were issued to external oversight entities.

### SYSTEM ADMINISTRATION STATUS OF PROJECTS IN FISCAL YEAR 2019 AUDIT AND COMPLIANCE PLAN

Project/Activity	Status, Report Title/Report Number, and Date Issued to External Oversight Entities
Hazlewood	In progress.
Leave Reporting	Not performed. Finite resources and higher risk or mandated projects resulting from the annual risk assessment precluded carrying this project to the Fiscal Year 2020 Audit and Compliance Plan.
General Data Protection Regulation (GDPR)	During project planning, an analysis indicated GDPR applied to .78% to 1.86% of students and staff and was therefore deemed low risk. Project cancelled due to higher risk projects requiring compliance resources.
Title IX	Cancelled due to Federal Title IX requirements remaining in flux in fiscal year 2019.
TSUS Policy Alignment	In progress.
Construction Audits (OUTSOURCED)	In progress.
TAC 202 and Cybersecurity	In progress. This is a multi-year project due to the scope and number of institutions involved.
SB 20 – Annual Review	Completed. System-wide report: Management Advisory Letter - Senate Bill 20 Required Audits for Fiscal Year 2019, 8-30-2019.
SB 20 – Contract Administration	Completed. System-wide report: Management Advisory Letter - Senate Bill 20 Required Audits for Fiscal Year 2019, 8-30-2019.
Quality Assurance Review	In progress.
Multi-hazard Emergency Operations Plan; Safety and Security Review	Completed. Management Advisory Letter – TSUS Compliance Review – Multi-Hazard Emergency Operations Plan, 8-15-2019.
GAO Auditing Standards Revisions	In progress. Activity does not result in a written report.
Follow-Up Reviews	On-going. Results posted in Board Book materials and on the TSUS webpage on a quarterly basis.
Annual Risk Assessment and Audit Plan	Completed.

	Activity does not result in a written report, rather it results in the annual Audit and Compliance Plan. The Fiscal Year 2020 Audit and Compliance Plan is posted on the TSUS and components' webpages.
Internal Audit Annual Report	Completed. Internal Audit Annual Report, Texas State University System, 10-29-2018.
Continuing Education	Completed. Activity does not result in a report.
Special Projects	<ul style="list-style-type: none"> <li>➤ Management requested review – completed; RGC Appropriation Transfer Timeline, email issued to President 10-9-2018.</li> <li>➤ EthicsPoint #22 – referred to appropriate authorities; closed within the hotline system.</li> <li>➤ EthicsPoint #23 – completed; summarized results within the hotline system.</li> <li>➤ Respond to multiple Open Records Requests – completed.</li> </ul>
SACSCOC Assistance	On-going. Activity does not result in a report.
Response to System Requests	On-going. Activity does not result in a report.
Component Audit Assistance	On-going. Activity does not result in a report.
Audit Liaison Activities	On-going. Activity does not result in a report.
System-wide Equal Employment Opportunity (EEO) Training	Project cancelled due to higher risk on-line training projects in development and the availability of on-line EEO training through the Texas Workforce Commission.
Compliance Program Development	On-going. Activity does not result in a report.
Compliance Newsletter	Completed. Newsletters issued in November 2018, February 2019, May 2019, and August 2019.
Compliance Risk Universe	On-going. Activity does not result in a report.
Compliance Program Development	On-going. Activity does not result in a report.

**PRIOR YEAR PROJECTS COMPLETED DURING FISCAL YEAR 2019**

Project/Activity	Report Title/Report Number, and Date Issued to External Oversight Entities
Title IX	Management Advisory Letter – TSUS Compliance Review – Title IX Employee Training, 4-10-2019.
Construction Audits	Retama Hall Renovations Construction Audit Services, 9-5-2018.

**LAMAR INSTITUTE OF TECHNOLOGY  
STATUS OF PROJECTS IN FISCAL YEAR 2019 AUDIT AND COMPLIANCE PLAN**

<b>Project/Activity</b>	<b>Status, Report Title/Report Number, and Date Issued to External Oversight Entities</b>
Inventory Special Project	Not performed. Finite resources and higher risk or mandated projects resulting from the 2020 Risk Assessment precluded carrying this project to the Fiscal Year 2020 Audit and Compliance Plan.
IT - On-Going	On-going. Activity does not result in a report.
SB 20 – Contract Administration	Completed. System-wide report: Management Advisory Letter - Senate Bill 20 Required Audits for Fiscal Year 2019, 8-30-2019.
Quality Assurance Review	In progress.
Follow-Up Reviews	On-going. Results posted in Board Book materials and on the TSUS webpage on a quarterly basis.
Annual Risk Assessment and Audit Plan	Completed. Activity does not result in a written report, rather it results in the annual Audit and Compliance Plan. The Fiscal Year 2020 Audit and Compliance Plan is posted on the TSUS and components' webpages.
Internal Audit Annual Report	Completed. Internal Audit Annual Report, Texas State University System, 10-29-2018.
Continuing Education	Completed. Activity does not result in a report.
Special Projects	Management requested review – completed; Management Advisory Letter LIT-19-001, Limited Review of Information Technology Logical Access, 5-17-2019.
Respond to System Administration Requests	On-going. Activity does not result in a report. ➤ Gathering and analyzing five years of leave data.
Audit Liaison Activities	On-going. Activity does not result in a report. (EEOC review by the Texas Workforce Commission)

**PRIOR YEAR PROJECTS COMPLETED DURING FISCAL YEAR 2019**

<b>Project/Activity</b>	<b>Report Title/Report Number, and Date Issued to External Oversight Entities</b>
Special Projects	Management Advisory Letter LIT-18-004, SkillsUSA Student Organization, 12-21-2018.
Payment Card Industry Data Security Standards Risk Assessment	Internal memorandum issued 12-20-2018.

**LAMAR STATE COLLEGE - ORANGE**  
**STATUS OF PROJECTS IN FISCAL YEAR 2019 AUDIT AND COMPLIANCE PLAN**

Project/Activity	Status, Report Title/Report Number, and Date Issued to External Oversight Entities
Physical Security	Not performed. Finite resources and higher risk or mandated projects resulting from the 2020 Risk Assessment precluded carrying this project to the Fiscal Year 2020 Audit and Compliance Plan.
IT - On-Going	On-going. Activity does not result in a report.
SB 20 – Contract Administration	Completed. System-wide report: Management Advisory Letter - Senate Bill 20 Required Audits for Fiscal Year 2019, 8-30-2019.
Quality Assurance Review	In progress.
Follow-Up Reviews	On-going. Results posted in Board Book materials and on the TSUS webpage on a quarterly basis.
Annual Risk Assessment and Audit Plan	Completed. Activity does not result in a written report, rather it results in the annual Audit and Compliance Plan. The Fiscal Year 2020 Audit and Compliance Plan is posted on the TSUS and components' webpages.
Internal Audit Annual Report	Completed. Internal Audit Annual Report, Texas State University System, 10-29-2018.
Continuing Education	Completed. Activity does not result in a report.
Special Projects	EthicsPoint #3 – completed; internal memorandum issued 7-1-2019.
Respond to System Administration Requests	On-going. Activity does not result in a report. ➤ Gathering and analyzing five years of leave data.
Audit Liaison Activities	On-going. Activity does not result in a report. (THECB Formula Funding and Comptroller Desk Review of Promotional Items)

**PRIOR YEAR PROJECTS COMPLETED DURING FISCAL YEAR 2019**

Project/Activity	Report Title/Report Number, and Date Issued to External Oversight Entities
Payment Card Industry Data Security Standards Risk Assessment	Internal memorandum issued 12-19-18.

**LAMAR STATE COLLEGE - PORT ARTHUR  
STATUS OF PROJECTS IN FISCAL YEAR 2019 AUDIT AND COMPLIANCE PLAN**

<b>Project/Activity</b>	<b>Status, Report Title/Report Number, and Date Issued to External Oversight Entities</b>
Physical Security	Not performed. Finite resources and higher risk or mandated projects resulting from the 2020 Risk Assessment precluded carrying this project to the Fiscal Year 2020 Audit and Compliance Plan.
IT – Patch Management	Completed. Management advisory letter issued to management 5-7-2019.
IT - On-Going	On-going. Activity does not result in a report.
SB 20 – Contract Administration	Completed. System-wide report: Management Advisory Letter - Senate Bill 20 Required Audits for Fiscal Year 2019, 8-30-2019.
Quality Assurance Review	In progress.
THECB Facilities Audit	In progress.
Follow-Up Reviews	On-going. Results posted in Board Book materials and on the TSUS webpage on a quarterly basis.
Annual Risk Assessment and Audit Plan	Completed. Activity does not result in a written report, rather it results in the annual Audit and Compliance Plan. The Fiscal Year 2020 Audit and Compliance Plan is posted on the TSUS and components' webpages.
Internal Audit Annual Report	Completed. Internal Audit Annual Report, Texas State University System, 10-29-2018.
Continuing Education	Completed. Activity does not result in a report.
Special Projects	EthicsPoint #7 – completed; internal memorandum issued 4-25-2019.
Respond to System Administration Requests	On-going. Activity does not result in a report. ➤ Gathering and analyzing five years of leave data.
Audit Liaison Activities	On-going. Activity does not result in a report. (THECB Formula Funding and THECB Facilities Follow-up)

**PRIOR YEAR PROJECTS COMPLETED DURING FISCAL YEAR 2019**

<b>Project/Activity</b>	<b>Report Title/Report Number, and Date Issued to External Oversight Entities</b>
Payment Card Industry Data Security Standards Risk Assessment	Internal memorandum issued 12-19-2018.

**LAMAR UNIVERSITY**  
**STATUS OF PROJECTS IN FISCAL YEAR 2019 AUDIT AND COMPLIANCE PLAN**

Project/Activity	Status, Report Title/Report Number, and Date Issued to External Oversight Entities
Grants Management	Cancelled due to multiple personnel and process changes. Internal Audit continues to monitor this area and will continually reassess risks for consideration for future audit. Additionally, certain grant activity is being reviewed under a special project.
IT – Logical Access	In progress.
IT – Network Management	Cancelled due to an infrastructure update to the network. Internal Audit will monitor the progress of this update and will reassess risks for consideration for future audit.
IT – Server Management	Completed. Server Management & Active Directory, LU-18-004, 7-2-2019.
IT – On-Going	On-going. Activity does not result in a report.
SB 20 – Contract Administration	Completed. System-wide report: Management Advisory Letter - Senate Bill 20 Required Audits for Fiscal Year 2019, 8-30-2019.
Quality Assurance Review	In progress.
Follow-Up Reviews	On-going. Results posted in Board Book materials and on the TSUS webpage on a quarterly basis.
Annual Risk Assessment and Audit Plan	Completed. Activity does not result in a written report, rather it results in the annual Audit and Compliance Plan. The Fiscal Year 2020 Audit and Compliance Plan is posted on the TSUS and components' webpages.
Internal Audit Annual Report	Completed. Internal Audit Annual Report, Texas State University System, 10-29-2018.
Continuing Education	Completed. Activity does not result in a report.
KVLU-FM Radio Station	In progress.
NCAA Agreed-Upon Procedures	Completed. Lamar University Final AUP Report, 1-23-2019
Special Projects	<ul style="list-style-type: none"> <li>➤ Management requested review – completed; Nursing Shortage Reduction Regular Program Audit for FY 2015 Award, LU-19-001, 2-26-2019.</li> <li>➤ Walk-in complaint – completed; employee interviews, referred to appropriate authorities.</li> <li>➤ EthicsPoint #84 - insufficient information; closed within the hotline system.</li> <li>➤ EthicsPoint #85 – in progress.</li> <li>➤ EthicsPoint #86 – completed; summarized results within the hotline system.</li> <li>➤ Respond to multiple Open Records Requests – completed.</li> <li>➤ Management requested review – in progress; CICE Review.</li> </ul>
Respond to System Administration Requests	On-going. Activity does not result in a report. <ul style="list-style-type: none"> <li>➤ Gathering and analyzing five years of leave data.</li> </ul>

Audit Liaison Activities	On-going. Activity does not result in a report. (NCAA Agreed-Upon Procedures, KVLU Financial Statement Audit, EEOC review by the Texas Workforce Commission, and Comptroller Desk Review of Promotional Items)
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**PRIOR YEAR PROJECTS COMPLETED DURING FISCAL YEAR 2019**

<b>Project/Activity</b>	<b>Report Title/Report Number, and Date Issued to External Oversight Entities</b>
Payment Card Industry Data Security Standards Risk Assessment	Internal memorandum issued 12-18-2018.
KVLU-FM Radio Station	KVLU FS 2017 Final, 9-24-2018.
NCAA Agreed-Upon Procedures	LU NCAA 2017, 9-25-2018.
Special Projects	<ul style="list-style-type: none"> <li>➤ Management Advisory Letter LU-16-001, Counseling and Special Populations Department, 9-14-2018.</li> <li>➤ Management Advisory Letter LU-18-006, Comprehensive Exams, 11-26-2018.</li> <li>➤ Management Advisory Letter LU-18-008, Hiring Concern, 1-23-2019.</li> </ul>

**SAM HOUSTON STATE UNIVERSITY  
STATUS OF PROJECTS IN FISCAL YEAR 2019 AUDIT AND COMPLIANCE PLAN**

Project/Activity	Status, Report Title/Report Number, and Date Issued to External Oversight Entities
Department of Agricultural Sciences	Not performed. Carried forward to Fiscal Year 2020 Audit and Compliance Plan.
Facilities Management	Postponed. Management Advisory Letter SHSU-19-003, Audit of Facilities Management Select Processes, 4-11-2019.
Financial Reporting – IT Integrated	Not performed. Carried forward to Fiscal Year 2020 Audit and Compliance Plan.
IT – Patch Management	In progress.
Other Revenues – Academic Departments	In progress.
IT – Project Management and System Development Methodology	Postponed. Audit to be planned after SHSU Prioritization and Communication Process matures and the project management and system development life cycle methodologies / standards have been formalized.
IT – Blackboard Learning Management System	Not performed. Carried forward to Fiscal Year 2020 Audit and Compliance Plan.
SB 20 – Contract Administration	Completed. System-wide report: Management Advisory Letter - Senate Bill 20 Required Audits for Fiscal Year 2019, 8-30-2019.
Quality Assurance Review	In progress.
Follow-Up Reviews	On-going. Results posted in Board Book materials and on the TSUS webpage on a quarterly basis.
Annual Risk Assessment and Audit Plan	Completed. Activity does not result in a written report, rather it results in the annual Audit and Compliance Plan. The Fiscal Year 2020 Audit and Compliance Plan is posted on the TSUS and components' webpages.
Internal Audit Annual Report	Completed. Internal Audit Annual Report, Texas State University System, 10-29-2018.
Continuing Education	Completed. Activity does not result in a report.
Joint Admission Medical Program (JAMP)	Completed. Appropriateness of Joint Admission Medical Program Expenditures, SHSU-19-002, 10-26-2018.
NCAA Agreed-Upon Procedures	Completed. SHSU-19-001, NCAA Financial Statement Compilation for FY 2018, 1-30-2019.
Special Projects	<ul style="list-style-type: none"> <li>➤ DELTA Trailer review - completed; activity did not result in a written report.</li> <li>➤ Hazlewood Legacy Review - completed; response provided to the Texas Higher Education Coordinating Board on 3-19-2019.</li> <li>➤ EthicsPoint #72 – completed; summarized results within the hotline system.</li> </ul>

	<ul style="list-style-type: none"> <li>➤ EthicsPoint #73 – completed; summarized results within the hotline system.</li> <li>➤ EthicsPoint #74 – completed; summarized results within the hotline system.</li> <li>➤ EthicsPoint #75 – completed; summarized results within the hotline system.</li> <li>➤ EthicsPoint #76 – completed; summarized results within the hotline system.</li> <li>➤ EthicsPoint #77 – completed; issued an internal memorandum on 6-10-2019.</li> <li>➤ EthicsPoint #78 – in progress.</li> <li>➤ EthicsPoint #79 – completed; issued an internal memorandum on 6-6-2019.</li> <li>➤ COBA Review – completed; referred to State Auditor's Office.</li> <li>➤ THECB complaint regarding COE – in progress.</li> </ul>
Respond to System Administration Requests	<p>On-going. Activity does not result in a report.</p> <ul style="list-style-type: none"> <li>➤ Gathering and analyzing five years of leave data.</li> </ul>
Audit Liaison Activities	<p>On-going. Activity does not result in a report. (Comptroller Desk Review of Promotional Items, Department of Education, National Science Foundation, Comptroller Post Payment Audit, Comptroller Excise Tax Audit, THECB B-on-Time Audit, Department of Justice)</p>

**PRIOR YEAR PROJECTS COMPLETED DURING FISCAL YEAR 2019**

Project/Activity	Report Title/Report Number, and Date Issued to External Oversight Entities
IT – Change Management Process	Banner Change Management, SHSU-18-004, 2-4-2019.
State Auditor's Office Hotline Complaint: 18-2987	Response provided to State Auditor's Office on 11-21-2019.

**SUL ROSS STATE UNIVERSITY AND RIO GRANDE COLLEGE  
STATUS OF PROJECTS IN FISCAL YEAR 2019 AUDIT AND COMPLIANCE PLAN**

<b>Project/Activity</b>	<b>Status, Report Title/Report Number, and Date Issued to External Oversight Entities</b>
Enrollment Management	Not performed. Carried forward to Fiscal Year 2020 Audit and Compliance Plan.
Accounts Payable	In progress.
Meats Lab	Completed. ANRS Meats Lab, SRSU-19-003, 4-9-2019.
Capital Projects/Construction	Not performed due to complete turnover in the department. Internal Audit will reevaluate audit timing during the fiscal year 2020 risk assessment.
SB 20 – Contract Administration	Completed. System-wide report: Management Advisory Letter - Senate Bill 20 Required Audits for Fiscal Year 2019, 8-30-2019.
Quality Assurance Review	In progress.
THECB Facilities Audit	Completed. SRSU THECB Facilities Audit, SRSU 19-006, 10-1-2019.
Follow-Up Reviews	On-going. Results posted in Board Book materials and on the TSUS webpage on a quarterly basis.
Annual Risk Assessment and Audit Plan	Completed. Activity does not result in a written report, rather it results in the annual Audit and Compliance Plan. The Fiscal Year 2020 Audit and Compliance Plan is posted on the TSUS and components' webpages.
Internal Audit Annual Report	Completed. Internal Audit Annual Report, Texas State University System, 10-29-2018.
Continuing Education	Completed. Activity does not result in a report.
Joint Admission Medical Program (JAMP)	Completed. Appropriateness of Joint Admission Medical Program Expenditures, SRSU-19-001, 10-26-2018.
Special Projects	<ul style="list-style-type: none"> <li>➤ Management requested review – completed; Timekeeping/dual employment review; internal memorandum issued 5-16-19.</li> <li>➤ Management requested review – completed; Post Office review; internal memorandum issued 8-28-2018.</li> </ul>
Respond to System Administration Requests	On-going. Activity does not result in a report. <ul style="list-style-type: none"> <li>➤ Gathering and analyzing five years of leave data.</li> </ul>
Audit Liaison Activities	On-going. Activity does not result in a report. (THECB Facilities Audit and Peer Review Team)

**PRIOR YEAR PROJECTS COMPLETED DURING FISCAL YEAR 2019**

<b>Project/Activity</b>	<b>Report Title/Report Number, and Date Issued to External Oversight Entities</b>
Purchasing	Purchasing, SRSU-17-007, 1-30-2019.

**TEXAS STATE UNIVERSITY  
STATUS OF PROJECTS IN FISCAL YEAR 2019 AUDIT AND COMPLIANCE PLAN**

Project/Activity	Status, Report Title/Report Number, and Date Issued to External Oversight Entities
Laboratory Safety	Not performed. Carried forward to 2020 Audit and Compliance Plan.
Research Compliance	Not performed. Carried forward to 2020 Audit and Compliance Plan.
SaaS Applications	Not performed. Carried forward to 2020 Audit and Compliance Plan.
General IT Controls, Student Affairs	In progress.
Student Recreation Center	In progress.
Monitoring of Electronic Access to Physical Structures	Not performed. Carried forward to 2020 Audit and Compliance Plan.
SB 20 – Contract Administration	Completed. System-wide report: Management Advisory Letter - Senate Bill 20 Required Audits for Fiscal Year 2019, 8-30-2019.
Quality Assurance Review	In progress.
Follow-Up Reviews	On-going. Results posted in Board Book materials and on the TSUS webpage on a quarterly basis.
Annual Risk Assessment and Audit Plan	Completed. Activity does not result in a written report, rather it results in the annual Audit and Compliance Plan. The Fiscal Year 2020 Audit and Compliance Plan is posted on the TSUS and components' webpages.
Internal Audit Annual Report	Completed. Internal Audit Annual Report, Texas State University System, 10-29-2018.
Continuing Education	Completed. Activity does not result in a report.
Joint Admission Medical Program (JAMP)	Completed. Appropriateness of Joint Admission Medical Program Expenditures, TXST-19-001, 10-26-2018
Special Projects	<ul style="list-style-type: none"> <li>➤ Walk-in complaint – completed; Timekeeping Review, Dean of Liberal Arts; email issued to Provost, 9-7-2018.</li> <li>➤ Walk-in complaint – completed; Review of Musical Theatre; summary provided to President, Provost, and Dean, 10-3-2018.</li> <li>➤ Respond to Open Records Request – completed.</li> <li>➤ Management requested review – completed; Management Advisory Letter TXST-19-004, Office of Disability Services – Review of Procurement Card Purchases and Other Expenditures, 5-17-2019.</li> <li>➤ UPD notification review – completed; Management Advisory Letter TXST-19-005, Department of Athletics – Review of Procedures Relating to Selected Cash Travel Advances, 6-21-2019.</li> <li>➤ EthicsPoint #21 – in progress.</li> </ul>

	<ul style="list-style-type: none"> <li>➤ EthicsPoint #43 – completed; summarized results within the hotline system.</li> <li>➤ EthicsPoint #44 – referred to appropriate authorities; closed within the hotline system.</li> <li>➤ EthicsPoint #45 – in progress.</li> <li>➤ EthicsPoint #46 – insufficient information; closed within the hotline system.</li> <li>➤ EthicsPoint #49 – completed; summarized results within the hotline system.</li> <li>➤ Management requested review – completed; Review of Study Abroad, TXST to Canterbury Program; email issued to Associate VP for Academic Affairs, 12-19-2018.</li> <li>➤ Hotline call – completed; Review of School of Music; email issued to VP for Academic Affairs, Associate VP for Academic Affairs, Dean, and Director, 2-20-2019.</li> <li>➤ Management requested review – completed; Timekeeping Review, Utilities Department; internal memorandum issued 8-16-2019.</li> </ul>
Respond to System Administration Requests	<p>On-going. Activity does not result in a report.</p> <ul style="list-style-type: none"> <li>➤ Gathering and analyzing five years of leave data.</li> </ul>
Audit Liaison Activities	<p>On-going. Activity does not result in a report. (THECB Teacher Quality, Institute of Criminal Justice, Comptroller Prompt Payment Audit, Comptroller Sales Tax, State Auditor’s HUB audit)</p>

**PRIOR YEAR PROJECTS COMPLETED DURING FISCAL YEAR 2019**

<b>Project/Activity</b>	<b>Report Title/Report Number, and Date Issued to External Oversight Entities</b>
Compliance with Research Agreements	Compliance with Research Agreements, TXST-18-005, 5-17-2019.
Travel Expenditures	Travel Expenditures, TXST-18-006, 5-17-2019.
EHSRM Key Positions	Environmental Health, Safety, and Risk Management Key Safety Positions, TXST-18-004, 6-4-2019.

### III. Consulting Services and Nonaudit Services Completed

The *International Standards for the Professional Practice of Internal Auditing* defines “consulting services” as advisory in nature, generally performed at the specific request of management. The *Government Auditing Standards* define “nonaudit services” as those activities which are not financial audits, attestation engagements, or performance audits. The following bulleted lists represent consulting and nonaudit services conducted during fiscal year 2019:

#### SYSTEM ADMINISTRATION

- Provided commentary on potential Rule changes for the Board’s consideration and on potential administrative policy changes.
- Prepared audit delegation requests for multiple projects across the TSUS.
- Researched a variety of issues at management’s request.
- Maintained the TSUS CPE Sponsorship with the Texas State Board of Public Accountancy as a registered CPE sponsor.
- Assisted components in re-accreditation efforts, and in particular, in assessing audit requirements and the timing of required audits.
- Performed a review of the Rio Grande College Library Expansion Transfer.
- Assisted System Administration in its efforts to obtain a historic tax credit for O. Henry Hall.
- Compiled a summary of audit issues and risks to assist in onboarding of new executive management at a component.
- Monitored pending legislation and provided feedback when audit implications were present.

#### LAMAR COMPONENTS

- Prepared and sent email “blasts” reminding faculty, staff, and students of their responsibilities to and options for reporting suspected waste, fraud, and abuse.
- Presented information on internal controls and audit observations at Lamar University departmental meetings within a specific college.
- Presented information on the Office of Internal Audit and reviewed high level results of certain projects at the Lamar University Council of Instructional Deans.
- Prepared audit delegation requests for external audit services at Lamar University and Lamar Institute of Technology.
- Consulted with Lamar University Risk Management on certain safety issues and concerns identified during the risk assessment process.
- Participated in discussions and meetings related to new ticketing system proposals for Lamar University.
- Participated in discussions regarding considerations for security of Lamar University nursing building.
- Reviewed and commented on potential administrative policy changes at all components.
- Reviewed and commented on draft nepotism form for Lamar University.
- Researched a variety of issues at management’s request at all components.
- Provided assistance and advised Lamar Institute of Technology/Lamar State College Port Arthur Information Security Officer on certain considerations for Ellucian cloud contracts.
- Consulted with Lamar State College Port Arthur and Lamar Institute of Technology management on project upgrading infrastructure and procedures at Lamar Institute of Technology
- Monitored and advised on IT business continuity at all components.
- Advised management on IT systems and applications controls at all components.

- Participated in informational meetings with vendor providing application for more efficient processing and tracking of grants through Lamar University's Office of Research and Sponsored Programs.
- Participated in discussions and meetings involving time and effort reporting at Lamar University.

### **SAM HOUSTON STATE UNIVERSITY**

- Prepared and sent email "blasts" reminding faculty, staff, and students of their responsibilities to and options for reporting suspected waste, fraud, and abuse.
- Prepared hotline posters for distribution on the campus.
- Prepared audit delegation request for the review of the updated pro forma for the SHSU College of Osteopathic Medicine as required by the accreditation body.
- Researched a variety of issues at management's request.
- Presented results of procurement card and purchasing transaction analysis to Procurement and Business Services to demonstrate data analytics software capabilities.
- Served on the SHSU Safety Committee.
- Provided assistance to the Investigations and Audit Support division of the State Auditor's Office on an investigation.
- Consulted with the Controller's Office regarding compliance activities.
- Gathered information regarding the Pay It Forward SHSU student organization at the request of the President and consulted with the Division of Student Affairs.
- Consulted with the Office of Admissions regarding Governor Abbott's college admissions process assessment.

### **SUL ROSS STATE UNIVERSITY AND RIO GRANDE COLLEGE**

- Prepared and sent email "blasts" reminding faculty, staff, and students of their responsibilities to and options for reporting suspected waste, fraud, and abuse.
- Served as Secretary to SRSU President's Select Task Force on Efficiencies and Innovation.
- Served on Risk Management Advisory Committee.
- Served on Cash Handling and Elimination Committee.
- Performed data analysis of certain salary information.
- Worked with UDPS and Texas Rangers on acquiring documentation for presenting charges related to possible theft to the grand jury.
- Prepared accounting services recommendations for incoming Vice President of Accounting and Finance.

### **TEXAS STATE UNIVERSITY**

- Prepared and sent email "blasts" reminding faculty, staff, and students of their responsibilities to and options for reporting suspected waste, fraud, and abuse.
- Provided assistance in determining the appropriate scope of and obtaining audit services for a grant from the Cancer Prevention and Research Institute of Texas.
- Prepared audit delegation request for the review of Texas State's financial statements in support of the University's reaccreditation efforts.
- Prepared audit delegation request for the agreed-upon procedures review of Texas State's National Transit Database participation.
- Consulted with the Office of Research and Sponsored Programs regarding the audit reports to satisfy SACSCOC.
- Served on the Business Services Council.
- Served as ex-officio member of the Human Resources Stakeholders Team.

#### **IV. External Quality Assurance Review (Peer Review)**

Texas Government Code 2102 requires periodic external assessments of the audit function for compliance with applicable professional standards. The following excerpt is the most recent independent external validator's statement regarding the TSUS internal audit function, based on criteria outlined in the Institute of Internal Auditors *Quality Assessment Manual for the Internal Audit Activity*. There are three ratings that can be given. The validator rated the TSUS internal audit function with a "Generally Conforms" rating, which is the best rating available. A peer review for fiscal years 2017-2019 is underway as of the date of this report.

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# **Texas State University System**

## **INDEPENDENT VALIDATION OPINION REPORT QUALITY ASSURANCE SELF-ASSESSMENT REVIEW**

**September 2016**

*Prepared by:*  
Richard Tarr, CIA, CISA  
3035 Dawley Avenue  
Orlando, FL 32806  
Ph: 407.896.2760  
E-mail: [rtarr@racar.com](mailto:rtarr@racar.com)

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## **Overview**

As required by the Texas Internal Auditing Act (article 6252-5d, V.A.C.S.) and the Institute of Internal Auditors' (IIA) *International Standards for the Professional Practice of Internal Auditing* (IIA Standards), a quality assurance review (QAR) was conducted of The Texas State University System (System) internal audit activity. The IIA Standards *require* that internal audit activities obtain an assessment either through an external review or a self-assessment quality assurance review, with an independent validation. The Texas State University System internal audit activity (IA) had an external review in 2013 and chose to conduct a self-assessment quality assurance review with an independent validation in 2016.

As an independent reviewer, I was engaged to conduct an independent validation of that self-assessment. The primary objective of the validation was to independently verify the assertions made in the System's attached self-assessment report regarding adequate fulfillment of the basic expectations of the IA activity and its conformity to the *IIA Standards*. An additional objective was to provide recommendations that the reviewer deems may be of value to the System IA activity. Matters that might have been reviewed and reported on in an external review, such as an in-depth analysis of best practices, governance, and use of advanced technology, were excluded from the scope of this review.

In acting as validator, I am fully independent of the System and have the necessary knowledge and skills to undertake this engagement. The validation was conducted from August 29th through September 1<sup>st</sup>, 2016. It consisted primarily of a review and testing of the procedures and documented results of the self-assessment conducted by the System's IA review team. It also included a review of a limited sample of various audit workpapers, an evaluation of responses to surveys distributed to System Administration executives, component Presidents and management, and audit staff, and interviews with the

Finance and Audit Committee Chair of the Board of Regents and the Texas State University System Chancellor.

**Opinion**

Based upon my interviews, workpaper reviews, and a review of the work conducted by the IA review teams, I concur with the conclusion that the internal audit activity at the System Office of Audits and Analysis (OAA) and the component institutions, **generally conforms** to the applicable IIA Standards and the Texas Internal Auditing Act. This opinion, representing the best possible evaluation, means that there are in place the relevant structures, policies, and procedures, including the processes by which they are applied, that comply with the IIA Standards and the Texas Internal Auditing Act in all material respects. A review of the workpapers documenting the self-assessment conducted by the System's IA review team showed that the review was appropriately documented by the team and the opinion appears to have been objectively developed.



Richard H. Tarr, CIA, CISA

## **V. Audit and Compliance Plan for Fiscal Year 2020**

The TSUS Office of Internal Audit prepares a consolidated audit and compliance plan (“the Plan”) for TSUS components and System Administration. 26,005 hours have been budgeted for activities/projects included in the Plan (including travel and administrative time). The TSUS Board of Regents approved the Plan on August 22, 2019.



## **Office of Internal Audit**

### **Audit and Compliance Plan Fiscal Year 2020**



**Carole M. Fox, CPA**  
Chief Audit Executive, Texas State University System

**Charles Gregory, CISA, CGEIT**  
Associate Director, Texas State University System

**Ramona Stricklan, CIA, CFE**  
Audit Director, Lamar Components

**Kelly Bielamowicz, CPA, MBA**  
Audit Director, Sam Houston State University

**Scott Cupp, CIA, CCA**  
Audit Director, Sul Ross State University

**Steven R. McGee, CPA, CIA**  
Audit Director, Texas State University

**Kelly Wintemute, CCEP, MBA**  
Compliance Officer, Texas State University System

## INTRODUCTION AND PURPOSE

The *Fiscal Year 2020 Audit and Compliance Plan* (“the Plan”) documents functional areas the Office of Internal Audit intends to devote resources to during fiscal year 2020. The Plan satisfies statutory responsibilities outlined in Section 2102.008 of the Texas Government Code, the Texas State University System *Rules and Regulations*, and applicable auditing standards. The number of hours budgeted to perform all activities in the Plan totals 26,005.

### Plan Categories

The Plan is divided into three different categories:

- **Statutory Audits and Activities:** Projects required by law for all institutions and System Administration.
- **Risk-Based Functional Areas:** Projects allocated amongst the institutions based on risks identified during the annual risk assessment process and subsequently categorized by functional area. The presentation of these projects is different than in prior years: rather than listing the specific projects to be performed at each institution and System Administration, the Plan identifies the functional areas where projects will be performed. See the section entitled “Risk Assessment Processes” below for more information.
- **Other Activities:** Projects required by grant agreements or third parties; consulting and advisory services; special projects such as time-sensitive management-requested reviews or investigations; identification and communication of emerging compliance requirements; liaising with external auditors; and other functions designed to assist management in mitigating risks.

### Risk Assessment Processes

Because of the increase in the number of statutorily-required projects and activities, audit resources available for risk-based projects have diminished. Therefore, it is critical that such projects focus on areas where independent reviews will provide the most value to the Texas State University System as a whole. In order to identify such projects, the Office of Internal Audit uses a two-phase risk assessment process.

The first phase is the annual risk assessment, used to build this Plan. (Texas Government Code 2102.005 requires audit plans to be developed “*utilizing risk assessment techniques.*”) The collective risk assessments performed at the institutions and System Administration included, but were not limited to, the following:

- Soliciting input from the Board of Regents, the Chancellor, Vice-Chancellors, and Component Presidents and management;
- Consulting with oversight entities regarding emerging concerns;
- Considering national trends within higher education;
- Evaluating materiality;
- Assessing the potential impact of negative public scrutiny; and
- Utilizing professional judgment and knowledge gained from prior projects regarding areas of risk.

The risk assessments considered a myriad of risks, including those associated with fraud, contract management, benefits proportionality, and information technology (including those associated with Title 1, Texas Administrative Code, Chapter 202, *Information Security Standards*). The risk assessments also considered work performed by external auditors, institutional risk appetites, and activities for which assurance or consulting engagements would be most helpful to management.

Upon completion of the annual risk assessment, identified risks were categorized into various functional areas, such as Financial Management, Academics and Instruction, and Outsourced Services. In creating the functional areas, we considered the various organizational structures within the Texas State University System, the Risk Dictionary classifications created by the *Association of College and University Auditors*, and the functional expense classifications promulgated by the *National Association of College and University Business Officers* for financial statement reporting purposes.

Each functional area contains numerous activities, processes, and operations that could be the subject of an audit. (See Appendix A.) Except for compliance reviews, which are conducted on a system-wide basis, the various functional areas and the specific projects selected for review in those functional areas vary amongst the institutions and System Administration, depending on the level of risk. For example, a project in the Financial Management functional area at Lamar University could involve an audit of accounts payable, while a project in the Financial Management functional area at Sul Ross State University could involve an audit of accounts receivable. There could be no projects (or multiple projects) in the Financial Management functional area at Sam Houston State University.

The second phase (of risk assessment) occurs when audit resources become available to commence a project in a designated functional area. Although the first phase of the risk assessment provides clear indicators of auditable units that would benefit from review, some units are of higher risk than others, and sometimes, risks identified during the annual risk assessment become mitigated as time passes. Therefore, as project planning begins, we conduct additional assessments to pinpoint the activities best suited for review. This approach affords us the flexibility to ensure emerging risks are timely reviewed.

As in prior years, there may be circumstances that require us to devote resources to activities not outlined in the Plan. Per the *Rules and Regulations*, significant changes to the Plan require approval by the Chair of the Finance and Audit Committee.

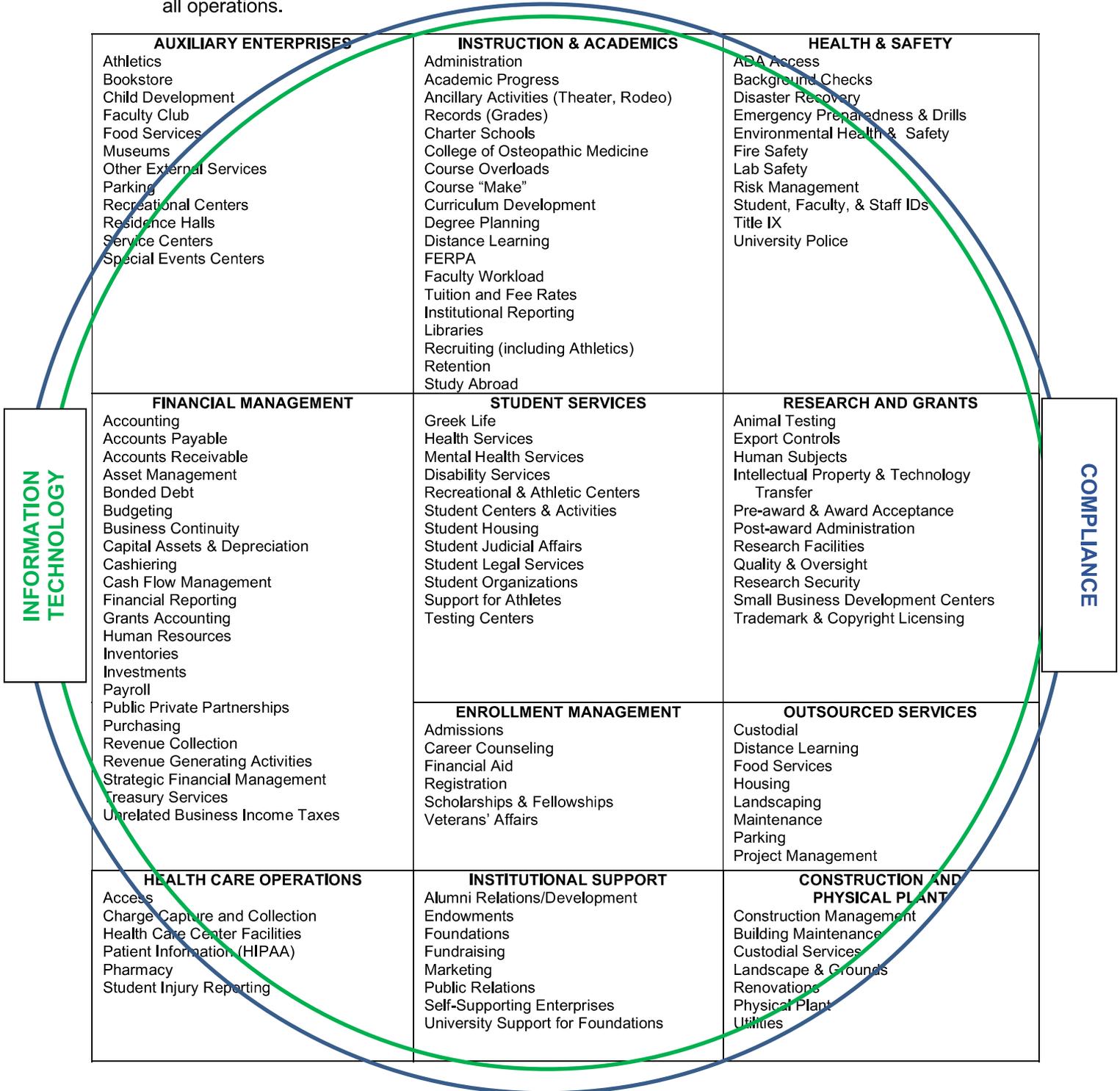
The Plan appears on the following page. Checkmarks, which can represent one or more planned projects, are used to identify the functional areas at individual institutions and System Administration where the Office of Internal Audit plans to devote resources throughout the year.

**TEXAS STATE UNIVERSITY SYSTEM  
AUDIT AND COMPLIANCE PLAN  
FISCAL YEAR 2020**

<b>STATUTORY AUDITS AND ACTIVITIES</b>								
	<b>LU</b>	<b>SHSU</b>	<b>SRSU</b>	<b>TXST</b>	<b>LIT</b>	<b>LSCO</b>	<b>LSCPA</b>	<b>System Administration</b>
SB 20 – Annual Review	✓	✓	✓	✓	✓	✓	✓	✓
SB 20 – Contract Administration	✓	✓	✓	✓	✓	✓	✓	✓
Benefits Proportionality	✓	✓	✓	✓	✓	✓	✓	✓
Quality Assurance Review	✓	✓	✓	✓	✓	✓	✓	✓
Follow-Up Reviews	✓	✓	✓	✓	✓	✓	✓	✓
Annual Risk Assessment and Audit Plan	✓	✓	✓	✓	✓	✓	✓	✓
Annual Internal Audit Report	✓	✓	✓	✓	✓	✓	✓	✓
Continuing Education	✓	✓	✓	✓	✓	✓	✓	✓
<b>RISK-BASED FUNCTIONAL AREAS (See Appendix A)</b>								
Auxiliary Enterprises				✓				
Instruction and Academic Support	✓	✓	✓	✓	✓	✓	✓	✓
Health & Safety	✓			✓	✓	✓	✓	
Financial Management	✓	✓	✓	✓	✓	✓	✓	✓
Student Services								
Enrollment Management	✓	✓	✓					
Research and Grants	✓		✓	✓				
Outsourced Services								
Health Care Operations								
Institutional Support								
Construction and Physical Plant		✓		✓				✓
Information Technology	✓	✓	✓	✓	✓	✓	✓	✓
Compliance	✓	✓	✓	✓	✓	✓	✓	✓
<b>OTHER ACTIVITIES</b>								
Special Projects	✓	✓	✓	✓	✓	✓	✓	✓
Third-Party Required Projects	✓	✓		✓				
SACSCOC Assistance	✓			✓	✓			
Audit Liaison Activities	✓	✓	✓	✓	✓	✓	✓	✓
Compliance Newsletter	✓	✓	✓	✓	✓	✓	✓	✓

## APPENDIX A RISK-BASED FUNCTIONAL AREAS

This chart depicts examples of (but not all) subprocesses/activities within each functional area, many of which overlap. These activities represent potential auditable units; however, some activities inherently have higher risks than others. Finite resources preclude audits of every activity listed, including those known to have higher risks. Therefore, the absence of check-marks in the Plan for risk-based audits means that no work is planned in the corresponding functional area(s). Information technology and compliance risks surround all of the functional areas and exist within in all operations.



## VI. External Audit Services Procured in Fiscal Year 2019

- System Administration contracted with the following firms:
  - Deloitte & Touche, LLP, for management audit and internal audit services (audit delegation 758-2019-002). No audit deliverables resulted from this contract in 2019.
  - Calhoun, Thomson + Matza, LLP, for an audit of the TSUS Foundation's financial statements (audit delegation 758-2019-001).
  - R.L. Townsend and Associates, LLC, for construction audit services (audit delegation 758-2018-002). This contract runs through 2021, with an option to extend an additional year. No audit deliverables resulted from this contract in 2019.
  - Novogradac & Company, LLP for an audit of the Texas Historic Preservation Tax Credits Schedule for O. Henry Hall (audit delegation 758-2019-003).
  
- Lamar University contracted with the following firms:
  - Weaver and Tidwell, LLP NCAA Agreed-Upon Procedures for the Athletic Department's Statement of Revenues and Expenditures for the fiscal year ended August 31, 2018 (audit delegation 734-2018-001).
  - Mitchell T. Fontenote, CPA, for an audit of KVLU FM Radio Station's fiscal year 2018 financial statements (audit delegation 734-2018-001).
  - Belt Harris Pechacek, LLLP for financial statement audit services for the fiscal year ending August 31, 2018 (audit delegation 734-2017-003).
  
- Sam Houston State University contracted with the following firms:
  - Bickley, Prescott, Webb & Wells, PC for the NCAA Agreed-Upon Procedures for the Athletic Department's Statement of Revenues and Expenditures for the fiscal year ended August 31, 2018 (audit delegation 753-2019-001).
  - Beall Barclay & Company, PLC, for agreed-upon procedures related to the schedule of forecasted cash receipts and disbursements for the College of Osteopathic Medicine for fiscal years 2019-2029 (audit delegation 753-2019-002).
  
- Texas State University contracted with the following firms:
  - Montemayor Britton Bender, PC, to conduct a review of the University's Cancer Prevention Research Institute of Texas (CPRIT) Program for fiscal year 2018 (audit delegation not obtained).
  - Montemayor Britton Bender, PC, for an audit of the schedule of expenditures of federal awards for the Student Financial Assistance Cluster for the year ended August 31, 2018 in connection with the University's reaccreditation efforts (audit delegation 754-2019-001).
  - Montemayor Britton Bender, PC, to perform agreed-upon procedures on financial data for the Federal Transit Administration (FTA) as set forth in its 2018 National Transit Database Policy Manual for Reduced Reporters, for the fiscal year ended August 31, 2018 (audit delegation 754-2019-002).

## VII. Reporting Suspected Fraud and Abuse

The TSUS has taken the following actions to ensure compliance with requirements of Section 7.09, Fraud Reporting, General Appropriations Act (86th Legislature), Article IX, Page IX-37:

- The TSUS contracts with EthicsPoint, an internet-based fraud reporting hotline. On the main webpage, there is a link entitled [Report Fraud & Abuse](#), which redirects to the EthicsPoint mechanism for reporting suspected fraud, waste or abuse.

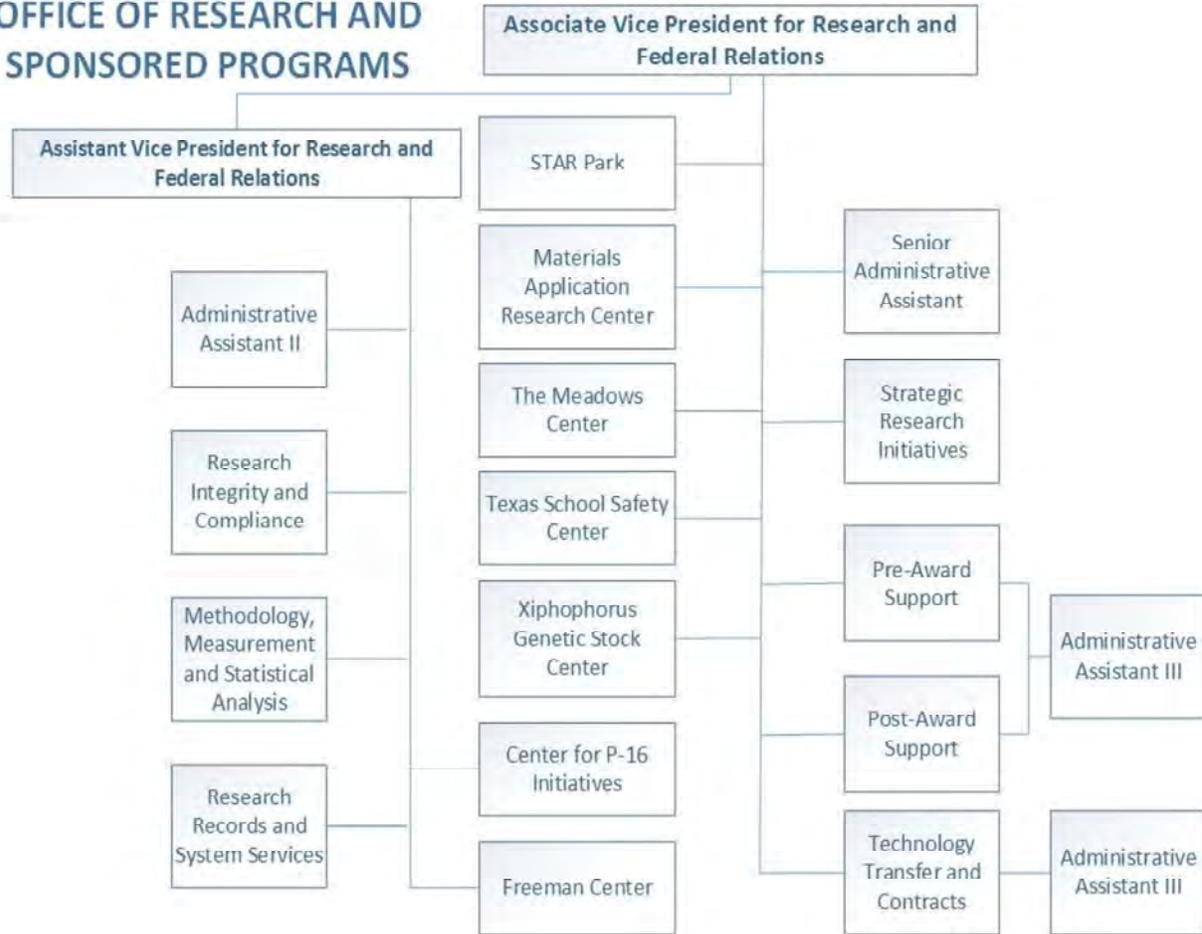
The link also appears on each TSUS component's homepage. Further, each component sends periodic email reminders to its employees regarding confidential avenues for reporting concerns about potential waste, fraud, and abuse of resources; the lack of compliance with laws, regulations, and/or University policies and procedures; or violations of the System's Code of Ethics.

Additionally, there is a link to the State Auditor's fraud reporting hotline on the TSUS webpage and each component's webpage.

Lastly, Texas State University has a local hotline that is monitored by the Office of Internal Audit.

- The TSUS Rules and Regulations place specific requirements for employees to report suspected waste, fraud, or abuse and delegates responsibility to the Chief Audit Executive to report such matters to the State Auditor's Office.
- The TSUS is aware of and complies with the requirements of Texas Government Code, Section 321.022, regarding reporting to the State Auditor's Office those situations where a reasonable cause to believe that money received from the state may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred. The TSUS Rules and Regulations explicitly state: "*Texas State University System, through the Chief Audit Executive, will report suspected fraud or unlawful conduct to the State Auditor's Office (SAO) if he or she knows of facts pointing to fraud or unlawful conduct.*" The Office of Internal Audit conducts reviews into complaints regarding potential waste, fraud, or abuse (including complaints forwarded to the TSUS by the State Auditor's Office) and provides a written response summarizing the results of those reviews.

# OFFICE OF RESEARCH AND SPONSORED PROGRAMS



## **Key Staff and Employees**

1. Dr. Seyedmeysam Khaleghian, Assistant Professor, Department of Engineering Technology, Design Team
2. Dr. BJ Spencer, Assistant Professor of Practice, Department of Engineering Technology, Design Team
3. Dr. Rodney Rohde, Professor & Chair, The Clinical Laboratory Science Program
4. Two future staff positions

### **Job description of the proposed positions**

The two future staff positions will be to test the units for the actual sample collecting process, job description for "Specimen Collectors":

- Facilitated the collection, processing and shipping of specimens
- Collected specimens from clients
- Followed departmental policies to correctly identify the client before any specimen is obtained
- Properly labeled and documented the specimens and prepared them for shipment
- Demonstrated customer service and compassion when interacting with clients and clinician



## Legislation Text

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**File #:** Ord. 2020-43, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-43, on the first of two readings, reclassifying and increasing the rank of the firefighter position assigned to the Fire Prevention Division, from the rank of firefighter to the rank of engineer in accordance with Section 143.021 of the Texas Local Government Code; amending the Fire Department staffing table maintained by the City Clerk in accordance with Section 2.373 of the San Marcos City Code to reflect such reclassification; providing a savings clause; providing for the repeal of any conflicting provisions; and providing an effective date.

**Meeting date:** June 2, 2020

**Department:** Fire 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.

Core Services

Not Applicable

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

Choose an item.

**Background Information:**

In March of 2018, we began the process of reintegrating the Fire Prevention Division back into the Fire Department. At that time, in keeping with our para-military rank structure and moving from all civilian personnel to sworn personnel, we requested two captain's positions, one engineer position, and one firefighter position. Since that time, we have come to realize that both the engineer and firefighter positions perform the same functions. There is no operational or job performance differences between the Fire Prevention positions of firefighter and engineer.

The purpose of this ordinance is to reclassify/increase the rank of the firefighter position, which is assigned to Fire Prevention, from the rank of firefighter to the rank of engineer. We have also decided that, moving forward, we will only request/assign positions of engineer or above to the Fire Prevention Division due to the job knowledge, skills, and abilities required to excel in this position.

The justification for this is as follows:

- Each position is required to drive safely to and from emergency calls, training, and routine assignments; which is a requirement of the Engineer position.
- Both positions are required to direct and coordinate activities related to Fire Prevention duties.
- Fire Inspector is a required certification for the position of Engineer; therefore, the Firefighter position in Fire Prevention requires certifications of the Engineer position.
- Both positions are required to: utilize department software; inspect buildings for hazards and compliance with adopted fire codes; engage in public education; and assist in the resolution of problems or questions from Fire Department staff, City administrators, and/or the public.

More specifically, Robert Dallimore is currently in the firefighter position and has achieved a passing score on the engineer's Civil Service exam and is eligible to promote to engineer. If this position is reclassified/upgraded, Dallimore has agreed to a five-year commitment of being assigned to Fire Prevention unless he promotes to Captain within the provisions of Civil Service. The advantages of maintaining Mr. Dallimore in Fire Prevention, while reclassifying him to Engineer are:

- The financial investment in Dallimore, which would have to be re-invested in an additional employee would be in excess of \$20,000 in just training courses and the wages associated with the training;
- The difference in pay as a result of the reclassification will be less than \$7,700 annually;
- Dallimore is currently enrolled in a Peace Officer academy to further his effectiveness as a fire/arson investigator within the Fire Prevention division;
- Transferring Dallimore back to Operations and training a new person in the position would result in lost productivity while training the replacement;
- When classified as a firefighter, the position would be a “revolving door” and require constant replacement and training;
- Also, Dallimore has established excellent working relationships with Fire Department personnel, developers, contractors, and other City employees/departments. These relationships cannot have a value placed on them; and,
- Allowing the reclassification would also allow Fire Prevention to maintain an increased level of productivity by not having to train a new full-time person.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Approve the reclassification of this position.

**ORDINANCE NO. 2020-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS RECLASSIFYING AND INCREASING THE RANK OF THE FIREFIGHTER POSITION ASSIGNED TO THE FIRE PREVENTION DIVISION, FROM THE RANK OF FIREFIGHTER TO THE RANK OF ENGINEER IN ACCORDANCE WITH SECTION 143.021 OF THE TEXAS LOCAL GOVERNMENT CODE; AMENDING THE FIRE DEPARTMENT STAFFING TABLE MAINTAINED BY THE CITY CLERK IN ACCORDANCE WITH SECTION 2.373 OF THE SAN MARCOS CITY CODE TO REFLECT SUCH RECLASSIFICATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

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

**SECTION 1.** In accordance with Section 143.021 of the Texas Local Government Code, the position of Firefighter assigned to the Fire Prevention Division is hereby reclassified and increased to the rank of Engineer.

**SECTION 2.** The Fire Department Staffing Table maintained by the City Clerk in accordance with Section 2.373 of the San Marcos City Code is amended as shown in Exhibit A, attached hereto and made a part hereof, to reflect such reclassification.

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

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

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

**PASSED AND APPROVED** on first reading on June 2, 2020.

**PASSED, APPROVED AND ADOPTED** on second reading on June 16, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney

## EXHIBIT A

FY20 Adopted Staffing Table - Fire Department

Public Safety Fire Operations	Positions				Full Time Equivalent			
	Actual 2017-18	Adopted 2018-19	Actual 2018-19	Adopted 2019-20	Actual 2017-18	Adopted 2018-19	Actual 2018-19	Adopted 2019-20
Fire Chief	1	1	1	1	1.00	1.00	1.00	1.00
Assistant Fire Chief	2	2	2	2	2.00	2.00	2.00	2.00
Battalion Chief	5	5	5	5	5.00	5.00	5.00	5.00
Fire Marshal	1	1	1	1	1.00	1.00	1.00	1.00
Fire Captain	18	18	18	18	18.00	18.00	18.00	18.00
Fire Captain-Fire Marshal	2	2	2	2	2.00	2.00	2.00	2.00
Fire Engineer	15	18	18	18	15.00	18.00	18.00	18.00
Fire Engineer-Fire Marshal	0	1	1	1	0.00	1.00	1.00	1.00
Fire Fighter	30	36	36	36	30.00	36.00	36.00	36.00
<del>Fire Fighter</del> -Fire Marshal	0	1	1	1	0.00	1.00	1.00	1.00
Paramedic Program	0	0	0	1	0.00	0.00	0.00	1.00
GIS Analyst	1	1	0	0	1.00	1.00	0.00	0.00
Administrative Coordinator	1	1	1	1	1.00	1.00	1.00	1.00
Administrative Assistant-Fire Marshal	1	1	1	1	1.00	1.00	1.00	1.00
Administrative Assistant	1	1	1	1	1.00	1.00	1.00	1.00
Total	78	89	88	89	78.00	89.00	88.00	89.00

Reclass of Fire Fighter Fire Marshal to Fire Engineer Fire Marshal

Public Safety Fire Operations	Positions				Full Time Equivalent			
	Actual 2017-18	Adopted 2018-19	Actual 2018-19	Adopted 2019-20	Actual 2017-18	Adopted 2018-19	Actual 2018-19	Adopted 2019-20
Fire Chief	1	1	1	1	1.00	1.00	1.00	1.00
Assistant Fire Chief	2	2	2	2	2.00	2.00	2.00	2.00
Battalion Chief	5	5	5	5	5.00	5.00	5.00	5.00
Fire Marshal	1	1	1	1	1.00	1.00	1.00	1.00
Fire Captain	18	18	18	18	18.00	18.00	18.00	18.00
Fire Captain-Fire Marshal	2	2	2	2	2.00	2.00	2.00	2.00
Fire Engineer	15	18	18	18	15.00	18.00	18.00	18.00
Fire Engineer-Fire Marshal	0	1	1	1	0.00	1.00	1.00	1.00
Fire Fighter	30	36	36	36	30.00	36.00	36.00	36.00
Fire Engineer-Fire Marshal	0	1	1	1	0.00	1.00	1.00	1.00
Paramedic Program	0	0	0	1	0.00	0.00	0.00	1.00
GIS Analyst	1	1	0	0	1.00	1.00	0.00	0.00
Administrative Coordinator	1	1	1	1	1.00	1.00	1.00	1.00
Administrative Assistant-Fire Marshal	1	1	1	1	1.00	1.00	1.00	1.00
Administrative Assistant	1	1	1	1	1.00	1.00	1.00	1.00
Total	78	89	88	89	78.00	89.00	88.00	89.00

FY20 Adopted Staffing Table - Fire Department

Public Safety Fire Operations	Positions				Full Time Equivalent			
	Actual 2017-18	Adopted 2018-19	Actual 2018-19	Adopted 2019-20	Actual 2017-18	Adopted 2018-19	Actual 2018-19	Adopted 2019-20
Fire Chief	1	1	1	1	1.00	1.00	1.00	1.00
Assistant Fire Chief	2	2	2	2	2.00	2.00	2.00	2.00
Battalion Chief	5	5	5	5	5.00	5.00	5.00	5.00
Fire Marshal	1	1	1	1	1.00	1.00	1.00	1.00
Fire Captain	18	18	18	18	18.00	18.00	18.00	18.00
Fire Captain-Fire Marshal	2	2	2	2	2.00	2.00	2.00	2.00
Fire Engineer	15	18	18	18	15.00	18.00	18.00	18.00
Fire Engineer-Fire Marshal	0	1	1	1	0.00	1.00	1.00	1.00
Fire Fighter	30	36	36	36	30.00	36.00	36.00	36.00
Fire Fighter-Fire Marshal	0	1	1	1	0.00	1.00	1.00	1.00
Paramedic Program	0	0	0	1	0.00	0.00	0.00	1.00
GIS Analyst	1	1	0	0	1.00	1.00	0.00	0.00
Administrative Coordinator	1	1	1	1	1.00	1.00	1.00	1.00
Administrative Assistant-Fire Marshal	1	1	1	1	1.00	1.00	1.00	1.00
Administrative Assistant	1	1	1	1	1.00	1.00	1.00	1.00
Total	78	89	88	89	78.00	89.00	88.00	89.00

Reclass of Fire Fighter Fire Marshal to Fire Engineer Fire Marshal

Public Safety Fire Operations	Positions				Full Time Equivalent			
	Actual 2017-18	Adopted 2018-19	Actual 2018-19	Adopted 2019-20	Actual 2017-18	Adopted 2018-19	Actual 2018-19	Adopted 2019-20
Fire Chief	1	1	1	1	1.00	1.00	1.00	1.00
Assistant Fire Chief	2	2	2	2	2.00	2.00	2.00	2.00
Battalion Chief	5	5	5	5	5.00	5.00	5.00	5.00
Fire Marshal	1	1	1	1	1.00	1.00	1.00	1.00
Fire Captain	18	18	18	18	18.00	18.00	18.00	18.00
Fire Captain-Fire Marshal	2	2	2	2	2.00	2.00	2.00	2.00
Fire Engineer	15	18	18	18	15.00	18.00	18.00	18.00
Fire Engineer-Fire Marshal	0	1	1	2	0.00	1.00	1.00	2.00
Fire Fighter	30	36	36	36	30.00	36.00	36.00	36.00
Paramedic Program	0	0	0	1	0.00	0.00	0.00	1.00
GIS Analyst	1	1	0	0	1.00	1.00	0.00	0.00
Administrative Coordinator	1	1	1	1	1.00	1.00	1.00	1.00
Administrative Assistant-Fire Marshal	1	1	1	1	1.00	1.00	1.00	1.00
Administrative Assistant	1	1	1	1	1.00	1.00	1.00	1.00
Total	78	89	88	89	78.00	89.00	88.00	89.00



## Legislation Text

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**File #:** Ord. 2020-44, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of ordinance 2020-44, on the first of two readings, amending section 2.421 of the San Marcos City Code by adding a new subsection (e) to clearly state that the policy and purpose statements in that section supporting the adoption of the San Marcos Code of Ethics shall not be cited, used, or considered by a citizen or by the ethics review commission as the basis of an ethics complaint filed against any officer or employee of the city; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** City Attorney

**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.
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

The San Marcos Code of Ethics is a city ordinance that includes general policy and purpose statements that explain the need for having an ethics code and the benefits derived from adopting one. Those provisions are contained in Section 2.421 of the San Marcos City Code. A copy of that section is attached.

The San Marcos Code of Ethics also contains specific conflict of interest provisions, standards of conduct for officers and employees, and restrictions on former city employees. Those provisions are contained in Sections 2.423 through 2.426 of the San Marcos City Code. Violations of those provisions can be alleged by any San Marcos resident by means of an ethics complaint filed with the City Attorney's Office and presented to the Ethics Review Commission. A copy of Sections 2.423 through 2.426 are attached as background information.

As a relatively recent development, ethics complaints have been filed that are based on the general policy and purpose statements in Section 2.421 of the Code of Ethics instead of the specific provisions in Sections 2.423 through 2.426 of the code. Such complaints have included allegations having nothing to do with an officer or employee's performance of his or her official duties. Ethics complaints have been filed against city officials for expressing opinions on matters of public policy and, in one instance, for endorsing candidates for public office. The ethics ordinance was not intended to be used as a political weapon, to intimidate, or to embarrass city officials or employees.

This agenda item was posted for consideration of the attached ordinance amending Section 2.421 of the San Marcos City Code, by adding a new subsection (e), to clearly state that the policy and purpose provisions in that section cannot be cited, used, or considered by a citizen by the Ethics Review Commission as the basis of an ethics complaint against any officer or employee of the city.

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

This ordinance amendment was discussed by the City Council on May 19, 2020 and direction was given to bring forward the attached amendment to Section 2.421 of the San Marcos City Code as an ordinance for council's consideration. In addition, the San Marcos Ethics Review Commission met on May 13, 2020 and recommended amending Section 2.421 to prevent the policy and purpose statements in that section of the Code of Ethics from being cited, used, or considered by a citizen or by the Ethics Review Commission as the basis of an ethics complaint.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Adopt the ordinance as presented.

**ORDINANCE NO. 2020 -**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING SECTION 2.421 OF THE SAN MARCOS CITY CODE BY ADDING A NEW SUBSECTION (E) TO CLEARLY STATE THAT THE POLICY AND PURPOSE STATEMENTS IN THAT SECTION SUPPORTING THE ADOPTION OF THE SAN MARCOS CODE OF ETHICS SHALL NOT BE CITED, USED, OR CONSIDERED BY A CITIZEN OR BY THE ETHICS REVIEW COMMISSION AS THE BASIS OF AN ETHICS COMPLAINT FILED AGAINST ANY OFFICER OR EMPLOYEE OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

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

**SECTION 1.** Section 2.421 of the San Marcos City Code is amended as set forth below. Underlining indicates added text.

Sec. 2.421. - Policy and purposes.

- (a) *General policy statement.* It is the policy of the city that all city officials and employees shall conduct themselves both inside and outside the city's service so as to give no occasion for distrust of their integrity, impartiality or devotion to the best interest of the city and the public trust which the city holds.
- (b) *Appearance of impropriety.* Public service is a public trust. All city officials and employees are stewards of the public trust. They have a responsibility to the citizens of the city to administer and enforce the City Charter and city ordinances. To ensure and enhance public confidence in city government, each city official and employee must strive not only to maintain technical compliance with the principles of ethical conduct set forth in this article and in state law, but also to avoid the appearance of impropriety at all times.
- (c) This code of ethics has five purposes:
  - (1) To encourage ethical conduct on the part of city officials and employees;
  - (2) To encourage public service with the city;
  - (3) To establish standards for ethical conduct for city officials and employees by defining and prohibiting conduct that is incompatible with the interests of the city;
  - (4) To require disclosure by city officials and employees of their economic interests that may conflict with the interests of the city; and
  - (5) To serve as a basis for disciplining those who fail to abide by its terms.
- (d) This code of ethics is not intended to be used as a political weapon or to intimidate or embarrass affected persons. The officials charged with administration of this code of ethics shall administer it in a manner that avoids any such use of this code of ethics.
- (e) This Section 2.421 is intended only to set forth the policy and purposes for adoption of the San Marcos Code of Ethics; it shall not be cited, used, or considered by a citizen or by the Ethics Review Commission as the basis of an ethics complaint filed against any officer or employee of

the city.

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

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

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

**PASSED AND APPROVED ON FIRST READING** on June 2, 2020.

**PASSED, APPROVED, AND ADOPTED** on June 16, 2020.

Jane Hughson  
Mayor

Attest:

Approved:

Tammy K. Cook  
Interim City Clerk

Michael J. Cosentino  
City Attorney



## Legislation Text

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**File #:** Ord. 2020-45, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Ordinance 2020-45, on first and final reading, authorizing the issuance of the City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District)"; approving and authorizing an indenture of trust, a bond purchase agreement, an offering memorandum, a continuing disclosure agreement, a landowner agreement and other agreements and documents in connection therewith; making findings with respect to the issuance of such bonds; providing for approval of this Ordinance on only one reading as authorized by Texas Government Code, Section 1201.028; and providing an effective date.

**Meeting date:** June 2, 2020

**Department:** Finance

**Amount & Source of Funding**

**Funds Required:** [Click or tap here to enter text.](#)

**Account Number:** [Click or tap here to enter text.](#)

**Funds Available:** [Click or tap here to enter text.](#)

**Account Name:** [Click or tap here to enter text.](#)

**Fiscal Note:**

**Prior Council Action: October 2014 - Council approved term sheet, December 2015 - Term sheet amendment #1 extending date for submission of design plans to June 2016, September 2017 - Term sheet amendment #2 extending date for construction completion to September 2018 and increase of maximum annual assessment, January 2019 - Term sheet amendment #3 extending date for construction completion to May 2019 and create traffic impact analysis criteria, April 2020 - Term sheet amendment #4 referring all terms to the Amended and Restated Financing Agreement upon completion, May 2020 - Public hearing and PID assessments approved, issuance of PLOM Preliminary Limited Offering Memorandum was approved.**

**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.
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

Whisper PID (public improvement district) will reimburse the developer for infrastructure, improvement and construction completed for: 28-acre business park, 285 acres of commercial development, 106 acres single family residential, 111 acres master retail and commercial center, and 50,000 square foot commercial spec building. Estimated addition to the tax roles at build out is \$638.2M. A maximum of \$14.6M in PID bonds will be issued to reimburse the developer for improvements that provide special benefit to the district.

**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. 2020-\_\_**

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE "CITY OF SAN MARCOS, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020 (WHISPER PUBLIC IMPROVEMENT DISTRICT)"; APPROVING AND AUTHORIZING AN INDENTURE OF TRUST, A BOND PURCHASE AGREEMENT, AN OFFERING MEMORANDUM, A CONTINUING DISCLOSURE AGREEMENT, A LANDOWNER AGREEMENT AND OTHER AGREEMENTS AND DOCUMENTS IN CONNECTION THEREWITH; MAKING FINDINGS WITH RESPECT TO THE ISSUANCE OF SUCH BONDS; PROVIDING FOR APPROVAL OF THIS ORDINANCE ON ONLY ONE READING AS AUTHORIZED BY TEXAS GOVERNMENT CODE, SECTION 1201.028; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City of San Marcos, Texas (the "City"), pursuant to and in accordance with the terms, provisions and requirements of the Public Improvement District Assessment Act, Subchapter A of Chapter 372, Texas Local Government Code (the "PID Act"), has previously established the "Whisper Public Improvement District" (the "District"), pursuant to Resolution No. 2014-149R adopted by the City Council of the City (the "Council") on October 21, 2014; and

**WHEREAS**, the authorization creating the District became effective upon publication of its authorization in the *San Marcos Daily Record*, a newspaper of general circulation in the City; and

**WHEREAS**, no written protests of the District from any owners of record of property within the District were filed with the City Clerk within 20 days after the date of publication of such notice; and

**WHEREAS**, pursuant to the PID Act, on May 8, 2020, the Council published notice of the assessment hearing in the *San Marcos Daily Record*, a newspaper of general circulation in the City, and held a public hearing on May 19, 2020, which remained open until June 2, 2020, regarding the levy of special assessments within the District, and on June 2, 2020, the Council adopted Ordinance No. 20\_\_\_\_\_ (the "Assessment Ordinance"); and

**WHEREAS**, in the Assessment Ordinance, the Council approved and accepted the initial Service and Assessment Plan (the "Service and Assessment Plan") relating to the District and levied the Initial Assessments (as defined in the Service and Assessment Plan, the "Assessments") against the Assessment Roll (as defined and described in the Service and Assessment Plan); and

**WHEREAS**, the Council has found and determined that it is in the best interests of the City to issue its bonds to be designated "City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District)" (the "Bonds"), such Bonds to be payable from and secured by the Pledged Revenues, as defined in the Indenture (defined below); and

**WHEREAS**, the City is authorized by the PID Act to issue the Bonds for the purpose of (i) paying or reimbursing all or a portion of the costs of the Major Improvements (as defined herein), (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Major Improvements, (iii) funding a reserve fund for payment of principal of and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuance of the Bonds; and

**WHEREAS**, in connection with the issuance of the Bonds, the Major Improvements are located within the District, and the City has determined that the Major Improvements confer a special benefit on the District as provided in Section V.C. of the Service and Assessment Plan attached hereto as **Exhibit C**; and

**WHEREAS**, the Council has found and determined to approve (i) the issuance of the Bonds to finance the Major Improvements, (ii) the form, terms and provisions of the Indenture securing the Bonds authorized hereby, (iii) the form, terms and provisions of a Bond Purchase Agreement (defined below) between the City and the purchaser of the Bonds, (iv) an Offering Memorandum (defined below), (v) a Continuing Disclosure Agreement (defined below), and (vi) a Landowner Agreement (defined below); and

**WHEREAS**, the meeting at which this Ordinance is considered is open to the public as required by law, and the public notice of the time, place and purpose of said meeting was given as required by Chapter 551, Texas Government Code, as amended;

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, THAT:**

Section 1. Findings. The findings and determinations set forth in the preamble hereof are hereby incorporated by reference for all purposes as if set forth in full herein.

Section 2. Approval of Issuance of Bonds and Indenture.

(a) The issuance of the Bonds in the principal amount of \$\_\_\_\_\_,000 for the purpose of (i) paying or reimbursing all or a portion of the costs of the Major Improvements (as defined herein), (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Major Improvements, (iii) funding a reserve fund for payment of principal of and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuance of the Bonds, is hereby authorized and approved.

(b) The Bonds shall be issued and secured under that certain Indenture of Trust (the "Indenture") dated as of June 2, 2020, between the City and UMB Bank, N.A., as trustee (the "Trustee"), with such changes as may be necessary or desirable to carry out the intent of this Ordinance and as approved by the Mayor or Mayor Pro Tem of the City, such approval to be evidenced by the execution and delivery of the Indenture, which Indenture is hereby approved in substantially final form attached hereto as **Exhibit A** and incorporated herein as a part hereof for all purposes. The Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute the Indenture and the City Clerk is hereby authorized and directed to attest such signature of the Mayor or Mayor Pro Tem.

(c) The Bonds shall be dated, shall mature on the date or dates and in the principal amount or amounts, shall bear interest, shall be subject to redemption and shall have such other terms and provisions as set forth in the Indenture. The Bonds shall be in substantially the form

set forth in the Indenture, with such insertions, omissions and modifications as may be required to conform the form of Bond to the actual terms of the Bonds. The Bonds shall be payable from and secured by the Pledged Revenues (as defined in the Indenture) and other assets of the Trust Estate (as defined in the Indenture) pledged to the Bonds, and shall never be payable from ad valorem taxes or any other funds or revenues of the City.

Section 3. Sale of Bonds; Approval of Bond Purchase Agreement. The Bonds shall be sold to FMSbonds, Inc. (the "Underwriter") at the price and on the terms and provisions set forth in that certain Bond Purchase Agreement (the "Bond Purchase Agreement"), dated the date hereof, between the City and the Underwriter, attached hereto as **Exhibit B** and incorporated herein as a part hereof for all purposes, which terms of sale are declared to be in the best interest of the City. The form, terms and provisions of the Bond Purchase Agreement are hereby authorized and approved and the Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute and deliver the Bond Purchase Agreement. The Mayor's signature on the Bond Purchase Agreement may be attested by the City Clerk.

Section 4. Landowner Agreement and Notice of Assessments. The Landowner Agreement and Notice of Assessments substantially in the form attached hereto as **Exhibit C** is hereby approved and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Landowner Agreement and Notice of Assessments with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 5. Offering Memorandum. The form and substance of the Preliminary Limited Offering Memorandum for the Bonds and any addenda, supplement or amendment thereto and the final Limited Offering Memorandum (the "Offering Memorandum") presented to and considered at the meeting at which this Ordinance is considered are hereby in all respects approved and adopted. The Offering Memorandum, with such appropriate variations as shall be approved by the Mayor or Mayor Pro Tem of the City and the Underwriter, may be used by the Underwriter in the offering and sale of the Bonds. The Mayor or Mayor Pro Tem of the City is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest, the Offering Memorandum. The City Clerk is hereby authorized and directed to include and maintain a copy of the Preliminary Limited Offering Memorandum and Offering Memorandum and any addenda, supplement or amendment thereto thus approved among the permanent records of this meeting. The use and distribution of the Preliminary Limited Offering Memorandum in the offering of the Bonds is hereby ratified, approved and confirmed. Notwithstanding the approval and delivery of such Preliminary Limited Offering Memorandum and Offering Memorandum by the Council, the Council is not responsible for and proclaims no specific knowledge of the information contained in the Preliminary Limited Offering Memorandum and Offering Memorandum pertaining to the Major Improvements, the Developer (as defined in the Offering Memorandum) or its financial ability, any builders, any landowners, or the appraisal of the property in the District.

Section 6. Continuing Disclosure Agreement. The Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") between the City and UMB Bank, N.A., is hereby authorized and approved in substantially final form attached hereto as **Exhibit D** and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Continuing Disclosure Agreement with such changes as may be required to carry out

the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 7. Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation. The Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation (the "Redemption and Waiver Agreement") between the City, Developer and UMB Bank, N.A., is hereby authorized and approved in substantially final form attached hereto as **Exhibit E** and incorporated herein as a part hereof for all purposes and the City Manager of the City is hereby authorized and directed to execute and deliver such Redemption and Waiver Agreement with such changes as may be required to carry out the purpose of this Ordinance and approved by the City Manager, such approval to be evidenced by the execution thereof.

Section 8. Additional Actions. The Mayor, the Mayor Pro Tem, the City Manager and the City Clerk are hereby authorized and directed to take any and all actions on behalf of the City necessary or desirable to carry out the intent and purposes of this Ordinance and to issue the Bonds in accordance with the terms of this Ordinance. The Mayor, the Mayor Pro Tem, the City Manager and the City Clerk are hereby authorized and directed to execute and deliver any and all certificates, agreements, notices, instruction letters, requisitions, and other documents which may be necessary or advisable in connection with the sale, issuance and delivery of the Bonds and the carrying out of the purposes and intent of this Ordinance.

Section 9. Severability. If any Section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 10. Effective Date. This Ordinance is passed on one reading as authorized by Texas Government Code, Section 1201.028, and shall be effective immediately upon its passage and adoption.

*[Remainder of page left blank intentionally]*

PASSED, APPROVED AND EFFECTIVE this June 2, 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

(City Seal)

**EXHIBIT A**  
INDENTURE OF TRUST

**EXHIBIT B**

**BOND PURCHASE AGREEMENT**

**EXHIBIT C**

**LANDOWNER AGREEMENT AND NOTICE OF ASSESSMENTS**

**EXHIBIT D**

CONTINUING DISCLOSURE AGREEMENT

**EXHIBIT E**

AGREEMENT REGARDING CONVEYANCE OF RIGHT OF REDEMPTION AND WAIVER OF  
AGRICULTURAL VALUATION

**WHISPER PUBLIC IMPROVEMENT DISTRICT**

**LANDOWNER AGREEMENT  
AND NOTICE OF ASSESSMENTS**

**among**

**THE CITY OF SAN MARCOS, TEXAS**

**And**

**YARRINGTON PARTNERS, LTD.,  
WHISPER MASTER COMMUNITY LIMITED PARTNERSHIP,  
WHISPER INDUSTRIAL 2019 QOZB, LLC, AND  
135 RESIDENTIAL DEVELOPMENT, LLC**

**Dated as of:**

\_\_\_\_\_, 2020

## LANDOWNER AGREEMENT AND NOTICE OF ASSESSMENTS

This **LANDOWNER AGREEMENT AND NOTICE OF ASSESSMENTS** (this "Agreement") is entered into among the CITY OF SAN MARCOS, TEXAS, a home-rule municipal corporation of the State of Texas (the "City"), and (i) YARRINGTON PARTNERS, LTD., a Texas limited partnership ("Yarrington Partners"), (ii) WHISPER MASTER COMMUNITY LIMITED PARTNERSHIP, a Texas limited partnership ("Whisper MC"), (iii) WHISPER INDUSTRIAL 2019 QOZB, LLC, a Texas limited liability company ("Whisper Industrial"), and (iv) 135 RESIDENTIAL DEVELOPMENT, LLC, a Texas limited liability company ("135 Residential") (Yarrington Partners, Whisper MC, Whisper Industrial and 135 Residential are each referred to herein as a "Landowner" and collectively as the "Landowners") (the City and the Landowners are referred to herein individually as a "Party" and collectively as the "Parties"). This Agreement shall be effective on the latest date it is executed by all the Parties (the "Effective Date").

### RECITALS

WHEREAS, the Landowners collectively own approximately 706.1 acres of land located in San Marcos, Hays County, Texas, which is more particularly described in **Exhibit "A"** attached hereto (the "Land"), which Land is comprised as follows:

Whisper MC owns a total of approximately 442.966 acres of land located within the Land which is more particularly described in Exhibit "A-1" attached hereto and made a part hereof (the "Whisper MC Property");

Yarrington Partners owns a total of approximately 115.686 acres of land located within the Land which is more particularly described in Exhibit "A-2" attached hereto and made a part hereof (the "Yarrington Property");

Whisper Industrial owns a total of approximately 16.560 acres of land located within the Land which is more particularly described in Exhibit "A-3" attached hereto and made a part hereof (the "Whisper Industrial Property"); and

135 Residential owns a total of approximately 130.641 acres of land located within the Land which is more particularly described in Exhibit "A-4" attached hereto and made a part hereof (the "135 Residential Property");

WHEREAS, the Land constitutes taxable, privately owned land located within the Whisper Public Improvement District (the "District") created pursuant to the authority of Chapter 372, Texas Local Government Code, as amended (the "PID Act");

WHEREAS, Yarrington Partners, Whisper MC and the City entered into that certain Whisper Public Improvement District Financing Agreement dated September 5, 2017 and passed and approved by Resolution No. 2017-139R, as amended and restated by that certain Amended and Restated Financing Agreement between the City and the Landowners dated \_\_\_\_\_, 2020 and passed and approved by Resolution No. \_\_\_\_\_ (as may

be further amended from time to time as provided therein, the “PID Finance Agreement”) (relating to, among other matters, the levy of assessments on the Land, the issuance of revenue bonds secured by such assessments, and the construction of the “Authorized Improvements” as defined therein);

WHEREAS, the City Council of the City (the “City Council”) has contemporaneously herewith adopted an assessment ordinance (Ordinance No. \_\_\_\_\_) (including all exhibits, the “Assessment Ordinance”) that levied an assessment (the “Assessment”) on each Parcel located within the District, which Assessments will be used to reimburse Whisper MC for the costs of the Authorized Improvements or, if PID Bonds are issued by the City, pledged as security for the payment of such PID Bonds to pay for, among other things, the costs of constructing the Authorized Improvements that will confer a special benefit on the property in the District;

WHEREAS, a copy of the Assessment Ordinance is attached hereto as **Exhibit “B”**;

WHEREAS, the Assessment Ordinance includes a “Service and Assessment Plan”;

WHEREAS, the Service and Assessment Plan includes an “Assessment Roll” setting forth the amount of the “Assessment” for each Parcel located within the District, including the amount of the “Annual Installment” for each Assessment paid in installments; and

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, obligations, and benefits hereinafter set forth, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS; APPROVAL OF AGREEMENTS**

Definitions. Capitalized terms used but not defined in this Agreement (including the exhibits hereto) shall have the meanings given to them in the Service and Assessment Plan.

Affirmation of Recitals. The matters set forth in the Recitals of this Agreement are true and correct and are incorporated in this Agreement as official findings of the City Council.

**ARTICLE II  
AGREEMENT OF LANDOWNERS**

A. Each Landowner ratifies, confirms, accepts, agrees to, and approves:

(i) the creation of the District, the boundaries of the District, and the boundaries of the Assessed Properties;

(ii) the location and construction of the Authorized Improvements which confer a special benefit on the Assessed Properties;

(iii) the determinations and findings of special benefit to the Assessed

Properties made by the City Council in the Assessment Ordinance and Service and Assessment Plan;

(iv) the Assessment Ordinance and the Service and Assessment Plan; and

(v) the Buyer Disclosure in the form attached as **Exhibit “C”**.

B. Each Landowner consents, acknowledges, accepts, and agrees:

(i) to the Assessments levied against the applicable Assessed Properties as shown on the Assessment Roll, as the Assessment Roll may be amended from time to time;

(ii) that the Authorized Improvements and administration and operation of the District confer a special benefit on the Assessed Properties in an amount that exceeds the Assessments against the Assessed Properties as shown on the Assessment Roll;

(iii) that the Assessments against the Assessed Properties are final, conclusive, and binding upon the Landowner and its successors and assigns;

(iv) to pay the Assessments and Annual Installments against the Assessed Properties when due and in the amounts stated in the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll;

(v) that each Assessment or reassessment against the Assessed Properties, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is a first and prior lien against the Assessed Properties, superior to all other liens and monetary claims except liens or monetary claims for state, county, school district, or municipal ad valorem taxes, and is a personal liability of and charge against the owner of the Assessed Properties regardless of whether the owner is named;

(vi) that the Assessment liens on the Assessed Properties are liens and covenants that run with the land and are effective from the date of the Assessment Ordinance and continue until the Assessments are paid in full and may be enforced by the governing body of the City in the same manner that ad valorem tax liens against real property may be enforced;

(vii) that delinquent installments of Assessments against the Assessed Properties shall incur and accrue interest, penalties, and attorney's fees as provided in the PID Act;

(viii) that the owner of an Assessed Property may pay at any time the entire Assessment against the Assessed Property, with interest that has accrued on the Assessment to the date of such payment;

(ix) that Annual Installments may be adjusted, decreased, and extended and

that owners of the Assessed Properties shall be obligated to pay such Annual Installments as adjusted, decreased, or extended, when due and without the necessity of further action, assessments, or reassessments by the City Council; and

(x) that the Landowner has received, or hereby waives, all notices required by State law (including, but not limited to the PID Act) in connection with the creation of the District and the adoption and approval by the City Council of the Assessment Ordinance, the Service and Assessment Plan, and the Assessment Roll.

C. Each Landowner hereby waives:

(i) any and all defects, irregularities, illegalities or deficiencies in the proceedings establishing the District, defining the Assessed Properties, adopting the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll, levying of the Assessments, and determining the amount of the Annual Installments of the Assessments;

(ii) any and all notices and time periods provided by the PID Act including, but not limited to, notice of the establishment of the District and notice of public hearings regarding the approval of the Assessment Ordinance, Service and Assessment Plan, Assessment Roll and regarding the levying of the Assessments and determining the amount of the Annual Installments of the Assessments;

(iii) any and all actions and defenses against the adoption or amendment of the Assessment Ordinance, Service and Assessment Plan, and Assessment Roll;

(iv) any and all actions and defenses against the City's finding of "special benefit" pursuant to the PID Act and as set forth in the Service and Assessment Plan and the levying of the Assessments and determining the amount of the Annual Installment of the Assessments; and

(v) any right to object to the legality of the Assessment Ordinance, Service and Assessment Plan, Assessment Roll, or Assessments or to any proceedings connected therewith.

### **ARTICLE III TEXAS PROPERTY CODE SECTION 5.014 NOTICE**

A. Section 5.014 of the Texas Property Code requires that a seller of residential real property that is located in a public improvement district and that consists of not more than one dwelling unit shall give to the purchaser of the property written notice of the district in substantially the form set forth on **Exhibit "C"** hereto. The seller is required to deliver the notice to the purchaser before the effective date of an executory contract binding the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the required notice, the

references to the street address, the date in the notice, and the purchaser's signature may be omitted.

B. As the property in the District is developed, a notice substantially in the form as the notice attached hereto as **Exhibit "C"** (as may be updated and amended from time to time) will be prepared and provided to any purchaser of an Assessed Property located in the District. If Section 5.014 of the Texas Property Code is amended, said amendment will control the notice to be provided as of the effective date of such amendment.

#### **ARTICLE IV DEDICATION OF AUTHORIZED IMPROVEMENTS**

The City hereby acknowledges and agrees that (i) the Authorized Improvements will be dedicated, conveyed, leased or otherwise provided to or for the benefit of the City or a homeowners' association or property owners' association formed by any of the Landowners with respect to any portion of the Land (each an "Owners Association"), and (ii) that in the case of any Authorized Improvements conveyed or dedicated to an Owners Association, such Authorized Improvements are nevertheless provided "for the benefit of" in accordance with Section 372.023 (a) of the PID Act and such Owners Association is an entity authorized approved by the City Council and authorized by the City to own, operate and maintain such Authorized Improvements for the City in accordance with Section 372.023(a)(3) of the PID Act. Each Landowner acknowledges that the Authorized Improvements, together with the land, easements, or other rights-of-way needed for the Authorized Improvements, shall be dedicated, conveyed, leased or otherwise provided to or for the benefit of the City or authorized Owners Association as provided in the PID Finance Agreement. Each Landowner will execute such conveyances and/or dedications as may be reasonably required to evidence the same. Without limiting the generality of any of the foregoing, with respect to any Authorized Improvements that are dedicated, conveyed, leased or otherwise provided to an Owners Association as provided herein, the applicable Landowner shall execute any necessary easements to the public with respect thereto in order to evidence that although such Authorized Improvements are owned and maintained by such Owners Association, the Authorized Improvements are provided for the use and benefit of the public.

#### **ARTICLE V MISCELLANEOUS**

A. Notices. Any notice or other communication (a "Notice") required or contemplated by this Agreement shall be given at the addresses set forth below. Notices as to one or more Assessed Properties shall only be given to the Landowner that owns the applicable Assessed Properties. Notices as to all of the Land shall be given to all Landowners. Notices shall be in writing and shall be deemed given: (i) five business days after being deposited in the United States Mail, Registered or Certified Mail, Return Receipt Requested; or (ii) when delivered by a nationally recognized private delivery service (*e.g.*, Federal Express or UPS) with evidence of delivery signed by any person at the delivery address. Each Party may change its address by written notice to the other Parties in accordance with this section.

If to Landowners: Whisper Master Community Limited Partnership  
9811 South IH 35  
Building 3, Suite 100  
Austin, Texas 78744

Yarrington Partners, Ltd.

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Whisper Industrial 2019 QOZB, LLC

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135 Residential Development, LLC  
9811 South IH 35  
Building 3, Suite 100  
Austin, Texas 78744

With a copy to: McLean & Howard, L.L.P.  
Attn: Jeffrey S. Howard  
Barton Oaks Plaza, Building II  
901 South MoPac Expressway, Suite 225  
Austin, Texas 78746  
Facsimile: 512-328-2409

If to City: City of San Marcos  
Attn: City Manager  
630 East Hopkins  
San Marcos, TX 78666  
Facsimile: 512-396-2683

B. Parties in Interest. In the event of the sale or transfer of an Assessed Property or any portion thereof, the purchaser or transferee shall be deemed to have assumed the obligations of the Landowner with respect to such Assessed Property or such portion thereof, and the seller or transferor shall be released with respect to such Assessed Property or portion thereof. Notwithstanding the foregoing, if PID Bonds are issued by the City, the holders of PID Bonds are express beneficiaries of this Agreement and shall be entitled to pursue any and all remedies at law or in equity to enforce the obligations of the Parties, subject to the limitations set forth in the Indenture.

C. Amendments. This Agreement may be amended only by a written instrument executed by all the Parties. No termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the then-current owners of the Land and recorded in the Official Public Records of Hays County, Texas.

D. Estoppels. Within 10 days after written request from any Party, the other Parties shall provide a written certification indicating whether this Agreement remains in effect as to an Assessed Property and whether any Party is then in default hereunder.

E. Termination. This Agreement shall terminate as to each Assessed Property upon payment in full of the Assessment against the Assessed Property.

[SIGNATURE PAGES TO FOLLOW]

EXECUTED by the Parties on the dates stated below.

**THE CITY OF SAN MARCOS, TEXAS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS           §

§

COUNTY OF HAYS         §

BEFORE ME, a Notary Public, on this day personally appeared \_\_\_\_\_, as \_\_\_\_\_ of the City of San Marcos, a Texas home-rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed on behalf of that municipal corporation.

GIVEN UNDER MY HAND AND SEAL of office this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public, State of Texas

**YARRINGTON PARTNERS:**

YARRINGTON PARTNERS, LTD.,  
a Texas limited partnership

By: TEXAS REALTY/RETAIL PARTNERS, INC.,  
a Texas corporation, its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: 501 W. 15TH, INC.,  
a Texas corporation, its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, as \_\_\_\_\_ of TEXAS REALTY/RETAIL PARTNERS, INC., a Texas corporation, the General Partner of Yarrington Partners, Ltd., a Texas limited partnership, on behalf of said entities.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_



**WHISPER MC:**

**WHISPER MASTER COMMUNITY LIMITED  
PARTNERSHIP, a Texas limited partnership**

By: Whisper M.C., LLC, a Texas limited liability company, Its  
General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, as \_\_\_\_\_ of Whisper M.C., LLC, a Texas limited liability company, the General Partner of Whisper Master Community Limited Partnership, a Texas limited partnership, on behalf of said entities.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**WHISPER INDUSTRIAL:**

WHISPER INDUSTRIAL 2019 QOZB, LLC,  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, as \_\_\_\_\_ of Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company, on behalf of said entity.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**135 RESIDENTIAL:**

135 RESIDENTIAL DEVELOPMENT, LLC,  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, as \_\_\_\_\_ of 135 RESIDENTIAL DEVELOPMENT, LLC, a Texas limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

The Land

The “Land” as defined in the Agreement consists of four tracts:

- (1) That certain approximately 442.966 acre tract, referred to as the “Whisper MC Property” in the Agreement, which is more particularly described in Exhibit “A-1” attached hereto;
- (2) That certain approximately 115.686 acre tract, referred to as the “Yarrington Property” in the Agreement, which is more particularly described in Exhibit “A-2” attached hereto;
- (3) That certain approximately 16.560 acre tract, referred to as the “Whisper Industrial Property” in the Agreement, which is more particularly described in Exhibit “A-3” attached hereto; and
- (4) That certain approximately 130.641 acre tract, referred to as the “135 Residential Property” in the Agreement, which is more particularly described in Exhibit “A-4” attached hereto.

**Exhibit “A-1”**

The Whisper MC Property

The “Whisper MC Property” as defined in the Agreement consists of approximately 442.966 acres of land described as follows:

**Exhibit “A-2”**

The Yarrington Property

The “Yarrington Property” as defined in the Agreement consists of approximately 115.686 acres of land described as follows:

**Exhibit “A-3”**

The Whisper Industrial Property

The “Whisper Industrial Property” as defined in the Agreement consists of approximately 16.560 acres of land described as follows:

**Exhibit “A-4”**

The 135 Residential Property

The “135 Residential Property” as defined in the Agreement consists of approximately 130.641 acres of land described as follows:

**EXHIBIT B**

**ASSESSMENT ORDINANCE**

[To Be Attached]

**EXHIBIT C**

**Homebuyer Disclosure**

**WHISPER PUBLIC IMPROVEMENT DISTRICT  
LOT TYPE \_\_  
HOMEBUYER DISCLOSURE**

**SECTION 5.014 TEXAS PROPERTY CODE NOTICE**

**NOTICE OF OBLIGATION TO PAY PUBLIC IMPROVEMENT DISTRICT ASSESSMENT TO THE CITY OF SAN MARCOS, TEXAS, CONCERNING THE PROPERTY AT THE FOLLOWING STREET ADDRESS AND TAX ID:**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**Tax ID**

As the purchaser of this parcel of residential real property located in a public improvement district, you are obligated to pay an Assessment to the City of San Marcos, Texas for improvement projects undertaken by the Whisper Public Improvement District under Subchapter A, Chapter 372, Local Government Code. Information about the Assessment (such as its due date, the amount of the Assessment, or how it is paid) may be obtained by contacting the City. The Assessment against your parcel may be paid in full at any time together with interest through the date of payment. If you do not elect to pay the Assessment in full, it will be due and payable in annual installments, including interest and collection costs. The amount of the Assessments is subject to change. Your failure to pay the Assessment or any annual installment could result in a lien on and the foreclosure of your property.

Date: \_\_\_\_\_

\_\_\_\_\_  
Purchaser

**AGREEMENT REGARDING WAIVER OF RIGHT OF REDEMPTION AND WAIVER  
OF AGRICULTURAL VALUATION**

(WHISPER PID)

This agreement regarding conveyance of right of redemption and waiver of agricultural valuation (the “Agreement”), dated as of \_\_\_\_\_, 2020 (the “Effective Date”), by and among Yarrington Partners, Ltd., a Texas limited partnership (“Yarrington Partners”), Whisper Master Community Limited Partnership, a Texas limited partnership (“Whisper MC”), and 135 Residential Development, LLC, a Texas limited liability company (“135 Residential”) (Yarrington Partners, Whisper MC, and 135 Residential are each referred to herein as a “Landowner” and collectively as the “Landowners”), the City of San Marcos, Texas (the “City”), and \_\_\_\_\_ (the “Escrow Agent”), each acting by and through its duly authorized representative (the Landowners, City, and Escrow Agent collectively referred to as the “Parties”). Capitalized terms not defined herein shall have the meanings provided in Appendix “A” attached hereto.

**RECITALS**

WHEREAS, on October 6, 2014, the City authorized the formation of the Whisper Public Improvement District (the “District”) on the Property (defined below) in accordance with Chapter 372 of the Texas Local Government Code. The “Property” shall mean the approximately 706.1 acres of land located in Hays County, Texas, and more particularly described in Exhibit “A” attached hereto;

WHEREAS, the Landowners intend to develop the Property as a master planned development and Whisper MC, as the “Developer,” has constructed and intends to construct certain public improvements to serve the Property and has transferred or intends to transfer certain of those improvements to the City in accordance with the terms and provisions of the Whisper Public Improvement District Financing Agreement, dated as of September 5, 2017 between Yarrington Partners, Whisper MC and the City, as such was amended and restated by that certain Amended and Restated Financing Agreement between the City, Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company and the Landowners dated \_\_\_\_\_, 2020 (collectively, the “PID Financing Agreement”);

WHEREAS, the City adopted an ordinance (the “Assessment Ordinance”) pursuant to which assessments (the “Assessments”) were levied against all or a portion of the Property (the “Assessed Property”), and intends to issue one or more series of bonds for payment of costs associated with construction and/or acquisition of the certain public improvements in connection with the Property (the “PID Bonds”);

WHEREAS, each Landowner agrees to (a) waive, subject to and in accordance with the terms and conditions of this Agreement, all rights to redeem any portion of the Non-Redeemable Property (defined below), following a foreclosure of a tax lien or sale, transfer or conveyance in connection with a tax sale (collectively a “Forced Sale”), and (b) execute and deliver into escrow with the Escrow Agent a waiver of agricultural use valuation as described in Section 2 hereof; and

NOW, THEREFORE, in consideration of the premises set forth above, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto hereby agree as follows:

**SECTION 1. WAIVER OF RIGHT OF REDEMPTION.**

Subject to and in accordance with the terms and conditions of this Agreement, with regard to any and all rights arising under Subchapter B of Chapter 34 of the Texas Tax Code, as amended (“Tax Redemption Rights”), each Landowner hereby agrees to absolutely, unconditionally and irrevocably waive, release, relinquish and surrender forever, on behalf of itself and its respective successors and assigns, and agrees not to assert or exercise any and all Tax Redemption Rights it now has or in the future may have in equity, pursuant to statute, the Constitution of the State of Texas or otherwise to redeem, repurchase or reacquire any portions of the Property that are Assessed Property and are designated and claimed for agricultural use as described in Subchapter C of Chapter 23 of the Texas Tax Code (the “Non-Redeemable Property”) in the event of and following a Forced Sale. As of the Effective Date, the Non-Redeemable Property is more particularly described in Exhibit “A-1” attached hereto and made a part hereof.

**SECTION 2. DEPOSIT OF FUNDS WITH ESCROW AGENT/WAIVER OF AGRICULTURAL USE VALUATION.**

(a) Deposit. The business day prior to the closing date of the PID Bonds, the Landowners will collectively deposit \$ \_\_\_\_\_, consisting of \$ \_\_\_\_\_, \$ \_\_\_\_\_ and \$ \_\_\_\_\_ to be provided by Yarrington Partners, Whisper MC and 135 Residential, respectively (collectively, the “Initial Landowner Deposit”) with the Escrow Agent to be held in the “Developer Property Tax Reserve Fund” relating to the “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District Improvement Area #1 Project)” (the “Property Tax Fund”), which is estimated to be two years of ad valorem taxes levied by all taxing units on the Non-Redeemable Property belonging to such Landowner for the calendar years 2019 and 2020. Escrow Agent is instructed to hold the Property Tax Fund in cash until such time as the Escrow Agent receives further instruction from the City to either (i) return the funds to the Landowners; or (ii) deliver the funds to the City if, and only if, the Agricultural Use Waiver (defined herein) is released to the City under Section 2(b)(ii) below as a result of delinquent taxes. In the event funds are delivered to the City to pay delinquent taxes pursuant to clause (ii) above, the Landowner of the Property delinquent on such taxes shall deposit additional funds with the Escrow Agent to be held in the Property Tax Fund in an amount that will cause such Landowner’s total deposit (less any funds delivered to the City) to the Property Tax Fund to equal their portion of the Initial Landowner Deposit. The Landowners and any Subsequent Landowner (as defined herein) shall provide proof of payment of any taxes or Assessments secured by a lien against any portion of the Non-Redeemable Property then owned by such Landowner or Subsequent Landowner to the Escrow Agent by each March 1. In the event that any Landowner or Subsequent Landowner does not timely provide such proof to the Escrow Agent, the Escrow Agent will notify the City and the applicable Owner or Subsequent Owner in writing, and is hereby directed to take action pursuant to Section 2(b)(ii) below.

(b) Delivery of Agricultural Use Waiver into Escrow.

(i) Concurrently with the execution and delivery of this Agreement, each Landowner executed and delivered, or will promptly deliver, to the Escrow Agent to be held in escrow 5 originals of the form attached hereto as Exhibit “B” (each an “Agricultural Use Waiver”) waiving any agricultural use valuation and any right to special appraisal arising based on agricultural use with respect to Non-Redeemable Property belonging to such Landowner. Each Agricultural Use Waiver shall be held in escrow, and shall only be released from escrow in strict accordance with the provisions of this Section 2.

(ii) In the event that any Landowner or any Subsequent Landowner has not provided to the Escrow Agent proof of payment of any taxes and Assessments secured by a lien against any portion of the Non-Redeemable Property then owned by such Landowner or Subsequent Landowner by March 1 following the year for which such taxes are levied, the Escrow Agent shall provide the City and the applicable Landowner or Subsequent Owner written notice of the deficiency and provide 20 days to cure said deficiency. If the applicable Landowner or Subsequent Landowner does not provide such proof of payment by March 21 of the applicable year, the Escrow Agent shall and the applicable Landowner or Subsequent Landowners hereby irrevocably authorizes the Escrow Agent to, release the Agricultural Use Waiver relating to the portion of the Non-Redeemable Property as to which proof of payment of taxes or Assessments was not provided from escrow and deliver it to the City. The Escrow Agent shall, and the applicable Landowner or Subsequent Landowner further authorize the Escrow Agent to, attach to the Agricultural Use Waiver a description of that portion of the Non-Redeemable Property for which taxes or Assessments are delinquent; provided, however, that the Escrow Agent shall verify with the City in writing the descriptions of the Non-Redeemable Property to be attached to such Agricultural Use Waiver. In the event that the Escrow Agent receives notice that delinquent taxes or Assessments and all penalties and interest have been paid prior to Escrow Agent’s transmittal of the Agricultural Use Waiver to the City, then the Escrow Agent shall not deliver the Waiver of Agricultural Use to the City and such waiver shall be returned to escrow.

(iii) Within ten (10) business days after termination of this Agreement, the Escrow Agent shall return any funds within the Property Tax Fund to the applicable Landowner and return all of the Agricultural Use Waivers to all of the Landowners.

(c) Continued Agricultural Use. The parties hereto acknowledge and agree that except in the limited circumstances set forth in Section 2(b) above, (i) Landowners and any Subsequent Landowner shall have the full right to maintain any and all ad valorem tax exemptions available under applicable law; (ii) such right to maintain ad valorem tax exemptions is not waived (except in the limited circumstances set forth in Section 2(b) above); and (iii) Landowners and any Subsequent Landowner expressly reserve and retain such rights.

(d) Proportional Release. Notwithstanding anything in this Agreement to the contrary, if all or a portion of the Non-Redeemable Property ceases to be included in the Assessment Rolls (as defined in Appendix “A”) with respect to the District, then the owner of such land shall have the right to assume ownership of the Tax Redemption Rights for said portion of the Non-Redeemable Property. In addition, if all or a portion of the Non-Redeemable Property ceases to

be designated and claimed for agricultural use as described in Subchapter C of Chapter 23 of the Texas Tax Code (the “Non-Agricultural Portion”), that Non-Agricultural Portion shall be entitled to release from this Agreement upon the applicable Landowner providing written notice to the Escrow Agent and the City with documentation that shows (i) the Non-Agricultural Portion no longer has an agricultural use appraisal, and (ii) that the taxes and Assessments for the final year in which an agricultural use appraisal applied to the Non-Agricultural Portion have been paid in full. Upon written request by an owner of land subject to an event described in this Section 2(d), the City and the Escrow Agent shall execute a Release of Redemption from this Agreement in the form attached hereto as Exhibit “C”.

It is hereby acknowledged and agreed that the Hays County Appraisal District is the sole entity authorized to make the determination of whether the Property is subject to an agricultural use valuation and/or any right to special appraisal arising based on agricultural use.

### **SECTION 3. DEFAULT AND REMEDIES.**

If a Landowner or any Subsequent Landowner of Non-Redeemable Property shall violate any of the terms and provisions set forth in this Agreement, then the Escrow Agent, upon written notice from the City of a violation of this Agreement, shall have any remedies available at law or in equity. Upon written direction from the City, the Escrow Agent shall provide 30 days’ notice to (i) any such defaulting Landowner or Subsequent Landowner, and (ii) to any lender or mortgagee that holds a lien or security interest in all or a portion of the Assessed Property prior to taking any enforcement action. Notwithstanding anything to the contrary set forth in this Agreement, the obligations of the Landowners under this Agreement shall be several, not joint.

### **SECTION 4. REGARDING ESCROW AGENT.**

(a) The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement, and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement and no implied obligations or duties are to be imposed upon Escrow Agent. The Escrow Agent shall not be responsible for the enforceability of the transfer rights provided in Section 2 or the terms of this Agreement.

(b) The Escrow Agent shall not be liable for any action taken or omitted by it in the performance of its duties under this Agreement, except for its own negligence or willful misconduct.

(c) Any action against the Escrow Agent under this Agreement shall be limited to specific performance.

(d) The Escrow Agent shall be under no obligation to institute any suit, or to undertake any proceeding under this Agreement, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of its responsibilities hereunder or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays, and counsel fees and other

reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct.

## **SECTION 5. MISCELLANEOUS.**

(a) Term of Agreement. Subject to the provisions of Section 2(d) above, this Agreement shall continue in full force and effect until the earlier of: (1) the Landowners provide written notice to the Escrow Agent and the City with documentation that shows (i) the Assessed Property no longer has an agricultural use appraisal, and (ii) that the taxes and Assessments for the final year in which an agricultural use appraisal applied to the Assessed Property have been paid in full; or (2) any obligations remain outstanding under the Indenture.

(b) Covenants Run with the Land; Transfers of the Property. This Agreement shall be recorded in the deed records of Hays County, Texas, and shall run with the land and the ownership of any Non-Redeemable Property and shall be binding upon Subsequent Landowners having an interest in the Non-Redeemable Property. Upon the acquisition by any party of any interest in the Non-Redeemable Property, (a) such party shall automatically and without further action by such party or any other party be deemed to have assumed and agreed to be bound by this Agreement from and after the date of such transfer, and (b) the applicable Landowner shall be released of liability with respect to the transferred interest in the Non-Redeemable Property from and after the date of such transfer, but not prior thereto. Without limiting the foregoing, any party who acquires a fee interest in any portion of the Non-Redeemable Property (each, a “Subsequent Landowner”) shall, and hereby shall be deemed to have agreed to, (i) execute and record in the Official Public Records of Hays County, Texas, promptly following the recording of the conveyance instrument, an agreement in the form attached hereto as Exhibit “D” (the “Acknowledgment and Agreement”) to acknowledge that such party is subject to the terms of this Agreement, expressly agreeing to comply with the terms and provisions of this Agreement applicable to the portion of the Non-Redeemable Property acquired by such party, and waiving such party’s right to redeem such portion of the Non-Redeemable Property, and (ii) execute and deliver to the Escrow Agent, concurrently with the recording of the Acknowledgment and Agreement, 5 Agricultural Use Waivers in the form attached hereto as Exhibit “B” for that portion of the Non-Redeemable Property acquired by such party. In the event that the number of Agricultural Use Waivers signed by a Subsequent Landowner that are held by Escrow Agent is fewer than 2 and some portion of the Property owned by the Subsequent Landowner is Non- Redeemable Property, such Subsequent Landowner agrees to promptly execute and deliver to the Escrow Agent, to be held in and released from escrow as provided herein, another Agricultural Use Waiver for use with any remaining Non-Redeemable Property owned by such Subsequent Landowner; provided, however, that the Escrow Agent shall deliver to the Hays County Tax Assessor/Collector or its successor an Agricultural Use Waiver with respect to the remaining Non-Redeemable Property owned by a Subsequent Landowner that has not paid taxes or Assessments as required by this Agreement, if said Subsequent Landowner does not execute and deliver to the Escrow Agent such additional Agricultural Use Waivers within 30 days of a written request by the Escrow Agent.

(c) Release of Obligations and Notice of Termination. Immediately prior to the termination of this Agreement as contemplated in Subsection (a) of this Section 5, the City shall execute and cause the Escrow Agent to record the Release of Obligations and Notice of

Termination of this Agreement in the form attached hereto as Exhibit “E” in the deed records of Hays County, Texas.

(d) **INDEMNIFICATION.** LANDOWNERS AND SUBSEQUENT LANDOWNERS, SEVERALLY SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ESCROW AGENT AND EACH DIRECTOR, OFFICER, EMPLOYEE, ATTORNEY, AGENT AND AFFILIATE OF THE ESCROW AGENT AND CITY (COLLECTIVELY, THE “INDEMNIFIED PARTIES”) AGAINST ANY AND ALL ACTIONS, CLAIMS (WHETHER OR NOT VALID), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS’ FEES, COSTS AND EXPENSES) INCURRED BY OR ASSERTED AGAINST ANY OF THE INDEMNIFIED PARTIES AS A RESULT OF OR ARISING FROM OR IN ANY WAY RELATING TO ANY CLAIM, DEMAND, SUIT, ACTION OR PROCEEDING BY ANY PERSON, INCLUDING WITHOUT LIMITATION SUCH LANDOWNER, ASSERTING A CLAIM FOR ANY LEGAL OR EQUITABLE REMEDY AGAINST ANY PERSON ARISING FROM OR IN CONNECTION WITH THE NEGOTIATING, EXECUTION, PERFORMANCE OR FAILURE OF PERFORMANCE OF THIS AGREEMENT BY LANDOWNER OR SUCH SUBSEQUENT LANDOWNER, AS APPLICABLE, WHETHER OR NOT ANY SUCH INDEMNIFIED PARTY IS A PARTY TO ANY SUCH SUIT, ACTION OR PROCEEDING; PROVIDED, HOWEVER, THAT NO INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO BE INDEMNIFIED HEREUNDER FOR ANY LIABILITY TO HAVE RESULTED SOLELY FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.

(e) Escrow Agent’s Fees. The Escrow Agent shall not charge a fee for the performance of services hereunder. The Landowners and/or Subsequent Landowners shall fully cover payment for any and all expenses incurred by the Escrow Agent, including legal expenses, relating to or arising from the Escrow Agent’s duties under this Agreement.

(f) Binding Effect. This Agreement shall be binding upon each Landowner and its successors, receivers, trustees, and assigns and shall inure to the benefit of the City, the Escrow Agent, and the successors and assigns of the City and Escrow Agent.

(g) Amendments. This Agreement may be modified or amended only by a written agreement executed by the Escrow Agent, the City, and each owner of Non-Redeemable Property and recorded in the Official Public Records of Hays County, Texas.

(h) Severability; No Waiver. If any provision of this Agreement is held invalid or unenforceable, no other provision of this Agreement will be affected by such holding and all other provisions of this Agreement will continue in full force and effect. Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver of such requirement or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

(i) Notices. Any notice, communication or disbursement required to be given or made hereunder shall be in writing and shall be given or made by (i) hand delivery, (ii) overnight courier, or (iii) by United States mail, certified or registered mail, return receipt requested, postage prepaid, at the address set forth below or at such other address as may be specified in writing by any party hereto to the other Parties.

If to Landowners: Whisper Master Community Limited Partnership  
9811 South IH 35  
Building 3, Suite 100  
Austin, Texas 78744

Yarrington Partners, Ltd.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

135 Residential Development, LLC  
9811 South IH 35  
Building 3, Suite 100  
Austin, Texas 78744

With a copy to: McLean & Howard, L.L.P.  
Attn: Jeffrey S. Howard  
Barton Oaks Plaza, Building II  
901 South MoPac Expressway, Suite 225  
Austin, Texas 78746  
Facsimile: 512-328-2409

If to City: City of San Marcos  
Attn: City Manager  
630 E. Hopkins Street  
San Marcos, Texas 78666

With a copy to: San Marcos City Attorney  
Attn: \_\_\_\_\_  
630 E. Hopkins Street  
San Marcos, Texas 78666

If to Escrow Agent: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(j) Third Party Beneficiaries. The provisions of this Agreement are and will be for the benefit of the Parties, the Escrow Agent and the holders of the PID Bonds only and are not for the benefit of any other third party and, accordingly, no other third party shall have the right to enforce the provisions of this Agreement.

(k) Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

(l) Governing Law. The law of the State of Texas shall govern this Agreement.

(m) Anti-Boycott Verification. Pursuant to Section 2271.002, Texas Government Code, the Landowners and the Escrow Agent hereby verify that neither the Landowners, the Escrow Agent, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowners or Escrow Agent, if any, boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Landowners and Escrow Agent understand “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Landowner or the Escrow Agent and exists to make a profit.

(n) Iran, Sudan and Foreign Terrorist Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Landowners and Escrow Agent represent that neither the Landowner, the Escrow Agent, nor any parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowners or Escrow Agent is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law and excludes the Landowners, the Escrow Agent, and each parent company, wholly- or majority-owned subsidiaries, and other affiliates of the Landowners or Escrow Agent, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Landowners and the Escrow Agent understand “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Landowner or the Escrow Agent and exists to make a profit.

IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be executed by their duly authorized representatives on dates set forth in the acknowledgements below, to be effective as of the day and year first above written.

The City of San Marcos, Texas

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF TEXAS §

§

COUNTY OF HAYS §

BEFORE ME, a Notary Public, on this day personally appeared, \_\_\_\_\_, as \_\_\_\_\_, and \_\_\_\_\_, City Clerk of the City of San Marcos, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed on behalf of that municipality.

GIVEN UNDER MY HAND AND SEAL of office this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

**YARRINGTON PARTNERS:**

YARRINGTON PARTNERS, LTD.,  
a Texas limited partnership

By: TEXAS REALTY/RETAIL PARTNERS, INC.,  
a Texas corporation, its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: 501 W. 15TH, INC.,  
a Texas corporation, its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

§

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, as \_\_\_\_\_ of TEXAS REALTY/RETAIL PARTNERS, INC., a Texas corporation, the General Partner of Yarrington Partners, Ltd., a Texas limited partnership, on behalf of said entities.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_



**WHISPER MC:**

WHISPER MASTER COMMUNITY  
LIMITED PARTNERSHIP,  
a Texas limited partnership

By: Whisper M.C., LLC,  
a Texas limited liability company, its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, as \_\_\_\_\_ of Whisper M.C., LLC, a Texas limited liability company, the General Partner of Whisper Master Community Limited Partnership, a Texas limited partnership, on behalf of said entities.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

**135 RESIDENTIAL:**

135 RESIDENTIAL DEVELOPMENT, LLC,  
a Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, as \_\_\_\_\_ of 135 RESIDENTIAL DEVELOPMENT, LLC, a Texas limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

\_\_\_\_\_, as Escrow Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by  
\_\_\_\_\_, \_\_\_\_\_ on behalf of  
\_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
Notary Public, State of Texas

Appendix "A"

Definitions

"Indenture" shall mean the Indenture of Trust between the City and \_\_\_\_\_, relating to the issuance of a series of PID Bonds for financing costs of authorized public improvements, as it may be amended from time to time.

"Assessment Roll" or "Assessment Rolls" shall mean both the Assessment Roll, prepared and approved in connection with the Service and Assessment Plan pertaining to the District, as such Service and Assessment Plan was initially approved by the City Council of the City pursuant to Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, as such Service and Assessment Plan is amended or restated from time to time.

**EXHIBIT "A"**

**DESCRIPTION OF THE PROPERTY**

**LEGAL DESCRIPTION**

The Property

The "Property" as defined in the Agreement consists of three tracts:

- (1) That certain approximately 442.966 acre tract, referred to as the "Whisper MC Property" in the Agreement, which is more particularly described in Exhibit "A-1" attached hereto;
- (2) That certain approximately 115.686 acre tract, referred to as the "Yarrington Property" in the Agreement, which is more particularly described in Exhibit "A-2" attached hereto; and
- (3) That certain approximately 130.641 acre tract, referred to as the "135 Residential Property" in the Agreement, which is more particularly described in Exhibit "A-3" attached hereto.

**Exhibit “A(1)”**

The Whisper MC Property

The “Whisper MC Property” as defined in the Agreement consists of approximately 442.966 acres of land described as follows:

**Exhibit “A(2)”**

The Yarrington Property

The “Yarrington Property” as defined in the Agreement consists of approximately 115.686 acres of land described as follows:

**Exhibit “A(3)”**

The 135 Residential Property

The “135 Residential Property” as defined in the Agreement consists of approximately 130.641 acres of land described as follows:

**EXHIBIT "A-1"**

**NON-REDEEMABLE PROPERTY**



Property would be detrimental to the property valuation base and may significantly impair the ability of the City to meet its obligations under the PID Financing Agreement or, if issued, its revenue bonds secured by and payable from assessment revenues.

G. Landowner further acknowledges that the exercise of the right to redemption after a tax sale pursuant to Subchapter B of Chapter 34 of the Texas Tax Code would also significantly impair the City's ability to meet its debt obligations for its revenue bonds secured by and payable from assessment revenues.

### WAIVER

Section 1. Waiver of Exemptions. Landowner, on behalf of itself, its successors and assigns, (i) irrevocably waives its right to claim any of the Exemptions with respect to the Property for a period of 30 years beginning on the date this Waiver is received by the Hays County Tax Assessor/Collector (the "Waiver Period"); (ii) authorizes the City and/or the Escrow Agent to file this Waiver with the Chief Appraiser of the Hays Central Appraisal District, or its successors, in accordance with the terms of the Agreement; and (iii) covenants that it will not, during the Waiver Period, if applicable, make any claim for a special appraisal except on written authorization of the City. Landowner acknowledges that it may have the right under Article 8 of the Texas Constitution to assert some or all of the Exemptions which it is waiving herein, and agrees that it shall be estopped from claiming such Exemptions at any time during the Waiver Period, if applicable; provided, however, it is expressly acknowledged and agreed by Landowner that mechanisms for single-family residences now available or to be made available by any change in Texas laws for the reduction of ad valorem tax liability or of valuation for the purposes of ad valorem taxes or other assessments with respect to real property, such as exemptions for homesteads, disabled veterans, elderly homesteads, and etcetera, are not included in the definition of Exemptions and are expressly allowed, to the extent such exemptions would be otherwise available, with respect to the Property.

[Section 2. Disclosures of Lienholders. Landowner represents and warrants that \_\_\_\_\_ and \_\_\_\_\_ are the current lienholders on the Property.]

Section 3. Covenants to Run with Land. The terms and provisions hereof shall be deemed to be restrictive covenants encumbering and running with the Property and shall be binding upon the Landowner and its successors and assigns. In particular, each successive purchaser of the Property shall, upon purchase thereof (or such portion thereof) be deemed to have waived its right to claims of the Exemptions with respect to the Property (or such portions thereof) at any time during the Waiver Period, if applicable.

Section 4. Enforceability. The covenants and restrictions binding the Property hereunder shall be enforceable only by the City, the Escrow Agent, and their respective successors and assigns. This Waiver is for the sole benefit of the parties hereto, and of the Escrow Agent, and no other third party is intended to be a beneficiary of this Waiver.

Section 5. Termination. This Waiver shall continue in full force and effect until the earlier to occur of the following: (i) the expiration of the Waiver Period; or (ii) such time as the

Escrow Agent approves a revocation in writing.

Section 6. Severability. Every provision of this Waiver is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable to the maximum extent permitted by law, it being the intent of the parties hereto to give full force and effect to the agreements made hereunder to the maximum extent permitted by law.

Section 7. Headings. The Section headings are included in this Waiver for convenience of reference only, and shall not be deemed to affect the substantive provisions of this Waiver.

Section 8. Remedies. If Landowner breaches its obligations hereunder, the Escrow Agent or the City (on behalf of the Escrow Agent), in addition to all other remedies set forth herein or otherwise available at law or in equity, shall be entitled to recover from Landowner the amount of assessments that would have been due to the City had Landowner complied with this Waiver. Such payment will be due and payable, and will incur penalties and charges under the same terms as if the payment had been an assessment obligation of Landowner to City.

[execution page follows]

EXECUTED to be effective as of the date first above written.

[LANDOWNER]

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Schedule 1 to Agricultural Use Waiver

**EXHIBIT “C”**

**RELEASE OF REDEMPTION AGREEMENT**

STATE OF TEXAS       §  
                                  §                   KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF HAYS     §

WHEREAS, the land described in the attached Exhibit “A” (“Property”) is located within the Whisper Public Improvement District (“District”);

WHEREAS, \_\_\_\_\_ is the owner of the Property (“Owner”);

WHEREAS, the Property is subject to the terms of the Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation with an effective date of \_\_\_\_\_, 2020, and recorded in Document No. \_\_\_\_\_, Official Public Records of Hays County, Texas (“Redemption Agreement”);

WHEREAS, the City of San Marcos, Texas (the “City”), \_\_\_\_\_ (the “Initial Owner”), and \_\_\_\_\_ (the “Escrow Agent”) are parties to the Redemption Agreement;

WHEREAS, pursuant to the Redemption Agreement, certain rights to redeem the Property under the Texas Tax Code (as described in the Redemption Agreement) were waived by the Initial Owner;

WHEREAS, pursuant to Redemption Agreement, the Escrow Agent is authorized to deliver a Waiver of Agricultural Use to the City for filing with the appropriate Tax Assessor/Collector office in the event that delinquent taxes or assessments are owed on the Property;

WHEREAS, pursuant to Redemption Agreement, the City and the Escrow Agent are authorized to release property from the terms of the Redemption Agreement; and

WHEREAS, the City and the Escrow Agent have determined that the Property should be released from the terms of the Redemption Agreement.

NOW, THEREFORE, for and in consideration of the above stated premises, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged by the City and the Escrow Agent, the City and the Escrow Agent do hereby forever release and discharge the Property from all terms, restrictions, covenants, and conditions of the Redemption Agreement in its entirety, and release any and all rights that the City and the Escrow Agent had, have or may have by virtue of the Redemption Agreement. In no event shall this release have any impact on land within the District other than the Property described in the attached Exhibit “A”.

WITNESS THE EXECUTION HEREOF this the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

The City of San Marcos, Texas

By: \_\_\_\_\_,  
\_\_\_\_\_, Mayor

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

THE STATE OF TEXAS       §

COUNTY OF HAYS       §

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ and \_\_\_\_\_, the Mayor and Clerk,  
respectively, of the City of San Marcos, Texas, a home rule city and Texas municipal corporation,  
on behalf of said city and municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

WITNESS THE EXECUTION HEREOF this the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

Escrow Agent

By: \_\_\_\_\_

THE STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_, on behalf of  
said entity.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

\* Attach description of the Property as Exhibit "A" prior to recording.

After Recording Mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT "D"**

**ACKNOWLEDGMENT OF ASSUMPTION AND WAIVER OF  
RIGHT OF REDEMPTION**

This Acknowledgment of Assumption and Waiver of Right of Redemption (this "Acknowledgment and Agreement") is entered into effective \_\_\_\_\_, 20 \_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_ (whether one or more, the "Buyer"), in favor of the City of San Marcos, Texas and the Escrow Agent, as such term is defined in the Redemption Agreement (defined below).

R E C I T A L S

A. WHEREAS, Buyer has purchased and acquired certain land described on Exhibit "A" attached hereto (the "Property"); and

B. WHEREAS, the Property is subject to that certain Agreement Regarding Waiver of Right of Redemption and Wavier of Agricultural Valuation, dated on or about \_\_\_\_\_, 20\_\_\_\_ (the "Redemption Agreement"); and

C. WHEREAS, pursuant to the requirements of the Redemption Agreement, it is a condition to the acquisition of the Property that the Buyer execute this Acknowledgment and Agreement and record same in the Official Public Records of Hays County, Texas; and

D. WHEREAS, the purchase price paid by Buyer for the Property was calculated and determined, in part, based upon the benefits and restrictions applicable to the Property and arising in connection with the Redemption Agreement and the other agreements executed in connection therewith and the requirement that Buyer execute this Acknowledgment and Agreement.

NOW, THEREFORE, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer hereby represents, warrants and agrees as follows:

1. Buyer acknowledges that the Redemption Agreement continues to affect the Property, and that Buyer has assumed, and Buyer hereby does assume and agree to perform, the obligations of Landowner (as such term is defined in the Redemption Agreement) under the Redemption Agreement with respect to the Property.

2. Subject to and in accordance with the terms and conditions set forth in the Redemption Agreement, Buyer hereby agrees to absolutely, unconditionally and irrevocably waive, release, relinquish and surrender forever on behalf of itself and its successors and assigns, and agrees not to assert or exercise any and all rights it now has or in the future may have in equity, pursuant to statute, the Constitution of the State of Texas or otherwise to redeem, repurchase or reacquire, in the event of and following any Forced Sale (as defined in the Redemption Agreement) in connection with any portion of the Property that constitutes Non- Redeemable Property (as defined in the Redemption Agreement), including, without limitation, any and all

rights arising under Subchapter B of Chapter 34 of the Texas Tax Code, but excluding any redemption rights arising out of the homestead status of the Property.

3. Concurrently with the execution and delivery of this Acknowledgment and Agreement, Buyer has executed and has delivered (or will promptly deliver) to the Escrow Agent to be held in escrow five (5) Waivers of Special Appraisal (the "Waivers") in the form attached as Exhibit "B" to the Redemption Agreement waiving any agricultural use valuation and any right to special appraisal arising based on agricultural use with respect to the Property. Such Waivers shall be held in, and released from, escrow in accordance with the provisions of the Redemption Agreement.

EXECUTED to be effective as of the date first above written.

BUYER:

\_\_\_\_\_

Address for Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE STATE OF TEXAS       §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

\* Attach description of the Property as **Exhibit A** prior to recording.

**EXHIBIT "E"**

**RELEASE OF OBLIGATIONS AND NOTICE OF TERMINATION**

THE STATE OF TEXAS                    §  
  §       KNOW EVERYONE BY THESE PRESENTS:  
COUNTY OF HAYS                     §

All rights and obligations under that certain Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation having an effective date of \_\_\_\_\_, 20\_\_\_\_ (the "Agreement") recorded in the Official Public Records of Hays County, Texas, on \_\_\_\_\_, 20\_\_\_\_, under Instrument No. \_\_\_\_\_ ARE HEREBY RELEASED and NOTICE IS HEREBY GIVEN of the termination of the Agreement in accordance with its terms.

**THE CITY OF SAN MARCOS, TEXAS**

By: \_\_\_\_\_  
  \_\_\_\_\_, Mayor

ATTEST:

By: \_\_\_\_\_  
  \_\_\_\_\_, City Clerk

STATE OF TEXAS                    §  
  §  
COUNTY OF HAYS                   §

BEFORE ME, a Notary Public, on this day personally appeared \_\_\_\_\_, Mayor, and \_\_\_\_\_, the Clerk of the City of San Marcos, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed on behalf of that municipality.

GIVEN UNDER MY HAND AND SEAL of office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

**[\$[PRINCIPAL]]**  
**CITY OF SAN MARCOS, TEXAS,**  
**SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020**  
**(WHISPER PUBLIC IMPROVEMENT DISTRICT)**

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**BOND PURCHASE AGREEMENT**

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June 2, 2020

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

Ladies and Gentlemen:

The undersigned, FMSbonds, Inc. (the “Underwriter”), offers to enter into this Bond Purchase Agreement (this “Agreement”) with the City of San Marcos, Texas (the “City”), which will be binding upon the City and the Underwriter upon the acceptance of this Agreement by the City. This offer is made subject to its acceptance by the City by execution of this Agreement and its delivery to the Underwriter on or before 10:00 p.m., Central Time, on the date hereof and, if not so accepted, will be subject to withdrawal by the Underwriter upon written notice delivered to the City at any time prior to the acceptance hereof by the City. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Indenture (defined herein) between the City and UMB Bank, N.A., Austin, Texas, as trustee (the “Trustee”), authorizing the issuance of the Bonds (defined herein), and in the Limited Offering Memorandum (defined herein).

1. Purchase and Sale of Bonds. Upon the terms and conditions and upon the basis of representations, warranties, and agreements hereinafter set forth, the Underwriter hereby agrees to purchase from the City, and the City hereby agrees to sell to the Underwriter, all (but not less than all) of the \$[PRINCIPAL] aggregate principal amount of the “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District)” (the “Bonds”), at a purchase price of \$\_\_\_\_\_ (representing the aggregate principal amount of the Bonds, less [an original issue discount of \$\_\_\_\_\_ and] an Underwriter’s discount of \$\_\_\_\_\_).

Inasmuch as this purchase and sale represents a negotiated transaction, the City understands, and hereby confirms, that the Underwriter is not acting as a municipal advisor or fiduciary of the City (including, without limitation, a “municipal advisor” (as such term is defined in Section 975(e) of the Dodd Frank Wall Street Reform and Consumer Protection Act)), but rather is acting solely in its capacity as Underwriter for its own account. The City acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Agreement

is an arm's length commercial transaction between the City and the Underwriter, (ii) in connection with the discussions, undertakings, and procedures leading up to the consummation of this transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent, municipal advisor, financial advisor, or fiduciary of the City, (iii) the Underwriter has not assumed an advisory or fiduciary responsibility in favor of the City with respect to the offering described herein or the discussions, undertakings, and procedures leading thereto (regardless of whether the Underwriter has provided other services or is currently providing other services to the City on other matters) and the Underwriter has no obligation to the City with respect to the offering described herein except the obligations expressly set forth in this Agreement, (iv) the City has consulted its own legal, financial and other advisors to the extent it has deemed appropriate, (v) the Underwriter has financial and other interests that differ from those of the City, and (vi) the Underwriter has provided to the City prior disclosures under Rule G-17 of the Municipal Securities Rulemaking Board ("MSRB"), which have been received by the City. The City further acknowledges and agrees that following the issuance and delivery of the Bonds, the Underwriter has indicated that it may have periodic discussions with the City regarding the expenditure of Bond proceeds and the construction of the Major Improvements financed with the Bonds and, in connection with such discussions, the Underwriter shall be acting solely as a principal and will not be acting as the agent or fiduciary of, and will not be assuming an advisory or fiduciary responsibility in favor of, the City.

The Bonds shall be dated [June 30], 2020 and shall have the maturities and redemption features, if any, and bear interest at the rates per annum shown on Schedule I hereto. Payment for and delivery of the Bonds, and the other actions described herein, shall take place on [June 30], 2020 (or such other date as may be agreed to by the City and the Underwriter) (the "Closing Date").

2. Authorization Instruments and Law. The Bonds were authorized by an ordinance enacted by the City Council of the City (the "City Council") on June 2, 2020 (the "Bond Ordinance") and shall be issued pursuant to the provisions of the Public Improvement District Assessment Act, Subchapter A of Chapter 372, Texas Local Government Code, as amended (the "Act"), and the Indenture of Trust, dated as of June 2, 2020, between the City and the Trustee, authorizing the issuance of the Bonds (the "Indenture"). The Bonds shall be substantially in the form described in, and shall be secured under the provisions of, the Indenture.

The Bonds and interest thereon shall be secured by the "Trust Estate" consisting primarily of revenue from special assessments (the "Assessments") levied on the assessable parcels within the Whisper Public Improvement District (the "District"). The District was established by a resolution (the "Creation Resolution"), enacted by the City Council on October 6, 2014, in accordance with the Act. The Assessments were levied in accordance with a service and assessment plan, adopted by the City Council on June 2, 2020 (the "Service and Assessment Plan"), pursuant to an ordinance (the "Assessment Ordinance" and, together with the Creation Resolution, the Indenture and the Bond Ordinance, the "Authorizing Documents"). The Bonds shall be further secured by certain applicable funds and accounts created pursuant to the Indenture.

The Bonds shall be as described in Schedule I attached hereto, the Indenture, and the Limited Offering Memorandum. The proceeds of the Bonds shall be used for (i) paying a

portion of the costs of the Major Improvements, (ii) paying a portion of the interest on the Bonds during and after the period of acquisition and construction of the Major Improvements, (iii) funding a reserve fund for the payment of principal of and interest on the Bonds, (iv) paying a portion of the costs incidental to the organization of the District, and (v) paying the costs of issuing the Bonds.

3. Public Offering. The Underwriter agrees to make a bona fide limited public offering of all of the Bonds in accordance with Section 4 hereof and to no more than thirty-five (35) persons that qualify as “Accredited Investors” (as defined in Rule 501 of Regulation D under the Securities Act (as defined herein) or “Qualified Institutional Buyers” (as defined in Rule 144A under the Securities Act)).

4. Establishment of Issue Price.

a. The Underwriter agrees to assist the City in establishing the issue price of the Bonds and shall execute and deliver to the City on or before the third (3rd) business day prior to the Closing Date an “issue price” or similar certificate (the “Issue Price Certificate”), together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Appendix B, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the City and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds. All actions to be taken by the City under this Section to establish the issue price of the Bonds may be taken on behalf of the City by the City’s Financial Advisor identified herein and any notice or report to be provided to the City may be provided to the City’s Financial Advisor.

b. The Underwriter confirms that it has offered all the Bonds of each maturity to the public on or before the date of this Agreement at the respective offering price (the “initial offering price”), or at the corresponding yield or yields, set forth in Schedule I attached hereto, except as otherwise set forth therein. The City will treat the first price at which 10% of each maturity of the Bonds is sold to the public as of the sale date as the issue price of that maturity (the “10% test”). At or promptly after the execution of this Agreement, the Underwriter shall report to the City on Schedule A to the Issue Price Certificate the first price at which the Underwriter has sold to the public each maturity of Bonds, and shall identify to the City on Schedule A to the Issue Price Certificate those maturities of the Bonds for which the 10% test has not been satisfied. If different interest coupons apply within a maturity, each separate CUSIP number within that maturity will be treated as a separate maturity for this purpose.

c. The City and the Underwriter agree that the restrictions set forth in the next sentence shall apply to those maturities of the Bonds for which the 10% test has not been met as of the date of this Agreement, which will allow the City to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the

initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (i) the close of the fifth (5th) business day after the sale date; or
- (ii) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the City when the Underwriter has sold 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public, if such sale occurs prior to the close of the fifth (5th) business day after the sale date.

d. The Underwriter confirms that any selling group agreement and each third-party distribution agreement relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each dealer who is a member of the selling group, and each broker-dealer that is a party to such third-party distribution agreement, as applicable, to (A) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Underwriter and as set forth in the related pricing wires, (B) promptly notify the Underwriter of any sales of Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public, and (C) acknowledge that, unless otherwise advised by the dealer or broker-dealer, the Underwriter shall assume that each order submitted by the dealer or broker-dealer is a sale to the public. The City acknowledges that, in making the representation set forth in this subsection, the Underwriter will rely on (i) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, if applicable, as set forth in a selling group agreement and the related pricing wires, and (ii) in the event that a third-party distribution agreement was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, if applicable, as set forth in the third-party distribution agreement and the related pricing wires. The City further acknowledges that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the Bonds.

e. The Underwriter acknowledges that sales of any Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this Section. Further, for purposes of this Section:

- (i) “public” means any person other than an underwriter or a related party to an underwriter;

(ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public);

(iii) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other); and

(iv) “sale date” means the date of execution of this Agreement by all parties.

5. Limited Offering Memorandum.

a. Delivery of Limited Offering Memorandum. The City previously has delivered, or caused to be delivered, to the Underwriter the Preliminary Limited Offering Memorandum for the Bonds dated May 21, 2020 (the “Preliminary Limited Offering Memorandum”), in a “designated electronic format,” as defined in the MSRB Rule G-32 (“Rule G-32”). The City will prepare, or cause to be prepared, a final Limited Offering Memorandum relating to the Bonds (as more particularly defined below, the “Limited Offering Memorandum”) which will be (i) dated the date of this Agreement, (ii) complete within the meaning of the United States Securities and Exchange Commission’s Rule 15c2-12, as amended (“Rule 15c2-12”), (iii) in a “designated electronic format,” and (iv) substantially in the form of the most recent version of the Preliminary Limited Offering Memorandum provided to the Underwriter before the execution hereof, except for the inclusion of the information permitted to be excluded from the Preliminary Limited Offering Memorandum by Section (b)(1) of Rule 15c2-12. The Limited Offering Memorandum, including the cover page thereto, all exhibits, schedules, appendices, maps, charts, pictures, diagrams, reports, and statements included or incorporated therein or attached thereto, and all amendments and supplements thereto that may be authorized for use with respect to the Bonds are collectively referred to herein as the “Limited Offering Memorandum.” Until the Limited Offering Memorandum has been prepared and is available for distribution, the City shall provide to the Underwriter, upon request, sufficient quantities (which may be in electronic format) of the Preliminary Limited Offering Memorandum as the Underwriter reasonably deems necessary to satisfy

the obligation of the Underwriter under Rule 15c2-12 with respect to distribution to each potential customer.

b. Preliminary Limited Offering Memorandum Deemed Final. The Preliminary Limited Offering Memorandum has been prepared for use by the Underwriter in connection with the public offering, sale, and distribution of the Bonds. The City hereby represents and warrants that the Preliminary Limited Offering Memorandum has been deemed final by the City as of its date, except for the omission of such information which is dependent upon the final pricing of the Bonds for completion, all as permitted to be excluded by Section (b)(1) of Rule 15c2-12.

c. Use of Limited Offering Memorandum in Offering and Sale. The City hereby authorizes the Limited Offering Memorandum and the information therein contained to be used by the Underwriter in connection with the public offering and the sale of the Bonds. The City consents to the use by the Underwriter prior to the date hereof of the Preliminary Limited Offering Memorandum in connection with the public offering of the Bonds. The City shall provide, or cause to be provided, to the Underwriter as soon as practicable after the date of the City's acceptance of this Agreement (but, in any event, not later than the earlier of the Closing Date or seven (7) business days after the City's acceptance of this Agreement) copies of the Limited Offering Memorandum which is complete as of the date of its delivery to the Underwriter. The City shall provide the Limited Offering Memorandum, or cause the Limited Offering Memorandum to be provided, (i) in a "designated electronic format" consistent with the requirements of Rule G-32 and (ii) in a printed format in such quantity as the Underwriter shall reasonably request in order for the Underwriter to comply with Section (b)(4) of Rule 15c2-12 and the rules of the MSRB.

d. Updating of Limited Offering Memorandum. If, after the date of this Agreement, up to and including the date the Underwriter is no longer required to provide a Limited Offering Memorandum to potential customers who request the same pursuant to Rule 15c2-12 (the earlier of (i) ninety (90) days from the "end of the underwriting period" (as defined in Rule 15c2-12) and (ii) the time when the Limited Offering Memorandum is available to any person from the MSRB, but in no case less than the twenty-fifth (25<sup>th</sup>) day after the "end of the underwriting period" for the Bonds), the City becomes aware of any fact or event which might or would cause the Limited Offering Memorandum, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary to amend or supplement the Limited Offering Memorandum to comply with law, the City will notify the Underwriter promptly (and for the purposes of this clause provide the Underwriter with such information as it may from time to time reasonably request), and if, in the reasonable judgment of the Underwriter, such fact or event requires preparation and publication of a supplement or amendment to the Limited Offering Memorandum, the City will forthwith prepare and furnish, at no expense to the Underwriter (in a form and manner approved by the Underwriter), either an amendment or a supplement to the Limited Offering Memorandum so that the statements therein as so amended and supplemented will not contain any untrue statement

of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading or so that the Limited Offering Memorandum will comply with law; provided, however, that for all purposes of this Agreement and any certificate delivered by the City in accordance herewith, the City makes no representations with respect to the following information (collectively, the “Non-City Disclosures”) (i) the descriptions in the Preliminary Limited Offering Memorandum or the Limited Offering Memorandum of The Depository Trust Company, New York, New York (“DTC”), or its book-entry-only system, and (ii) the information in the Preliminary Limited Offering Memorandum or the Limited Offering Memorandum in any maps included therein or under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “ — Status of Major Improvements and Additional Improvements,” “ — Homebuilders and Status of Home Construction” and “ — Status of Multi-family, Industrial/Business Park and General Commercial,” “BOOK-ENTRY-ONLY SYSTEM,” “THE AUTHORIZED IMPROVEMENTS,” “THE DEVELOPMENT,” “THE DEVELOPER,” “THE PID ADMINISTRATOR,” “APPRAISAL OF PROPERTY WITHIN THE DISTRICT,” “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Major Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation – The Developer,” “CONTINUING DISCLOSURE — The Developer,” “ — The Developer’s Compliance with Prior Undertakings,” “— Yarrington,” “— Yarrington’s Compliance with Prior Undertakings,” “— 135 Residential” and “— 135 Residential’s Compliance with Prior Undertakings,” “INFORMATION RELATING TO THE TRUSTEE,” “APPENDIX E-2,” “APPENDIX E-3,” “APPENDIX E-4” and “APPENDIX F.” If such notification shall be subsequent to the Closing (as defined herein), the City, at no expense to the Underwriter, shall furnish such legal opinions, certificates, instruments, and other documents as the Underwriter may reasonably deem necessary to evidence the truth and accuracy of such supplement or amendment to the Limited Offering Memorandum. The City shall provide any such amendment or supplement, or cause any such amendment or supplement to be provided, (i) in a “designated electronic format” consistent with the requirements of Rule G-32 and (ii) in a printed format in such quantity as the Underwriter shall reasonably request in order for the Underwriter to comply with Section (b)(4) of Rule 15c2-12 and the rules of the MSRB.

e. Filing with MSRB. The Underwriter hereby agrees to timely file the Limited Offering Memorandum with the MSRB through its Electronic Municipal Market Access (“EMMA”) system within one (1) business day after receipt but no later than the Closing Date. Unless otherwise notified in writing by the Underwriter, the City can assume that the “end of the underwriting period” for purposes of Rule 15c2-12 is the Closing Date.

f. Limited Offering. The Underwriter hereby represents, warrants and covenants that the Bonds were initially sold pursuant to a limited offering. The Bonds were sold to not more than thirty-five (35) persons that qualify as “Accredited Investors” (as defined in Rule 501 of Regulation D under the Securities Act) or “Qualified Institutional Buyers” (as defined in Rule 144A under the Securities Act).

6. City Representations, Warranties and Covenants. The City represents, warrants and covenants that:

a. Due Organization, Existence and Authority. The City is a political subdivision of the State of Texas (the “State”), and has, and at the Closing Date will have, full legal right, power and authority:

(i) to enter into and perform its duties and obligations under:

(1) this Agreement;

(2) the Indenture;

(3) the Amended and Restated Whisper Public Improvement District Financing Agreement, effective as of May 8, 2020 (the “Financing Agreement”), executed and delivered by the City, Whisper Master Community Limited Partnership, a Texas limited partnership (the “Developer”), Yarrington Partners, Ltd., a Texas limited partnership (“Yarrington”), Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“Whisper Industrial”) and 135 Residential Development, LLC, a Texas limited liability company (“135 Residential” and, together with the Developer, Yarrington, and Whisper Industrial, the “Landowners”);

(4) the Whisper Public Improvement District Acquisition and Reimbursement Agreement, effective as of May 8, 2020 (the “Reimbursement Agreement”), executed and delivered by the City and the Landowners;

(5) the Whisper Public Improvement District Landowner Agreement and Notice of Special Assessments, dated as of [June 2], 2020 (the “Landowner Agreement”), executed and delivered by the City and the Landowners;

(6) the Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (WHISPER PID) dated as of [June 2], 2020, executed and delivered by the City, the Developer, Yarrington, 135 Residential and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”); and

(7) the Continuing Disclosure Agreement of Issuer with respect to the Bonds, dated as of June 2, 2020 (the “Continuing Disclosure Agreement of Issuer”), executed and delivered by the City and UMB Bank, N.A., as Dissemination Agent.

(ii) to issue, sell, and deliver the Bonds to the Underwriter as provided herein; and

(iii) to carry out and consummate the transactions on its part described in (1) the Authorizing Documents, (2) this Agreement, (3) the Financing Agreement, (4) Reimbursement Agreement, (5) the Landowner Agreement, (6) the Redemption Waiver Agreement, (7) the Continuing Disclosure Agreement of Issuer, (8) the Limited Offering Memorandum, and (9) any other documents and certificates described in any of the foregoing (the documents described by subclauses (1) through (9) being referred to collectively herein as the “City Documents”).

b. Due Authorization and Approval of City. By all necessary official action of the City, the City has duly authorized and approved the adoption or execution and delivery by the City of, and the performance by the City of the obligations on its part contained in, the City Documents and, as of the date hereof, such authorizations and approvals are in full force and effect and have not been amended, modified or rescinded, except as may have been approved by the Underwriter. When validly executed and delivered by the other parties thereto, the City Documents will constitute the legally valid and binding obligations of the City enforceable upon the City in accordance with their respective terms, except insofar as enforcement may be limited by principles of sovereign immunity, bankruptcy, insolvency, reorganization, moratorium, or similar laws or equitable principles relating to or affecting creditors’ rights generally. The City has complied, and will at the Closing be in compliance, in all material respects, with the obligations on its part to be performed on or prior to the Closing Date under the City Documents.

c. Due Authorization for Issuance of the Bonds. The City has duly authorized the issuance and sale of the Bonds pursuant to the Bond Ordinance, the Indenture, and the Act. The City has, and at the Closing will have, full legal right, power and authority (i) to enter into, execute, deliver, and perform its obligations under this Agreement and the other City Documents, (ii) to issue, sell and deliver the Bonds to the Underwriter pursuant to the Indenture, the Bond Ordinance, the Act, and as provided herein, and (iii) to carry out, give effect to and consummate the transactions on the part of the City described by the Bond Ordinance and the other City Documents.

d. No Breach or Default. As of the time of acceptance hereof, and to its knowledge, the City is not, and as of the Closing Date the City will not be, in breach of or in default in any material respect under any applicable constitutional provision, law or administrative rule or regulation of the State or the United States, or any applicable judgment or decree or any trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument related to the Bonds and to which the City is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument which breach, default or event could have a material adverse effect on the City’s ability to perform its obligations under the Bonds or the City Documents; and, as of such times, the authorization, execution and delivery of the Bonds and the City Documents and compliance by the City with obligations on its part to be performed in each of such agreements or instruments does not and will not conflict with or constitute a breach of or default under any applicable constitutional provision, law or

administrative rule or regulation of the State or the United States, or any applicable judgment, decree, license, permit, trust agreement, loan agreement, bond, note, resolution, ordinance, agreement or other instrument to which the City (or any of its officers in their respective capacities as such) is subject, or by which it or any of its properties are bound, nor will any such authorization, execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of its assets or properties or under the terms of any such law, regulation or instrument, except as may be permitted by the City Documents.

e. No Litigation. At the time of acceptance hereof there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body (collectively and individually, an “Action”) pending against the City with respect to which the City has been served with process, nor to the knowledge of the City is any Action threatened against the City, in which any such Action (i) in any way questions the existence of the City or the rights of the members of the City Council to hold their respective positions, (ii) in any way questions the formation or existence of the District, (iii) affects, contests or seeks to prohibit, restrain or enjoin the issuance or delivery of any of the Bonds, or the payment or collection of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contests or affects the validity of the City Documents or the consummation of the transactions on the part of the City described therein, or contests the exclusion of the interest on the Bonds from federal income taxation, or (iv) which may result in any material adverse change in the financial condition of the City; and, as of the time of acceptance hereof, to the City’s knowledge, there is no basis for any action, suit, proceeding, inquiry, or investigation of the nature described in clauses (i) through (iv) of this sentence.

f. Bonds Issued Pursuant to Indenture. The City represents that the Bonds, when issued, executed, and delivered in accordance with the Indenture and sold to the Underwriter as provided herein, will be validly issued and outstanding obligations of the City subject to the terms of the Indenture, entitled to the benefits of the Indenture and the security of the pledge of the proceeds of the levy of the Assessments received by the City, all to the extent provided for in the Indenture. The Indenture creates a valid pledge of certain revenues and the monies in certain funds and accounts established pursuant to the Indenture to the extent provided for in the Indenture, including the investments thereof, subject in all cases to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

g. Assessments. The Assessments constituting the security for the Bonds have been levied by the City in accordance with the Act on those parcels of land identified in the Assessment Roll (as defined in the Service and Assessment Plan). According to the Act, such Assessments constitute a valid and legally binding first and prior lien against the properties assessed, superior to all other liens and claims, except liens or claims for state, county, school district, or municipality ad valorem taxes.

h. Consents and Approvals. All authorizations, approvals, licenses, permits, consents, elections, and orders of or filings with any governmental authority, legislative body, board, agency, or commission having jurisdiction in the matters which are required by the Closing Date for the due authorization of, which would constitute a condition precedent to or the absence of which would adversely affect the due performance by the City of, its obligations in connection with the City Documents have been duly obtained or made and are in full force and effect, except the approval of the Bonds by the Attorney General of the State, registration of the Bonds by the Comptroller of Public Accounts of the State, and the approvals, consents and orders as may be required under Blue Sky or securities laws of any jurisdiction.

i. Public Debt. Prior to the Closing, the City will not offer or issue any bonds, notes or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or secured by a pledge of the Assessments which secure the Bonds without the prior approval of the Underwriter.

j. Preliminary Limited Offering Memorandum. The information contained in the Preliminary Limited Offering Memorandum is true and correct in all material respects, and such information does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the City makes no representations with respect to the Non-City Disclosures.

k. Limited Offering Memorandum. At the time of the City's acceptance hereof and (unless the Limited Offering Memorandum is amended or supplemented pursuant to paragraph (d) of Section 5 of this Agreement) at all times subsequent thereto during the period up to and including the twenty-fifth (25th) day subsequent to the "end of the underwriting period," the information contained in the Limited Offering Memorandum does not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the City makes no representations with respect to the Non-City Disclosures; and further provided, however, that if the City notifies the Underwriter of any fact or event as required by Section 5(d) hereof, and the Underwriter determines that such fact or event does not require preparation and publication of a supplement or amendment to the Limited Offering Memorandum, then the Limited Offering Memorandum in its then-current form shall be conclusively deemed to be complete and correct in all material respects.

l. Supplements or Amendments to Limited Offering Memorandum. If the Limited Offering Memorandum is supplemented or amended pursuant to paragraph (d) of Section 5 of this Agreement, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the twenty-fifth (25th) day subsequent to the "end of the underwriting period," the Limited Offering Memorandum as so supplemented or amended will not contain any untrue statement of a material fact or

omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that if the City notifies the Underwriter of any fact or event as required by Section 5(d) hereof, and the Underwriter determines that such fact or event does not require preparation and publication of a supplement or amendment to the Limited Offering Memorandum, then the Limited Offering Memorandum in its then-current form shall be conclusively deemed to be complete and correct in all material respects.

m. Compliance with Rule 15c2-12. During the past five (5) years, the City has complied in all material respects with its previous continuing disclosure undertakings made by it in accordance with Rule 15c2-12, except as described in the Limited Offering Memorandum.

n. Use of Bond Proceeds. The City will apply, or cause to be applied, the proceeds from the sale of the Bonds as provided in and subject to all of the terms and provisions of the Indenture and will not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

o. Blue Sky and Securities Laws and Regulations. The City will furnish such information and execute such instruments and take such action in cooperation with the Underwriter as the Underwriter may reasonably request, at no expense to the City, (i) to (y) qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions in the United States as the Underwriter may designate and (z) determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions and (ii) to continue such qualifications in effect so long as required for the initial distribution of the Bonds by the Underwriter (provided, however, that the City will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any jurisdiction) and will advise the Underwriter immediately of receipt by the City of any notification with respect to the suspension of the qualification of the Bonds for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose.

p. Certificates of the City. Any certificate signed by any official of the City authorized to do so in connection with the transactions described in this Agreement shall be deemed a representation and warranty by the City to the Underwriter as to the statements made therein and can be relied upon by the Underwriter as to the statements made therein.

q. Intentional Actions Regarding Representations and Warranties. The City covenants that between the date hereof and the Closing it will not intentionally take actions which will cause the representations and warranties made in this Section to be untrue as of the Closing.

r. Financial Advisor. The City has engaged Specialized Public Finance Inc. as its financial advisor (the “Financial Advisor”) in connection with its offering and issuance of the Bonds.

By delivering the Limited Offering Memorandum to the Underwriter, the City shall be deemed to have reaffirmed, with respect to the Limited Offering Memorandum, the representations, warranties and covenants set forth above.

7. Developer Letter of Representations. At the signing of this Agreement, the City and Underwriter shall receive from the Developer an executed Developer Letter of Representations (the “Developer Letter of Representations”) in the form of Appendix A hereto, and at the Closing, a certificate signed by the Developer as set forth in Section 10(e) hereof (the “Developer Closing Certificate”).

8. The Closing. At 10:00 a.m., Central time, on the Closing Date, or at such other time or on such earlier or later business day as shall have been mutually agreed upon by the City and the Underwriter, (i) the City will deliver or cause to be delivered to DTC through its “FAST” System, the Bonds in the form of one fully registered Bond for each maturity, registered in the name of Cede & Co., as nominee for DTC, duly executed by the City and authenticated by the Trustee as provided in the Indenture, and (ii) the City will deliver the closing documents hereinafter mentioned to McCall, Parkhurst & Horton L.L.P. (“Bond Counsel”), or a place to be mutually agreed upon by the City and the Underwriter. Settlement will be through the facilities of DTC. The Underwriter will accept delivery and pay the purchase price of the Bonds as set forth in Section 1 hereof by wire transfer in federal funds payable to the order of the City or its designee. These payments and deliveries, together with the delivery of the aforementioned documents, are herein called the “Closing.” The Bonds will be made available to the Underwriter or Underwriter’s Counsel (as defined herein) for inspection not less than twenty-four (24) hours prior to the Closing.

9. Underwriter’s Closing Conditions. The Underwriter has entered into this Agreement in reliance upon the representations and covenants herein and in the Developer Letter of Representations and the performance by the City of its obligations under this Agreement, both as of the date hereof and as of the Closing Date. Accordingly, the Underwriter’s obligations under this Agreement to purchase, accept delivery of, and pay for the Bonds shall be conditioned upon the performance by the City of its obligations to be performed hereunder at or prior to Closing and shall also be subject to the following additional conditions:

a. Bring-Down Representations of the City. The representations and covenants of the City contained in this Agreement shall be true and correct in all material respects as of the date hereof and at the time of the Closing, as if made on the Closing Date.

b. Executed Agreements and Performance Thereunder. At the time of the Closing (i) the City Documents shall be in full force and effect, and shall not have been amended, modified, or supplemented except with the written consent of the Underwriter; (ii) the Authorizing Documents shall be in full force and effect; (iii) there shall be in full force and effect such other resolutions or actions of the City as, in the opinion of Bond

Counsel and Underwriter's Counsel, shall be necessary on or prior to the Closing Date in connection with the transactions on the part of the City described in this Agreement and the City Documents; (iv) there shall be in full force and effect such other resolutions or actions of the Developer as, in the opinion of McLean & Howard, LLP ("Developer's Counsel"), shall be necessary on or prior to the Closing Date in connection with the transactions on the part of the Developer described in the Developer Letter of Representations, the Financing Agreement, the Reimbursement Agreement, the Landowner Agreement, the Redemption Waiver Agreement, and the Continuing Disclosure Agreement of the Developer with respect to the Bonds, dated as of June 2, 2020, executed and delivered by the Developer, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent (the "Continuing Disclosure Agreement of Developer" and, together with the Developer Letter of Representation, the Financing Agreement, the Reimbursement Agreement, the Landowner Agreement, and the Redemption Waiver Agreement the "Developer Documents"); and (v) the City shall perform or have performed its obligations required or specified in the City Documents to be performed at or prior to Closing.

c. No Default. At the time of the Closing, no default shall have occurred or be existing and no circumstances or occurrences that, with the passage of time or giving of notice, shall constitute an event of default under this Agreement, the Indenture, the City Documents, the Developer Documents or other documents relating to the financing and construction of the Major Improvements and the Development, and the Developer shall not be in default in the payment of principal or interest on any of its indebtedness which default shall materially adversely impact the ability of the Developer to pay the Assessments when due or complete the Major Improvements.

d. Closing Documents. At or prior to the Closing, the Underwriter shall have received each of the documents required under Section 10 below.

e. Termination Events. The Underwriter shall have the right to cancel its obligation to purchase the Bonds and to terminate this Agreement without liability therefor by written notification to the City if, between the date of this Agreement and the Closing, in the Underwriter's reasonable judgment, any of the following shall have occurred:

(i) the market price or marketability of the Bonds, or the ability of the Underwriter to enforce contracts for the sale of the Bonds, shall be materially adversely affected by the occurrence of any of the following:

(1) legislation shall have been introduced in or enacted by the Congress of the United States or adopted by either House thereof, or legislation pending in the Congress of the United States shall have been amended, or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice, or otherwise) by the President of the United States, the Treasury Department of the United States, or the Internal Revenue Service or legislation shall have been proposed for consideration by either

the U.S. Senate Committee on Finance or the U.S. House of Representatives Committee on Ways and Means or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or a decision by a court of the United States or the Tax Court of the United States shall be rendered or a ruling, regulation, or official statement (final, temporary, or proposed) by or on behalf of the Treasury Department of the United States, the Internal Revenue Service, or other federal agency shall be made, which would result in federal taxation of revenues or other income of the general character expected to be derived by the City or upon interest on securities of the general character of the Bonds or which would have the effect of changing, directly or indirectly, the federal income tax consequences of receipt of interest on securities of the general character of the Bonds in the hands of the holders thereof, and which in either case, makes it, in the reasonable judgment of the Underwriter, impracticable or inadvisable to proceed with the offer, sale, or delivery of the Bonds on the terms and in the manner described in the Limited Offering Memorandum; or

(2) legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including all underlying obligations, as described herein or by the Limited Offering Memorandum, is in violation or would be in violation of, or that obligations of the general character of the Bonds, or the Bonds, are not exempt from registration under, any provision of the federal securities laws, including the Securities Act of 1933, as amended and as then in effect (the "Securities Act"), or that the Indenture need to be qualified under the Trust Indenture Act of 1939, as amended and as then in effect (the "Trust Indenture Act"); or

(3) a general suspension of trading in securities on the New York Stock Exchange, the establishment of minimum prices on such exchange, the establishment of material restrictions (not in force as of the date hereof) upon trading securities generally by any governmental authority or any national securities exchange, a general banking moratorium declared by federal, State of New York, or State officials authorized to do so; or

(4) there shall have occurred any outbreak of hostilities (including, without limitation, an act of terrorism) or other national or international calamity or crisis, including, but not limited to, an escalation of hostilities that existed prior to the date hereof, and the effect of any

such event on the financial markets of the United States shall be such as would make it impracticable, in the reasonable judgment of the Underwriter, for it to sell the Bonds on the terms and in the manner described in the Limited Offering Memorandum; or

(5) there shall have occurred since the date of this Agreement any materially adverse change in the affairs or financial condition of the City, except as disclosed in or described in the Limited Offering Memorandum; or

(6) any state blue sky or securities commission or other governmental agency or body in any state in which more than ten percent (10%) of the Bonds have been offered and sold shall have withheld registration, exemption or clearance of the offering of the Bonds as described herein, or issued a stop order or similar ruling relating thereto; or

(7) any amendment to the federal or State Constitution or action by any federal or State court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the City, its property, income, securities (or interest thereon), or the validity or enforceability of the Assessments pledged to pay principal of and interest on the Bonds; or

(ii) the New York Stock Exchange or other national securities exchange or any governmental authority shall impose, as to the Bonds or as to obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter; or

(iii) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Limited Offering Memorandum, or has the effect that the Limited Offering Memorandum contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, which change shall occur subsequent to the date of this Agreement and shall not be due to the malfeasance, misfeasance or nonfeasance of the Underwriter; or

(iv) any fact or event shall exist or have existed that, in the Underwriter's reasonable judgment, requires or has required an amendment of or supplement to the Limited Offering Memorandum; or

(v) a general banking moratorium shall have been declared by federal or State authorities having jurisdiction and shall be in force; or

(vi) a material disruption in securities settlement, payment or clearance services shall have occurred; or

(vii) a decision by a court of the United States shall be rendered, or a stop order, release, regulation or no-action letter by or on behalf of the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall have been issued or made, to the effect that the issuance, offering or sale of the Bonds, including the underlying obligations as described in this Agreement or in the Limited Offering Memorandum, or any document relating to the issuance, offering or sale of the Bonds, is or would be in violation of any provision of the federal securities laws on the Closing Date, including the Securities Act, the Securities Exchange Act of 1934 and the Trust Indenture Act; or

(viii) the purchase of and payment for the Bonds by the Underwriter, or the resale of the Bonds by the Underwriter, on the terms and conditions herein provided shall be prohibited by any applicable law, governmental authority, board, agency or commission, which prohibition shall occur subsequent to the date hereof and shall not be due to the malfeasance, misfeasance, or nonfeasance of the Underwriter.

With respect to the conditions described in subparagraphs (ii), (vii) and (viii) above, the Underwriter is not aware of any current, pending or proposed law or government inquiry or investigation as of the date of execution of this Agreement which would permit the Underwriter to invoke its termination rights hereunder.

10. Closing Documents. At or prior to the Closing, the Underwriter (or Underwriter's Counsel on behalf of the Underwriter) shall receive the following documents:

a. Bond Opinion. The approving opinion of Bond Counsel, dated the Closing Date and substantially in the form included as Appendix D to the Limited Offering Memorandum, together with a reliance letter from Bond Counsel, dated the Closing Date and addressed to the Underwriter, which may be included in the supplemental opinion required by Section 10(b) hereof, to the effect that the foregoing opinion may be relied upon by the Underwriter to the same extent as if such opinion were addressed to it.

b. Supplemental Opinion. A supplemental opinion of Bond Counsel dated the Closing Date and addressed to the City and the Underwriter, in form and substance acceptable to Underwriter's Counsel, to the following effect:

(i) Except to the extent noted therein, Bond Counsel has not verified and is not passing upon, and does not assume any responsibility for, the accuracy, completeness or fairness of the statements and information contained in the Preliminary Limited Offering Memorandum and in the Limited Offering Memorandum but that Bond Counsel has reviewed the statements and information appearing in the Preliminary Limited Offering Memorandum and in the Limited

Offering Memorandum under the captions and subcaptions “PLAN OF FINANCE — The Bonds,” “DESCRIPTION OF THE BONDS,” “SECURITY FOR THE BONDS SIMILARLY SECURED,” “ASSESSMENT PROCEDURES” (except for the subcaptions “Assessment Methodology” and “Assessment Amounts”), “THE DISTRICT,” “TAX MATTERS,” “LEGAL MATTERS — Legal Proceedings” (except for the final paragraph thereof) and “— Legal Opinions” (except for the final paragraph thereof), “CONTINUING DISCLOSURE — The City,” “REGISTRATION AND QUALIFICATION OF BONDS FOR SALE,” “LEGAL INVESTMENTS AND ELIGIBILITY TO SECURE PUBLIC FUNDS IN TEXAS,” and “APPENDIX B” and Bond Counsel is of the opinion that the information relating to the Bonds and legal issues contained under such captions and subcaptions is an accurate and fair description of the laws and legal issues addressed therein and, with respect to the Bonds, such information conforms to the Bond Ordinance, the Assessment Ordinance, the Service and Assessment Plan and the Indenture;

(ii) The Bonds are not subject to the registration requirements of the Securities Act, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act;

(iii) The City has or at the time of the adoption thereof had full power and authority to adopt the Creation Resolution, the Assessment Ordinance, the Service and Assessment Plan and the Bond Ordinance (collectively, the foregoing documents are referred to herein as the “City Actions”) and perform its obligations thereunder and the City Actions have been duly adopted, are in full force and effect and have not been modified, amended or rescinded; and

(iv) The Indenture, the Financing Agreement, the Reimbursement Agreement, the Landowner Agreement, the Redemption Waiver Agreement, the Continuing Disclosure Agreement of Issuer, and this Agreement have been duly authorized, executed and delivered by the City and, assuming the due authorization, execution and delivery of such instruments, documents, and agreements by the other parties thereto, constitute the legal, valid, and binding agreements of the City, enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, or other laws affecting enforcement of creditors’ rights, or by the application of equitable principles if equitable remedies are sought and to the application of Texas law relating to governmental immunity applicable to governmental entities.

c. City Legal Opinion. An opinion of an attorney for the City, dated the Closing Date and addressed to the Underwriter, the City and the Trustee, with respect to matters relating to the City, substantially in the form of Appendix C hereto or in form otherwise agreed upon by the Underwriter.

d. Opinion of Developer’s Counsel. An opinion of Developer’s Counsel, substantially in the form of Appendix D hereto, dated the Closing Date and addressed to the City, Bond Counsel, the Attorney for the City, the Underwriter and the Trustee.

e. Developer Closing Certificate. The Developer Closing Certificate dated as of the Closing Date, signed by authorized officers of the Developer in substantially the form of Appendix E hereto.

f. Landowner Closing Certificates. Closing certificates of both 135 Residential and Yarrington dated as of the Closing Date, signed by authorized officers of 135 Residential and Yarrington, respectively, in substantially the forms of Appendix F and Appendix G, respectively, hereto.

g. City Closing Certificate. A certificate of the City, dated the Closing Date, signed by an appropriate City official, to the effect that:

(i) the representations and warranties of the City contained herein and in the City Documents are true and correct in all material respects on and as of the Closing Date as if made on the date thereof;

(ii) the Authorizing Documents and City Documents are in full force and effect and have not been amended, modified, or supplemented;

(iii) except as disclosed in the Limited Offering Memorandum, no litigation or proceeding against the City is pending or, to the best of the knowledge of such person, threatened in any court or administrative body nor is there a basis for litigation which would (a) contest the right of the members or officials of the City to hold and exercise their respective positions, (b) contest the due organization and valid existence of the City or the establishment of the District, (c) contest the validity, due authorization and execution of the Bonds or the City Documents, or (d) attempt to limit, enjoin or otherwise restrict or prevent the City from levying and collecting the Assessments pledged to pay the principal of and interest on the Bonds, or the pledge thereof; and

(iv) the City has, to the best of such person's knowledge, complied with all agreements and covenants and satisfied all conditions set forth in the City Documents, on its part to be complied with or satisfied hereunder at or prior to the Closing.

h. Trustee's Counsel Opinion. An opinion, dated the Closing Date and addressed to the Underwriter, the City and Bond Counsel, in form and substance acceptable to Underwriter's Counsel, the City and Bond Counsel to the following effect:

(i) the Trustee is duly organized, validly existing and in good standing as a national banking association organized under the laws of the United States of America, and is duly qualified to serve as Trustee in accordance with the qualifications set forth for the Trustee in the Indenture;

(ii) the Trustee has full right, power, and authority to enter into the Indenture, to perform its obligations under, and to carry out and consummate all of the transactions involving the Trustee contemplated by, the Indenture; and

(iii) the Indenture has been duly authorized, executed and delivered by the Trustee and is valid and enforceable against the Trustee in accordance with its terms;

i. Trustee's Certificate. A customary authorization and incumbency certificate dated prior to the Closing Date, signed by authorized officers of the Trustee in form and substance acceptable to the Underwriter, Underwriter's Counsel and Bond Counsel.

j. Underwriter Counsel's Opinion. An opinion, dated the Closing Date and addressed to the Underwriter, of Orrick, Herrington & Sutcliffe LLP, ("Underwriter's Counsel"), to the effect that:

(i) The Bonds are not subject to the registration requirements of the Securities Act, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act;

(ii) Such counsel is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of any of the statements contained in the Preliminary Limited Offering Memorandum or in the Limited Offering Memorandum and makes no representation that it has independently verified the accuracy, completeness or fairness of any such statements. In its capacity as counsel to the Underwriter, to assist the Underwriter in part of its responsibility with respect to the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum, such counsel has participated in conferences with representatives of the Underwriter, representatives of the City, and its counsel, McCall, Parkhurst & Horton L.L.P., as bond counsel, Specialized Public Finance Inc., as financial advisor, the public improvement district administrator, the special assessment consultant, the Developer, and its engineers and others, during which the contents of the Preliminary Limited Offering Memorandum or the Limited Offering Memorandum and related matters were discussed. Based on such counsel's participation in the above-mentioned conferences (which did not extend beyond the date of the Limited Offering Memorandum), and in reliance thereon, on oral and written statements and representations of the City, the Developer and others and on the records, documents, certificates, opinions and matters herein mentioned, such counsel advises the Underwriter as a matter of fact and not opinion that, during the course of such counsel's representation of the Underwriter on this matter, (a) no facts had come to the attention of the attorneys in such counsel's firm rendering legal services to the Underwriter in connection with the Preliminary Limited Offering Memorandum which caused such counsel to believe, as of the date of the Preliminary Limited Offering Memorandum and as of June 2, 2020, based on the documents, drafts and facts in existence and reviewed as of those dates, that the Preliminary Limited Offering Memorandum contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except any information marked as preliminary or subject to change, any information permitted to be omitted by Securities and

Exchange Commission Rule 15c2-12 or otherwise left blank and any other differences with the information in the Limited Offering Memorandum), and (b) no facts had come to the attention of the attorneys in such counsel's firm rendering legal service to the Underwriter in connection with the Limited Offering Memorandum which caused such counsel to believe that the Limited Offering Memorandum contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, such counsel expressly excludes from the scope of this paragraph and expresses no view or opinion with respect to both the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum any CUSIP numbers, financial, accounting, statistical or economic, engineering or demographic data or forecasts, numbers, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, any information about verification, feasibility, valuation, appraisals, absorption, real estate or environmental matters, relationship among the parties, Appendices (other than with respect to the Continuing Disclosure Agreement of Issuer) or any information about book-entry, DTC, tax matters, included or referred to therein or omitted therefrom. No responsibility is undertaken or view expressed with respect to any other disclosure document, materials or activity, or as to any information from another document or source referred to by or incorporated by reference in the Preliminary Limited Offering Memorandum or the Limited Offering Memorandum; and

(iii) The Continuing Disclosure Agreement of Issuer satisfies the requirements contained in Securities and Exchange Commission Rule 15c2-12(b)(5) for an undertaking for the benefit of the holders of the Bonds to provide the information at the times and in the manner required by said Rule; provided that, for purposes of this opinion, such counsel is not expressing any view regarding the content of the Preliminary Limited Offering Memorandum or the Limited Offering Memorandum that is not expressly stated in numbered paragraph ii, above.

k. Limited Offering Memorandum. The Limited Offering Memorandum and each supplement or amendment, if any, thereto.

l. Delivery of City Documents and Developer Documents. The City Documents and Developer Documents shall have been executed and delivered in form and content satisfactory to the Underwriter.

m. Form 8038-G. Evidence that the federal tax information form 8038-G has been prepared by Bond Counsel for filing.

n. Federal Tax Certificate. A certificate of the City in form and substance satisfactory to Bond Counsel and Underwriter's Counsel setting forth the facts, estimates and circumstances in existence on the Closing Date, which establish that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the

Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and any applicable regulations (whether final, temporary or proposed) issued pursuant to the Code.

o. Attorney General Opinion and Comptroller Registration. The approving opinion of the Attorney General of the State regarding the Bonds and the Comptroller of the State’s Certificate of Registration for the Initial Bond.

p. Continuing Disclosure Agreements. The Continuing Disclosure Agreement of Issuer, the Continuing Disclosure Agreement of Developer, the Continuing Disclosure Agreement of Yarrington with respect to the Bonds, dated as of June 2, 2020, executed and delivered by Yarrington, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent and the Continuing Disclosure Agreement of 135 Residential with respect to the Bonds, dated as of June 2, 2020, executed and delivered by 135 Residential, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent (collectively, the “Continuing Disclosure Agreements”) shall have been executed by the parties thereto in substantially the forms attached to the Limited Offering Memorandum as Appendix E-1, Appendix E-2, Appendix E-3 and Appendix E-4.

q. Letter of Representation of the Appraiser. (i) Letter of Representation of the Appraiser, substantially in the form of Appendix H hereto, addressed to the City, Bond Counsel, the Underwriter, and the Trustee, or in form otherwise agreed upon by the Underwriter, and (ii) a copy of the real estate appraisal of the property in the District dated May 8, 2020.

r. Letter of Representation of PID Administrator. Letter of Representation of PID Administrator, substantially in the form of Appendix I hereto, addressed to the City, Bond Counsel, the Underwriter, and the Trustee, or in form otherwise agreed upon by the Underwriter.

s. Evidence of Filing of Creation Resolution, Assessment Ordinance and Landowner Agreement. Evidence that (i) the Creation Resolution, including legal description of the District by metes and bounds, (ii) the Assessment Ordinance, including the legal description of the property within the District, the assessment rolls and a statement indicating the contact for and address of where a copy of the Service and Assessment Plan, and any updates thereto may be obtained or viewed and (iii) the Landowner Agreement, including any appendices thereto, have been filed of record in the real property records of Hays County, Texas.

t. Lender Consent Certificate. Lender Consent Certificate of First United Bank, the Developer and Harris Hill Investments, Ltd. and any other lienholder on land in the District, in recordable form, acknowledging the creation of the District and consenting to and acknowledging the adoption of the Assessment Ordinance, the levy of the Assessments, and the subordination of their respective liens to the lien created by the Assessments, in form and substance acceptable to the Underwriter, Underwriter’s Counsel and Bond Counsel.

u. Developer Organizational Documents. The Developer shall have delivered to the Underwriter and the City, (i) fully executed copies of the Developer's organizational documents, (ii) a Certificate of Status from the Texas Secretary of State and (iii) verification of franchise tax account status from the Texas Comptroller of Public Accounts for the Developer.

v. Rule 15c2-12 Certification. A resolution, ordinance or certificate of the City whereby the City has deemed the Preliminary Limited Offering Memorandum final as of its date, except for permitted omissions, as contemplated by Rule 15c2-12 in connection with the offering of the Bonds, which certification, if made in the form of a certificate, may be included in the City Certificate required by Section 10(g) hereof.

w. Dissemination Agent. Evidence acceptable to the Underwriter in its sole discretion that the City has engaged a dissemination agent acceptable to the Underwriter for the Bonds, with the execution of the Continuing Disclosure Agreements by other parties thereto being conclusive evidence of such acceptance by the Underwriter.

x. BLOR. A copy of the current Blanket Issuer Letter of Representation to DTC and signed by the City.

y. Additional Documents. Such additional legal opinions, certificates, instruments, and other documents as the Underwriter or Underwriter's Counsel may reasonably deem necessary.

11. City's Closing Conditions. The obligation of the City hereunder to deliver the Bonds shall be subject to receipt on or before the Closing Date of the purchase price set forth in Section 1 hereof, the Attorney General Opinion, the opinion of Bond Counsel described in Section 10(a) hereof and all documents required to be delivered by the Developer.

12. Consequences of Termination. If the City shall be unable to satisfy the conditions contained in this Agreement or if the obligations of the Underwriter shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and the Underwriter and the City shall have no further obligation hereunder, except as further set forth in Sections 13, 15 and 16 hereof.

13. Costs and Expenses.

a. The Underwriter shall be under no obligation to pay, and the City shall cause to be paid from proceeds of the Bonds the following expenses incident to the issuance of the Bonds and performance of the City's obligations hereunder: (i) the costs of the preparation and printing of the Bonds; (ii) the cost of preparation, printing, and mailing of the Preliminary Limited Offering Memorandum, the final Limited Offering Memorandum and any supplements and amendments thereto; (iii) the fees and disbursements of the City's Financial Advisor, the Trustee's counsel, Bond Counsel, Developer's Counsel, and the Trustee relating to the issuance of the Bonds; (iv) the Attorney General's review fees; (v) the fees and disbursements of accountants, advisers and any other experts or consultants retained by the City or the Developer, including but not limited to the fees and expenses of the Appraiser, the special assessment consultant

and the PID Administrator; and (vi) the expenses incurred by or on behalf of City employees and representatives that are incidental to the issuance of the Bonds and the performance by the City of its obligations under this Agreement.

b. The Underwriter shall pay the following expenses: (i) all advertising expenses in connection with the limited offering of the Bonds; (ii) fees of Underwriter's Counsel; and (iii) all other expenses, including CUSIP fees (including out-of-pocket expenses and related regulatory expenses), incurred by it in connection with its public offering and distribution of the Bonds, except as noted in Subsection 13(a) above.

c. The City acknowledges that the Underwriter will pay from the Underwriter's expense allocation of the underwriting discount the applicable per bond assessment charged by the Municipal Advisory Council of Texas, a nonprofit corporation ("Texas MAC") whose purpose is to collect, maintain and distribute information relating to issuing entities of municipal securities.

14. Notice. Any notice or other communication to be given to the City under this Agreement may be given by delivering the same in writing to: City of San Marcos, Texas, City of San Marcos, Texas, 630 East Hopkins, San Marcos, Texas 78666, Attention: Director of Finance.

Any notice or other communication to be given to the Underwriter under this Agreement may be given by delivering the same in writing to: FMSbonds, Inc., 5 Cowboys Way, Suite 300-V, Frisco, Texas 75034, Attention: Tripp Davenport, Director.

15. Entire Agreement. This Agreement is made solely for the benefit of the City and the Underwriter (including their respective successors and assigns), and no other person shall acquire or have any right hereunder or by virtue hereof. All of the City's representations, warranties, and agreements contained in this Agreement shall remain operative and in full force and effect regardless of: (i) any investigations made by or on behalf of the Underwriter, provided the City shall have no liability with respect to any matter of which the Underwriter has actual knowledge prior to the purchase of the Bonds; or (ii) delivery of any payment for the Bonds pursuant to this Agreement. The agreements contained in this Section and in Section 16 shall survive any termination of this Agreement.

16. Survival of Representations and Warranties. All representations and warranties of the parties made in, pursuant to or in connection with this Agreement shall survive the execution and delivery of this Agreement, notwithstanding any investigation by the parties. All statements contained in any certificate, instrument, or other writing delivered by a party to this Agreement or in connection with the transactions described in or by this Agreement constitute representations and warranties by such party under this Agreement to the extent such statement is set forth as a representation and warranty in the instrument in question.

17. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

18. Severability. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

19. State Law Governs. The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State.

20. No Assignment. The rights and obligations created by this Agreement shall not be subject to assignment by the Underwriter or the City without the prior written consent of the other party hereto.

21. No Personal Liability. None of the members of the City Council, nor any officer, representative, agent, or employee of the City, shall be charged personally by the Underwriter with any liability, or be held liable to the Underwriter under any term or provision of this Agreement, or because of execution or attempted execution, or because of any breach or attempted or alleged breach of this Agreement.

22. Anti-Boycott Verification. The Underwriter hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Underwriter understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

23. Iran, Sudan and Foreign Terrorist Organizations. The Underwriter represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable State or Federal law and excludes the Underwriter and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Underwriter understands

“affiliate” to mean any entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

24. Form 1295. Submitted herewith is a completed Form 1295 in connection with the Underwriter’s participation in the execution of this Agreement generated by the Texas Ethics Commission’s (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The City hereby confirms receipt of the Form 1295 from the Underwriter, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the thirtieth (30th) day after the receipt of such form. The Underwriter and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Underwriter; and, neither the City nor its consultants have verified such information.

*[Signature pages follow.]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

**FMSbonds, Inc.,**  
as Underwriter

By: \_\_\_\_\_  
Name: Theodore A. Swinarski  
Title: Senior Vice President - Trading

Accepted at \_\_\_\_\_ a.m./p.m. central time on the date first stated above.

**City of San Marcos, Texas**

By: \_\_\_\_\_  
Mayor

**SCHEDULE I**

\$[PRINCIPAL]  
 CITY OF SAN MARCOS, TEXAS  
 (a municipal corporation of the State of Texas located in  
 Hays, Caldwell and Guadalupe Counties)  
 SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020  
 (WHISPER PUBLIC IMPROVEMENT DISTRICT)

Interest Accrues From: Date of Delivery

\$ \_\_\_\_\_ % Term Bonds, Due September 1, 20\_\_, Priced to Yield \_\_\_\_\_% (a)(c)

\$ \_\_\_\_\_ % Term Bonds, Due September 1, 20\_\_, Priced to Yield \_\_\_\_\_% (a)(b)(c)

\$ \_\_\_\_\_ % Term Bonds, Due September 1, 20\_\_, Priced to Yield \_\_\_\_\_% (a)(b)(c)

- (a) [The initial reoffering prices or yields of the Bonds have been determined in accordance with the 10% test.]
- (b) The Bonds maturing on or after \_\_\_\_\_, 20\_\_ may be redeemed before their scheduled maturity dates, in whole or in part, on any date on or after September 1, 20\_\_, such redemption date or dates to be fixed by the City, at a redemption price equal to the principal amount to be redeemed plus accrued interest to the date fixed for redemption.
- (c) The Bonds are also subject to extraordinary optional redemption as described in the Limited Offering Memorandum under “DESCRIPTION OF THE BONDS — Redemption Provisions.”
- (d) The Term Bonds maturing September 1, 20\_\_, are also subject to mandatory sinking fund redemption on the dates and in the respective Sinking Fund Installments as set forth in the following schedule.

<u>\$ _____ Term Bonds Maturing September 1, 20__</u>	
<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$
September 1, 20__	
September 1, 20__	
September 1, 20__	
September 1, 20__ †	
<hr/>	
† Stated Maturity	

The Term Bonds maturing September 1, 20\_\_, are also subject to mandatory sinking fund redemption on the dates and in the respective Sinking Fund Installments as set forth in the following schedule.

<u>\$ _____ Term Bonds Maturing September 1, 20__</u>	
<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$
September 1, 20__	
September 1, 20__	
September 1, 20__	
September 1, 20__ †	
<hr/>	
† Stated Maturity	

The Term Bonds maturing September 1, 20\_\_, are also subject to mandatory sinking fund redemption on the dates and in the respective Sinking Fund Installments as set forth in the following schedule.

<u>\$            Term Bonds Maturing September 1, 20</u>			
<u>Redemption Date</u>	<u>Sinking Fund Installment</u>	<u>Redemption Date</u>	<u>Sinking Fund Installment</u>
September 1, 20__	\$	September 1, 20__	\$
September 1, 20__		September 1, 20__	
September 1, 20__		September 1, 20__	
September 1, 20__		September 1, 20__	
September 1, 20__		September 1, 20__†	

† Stated Maturity

**APPENDIX A**

**FORM OF DEVELOPER LETTER OF REPRESENTATIONS**

**[\$[PRINCIPAL]  
CITY OF SAN MARCOS, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020  
(WHISPER PUBLIC IMPROVEMENT DISTRICT)**

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**DEVELOPER LETTER OF REPRESENTATIONS**

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June 2, 2020

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

FMSbonds, Inc.  
5 Cowboys Way, Suite 300-V  
Frisco, Texas 75034

Ladies and Gentlemen:

This letter is being delivered to the City of San Marcos, Texas (the “City”) and FMSbonds, Inc. (the “Underwriter”), in consideration for your entering into the Bond Purchase Agreement dated the date hereof (the “Bond Purchase Agreement”) for the sale and purchase of the \$[PRINCIPAL] “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District)” (the “Bonds”). Pursuant to the Bond Purchase Agreement, the Underwriter has agreed to purchase from the City, and the City has agreed to sell to the Underwriter the Bonds. In order to induce the City to enter into the Bond Purchase Agreement and as consideration for the execution, delivery, and sale of the Bonds by the City and the purchase of them by the Underwriter, the undersigned, Whisper Master Community Limited Partnership, a Texas limited partnership (the “Developer”), makes the representations, warranties, and covenants contained in this Developer Letter of Representations. Unless the context clearly indicates otherwise, each capitalized term used in this Developer Letter of Representations will have the meaning set forth in the Bond Purchase Agreement.

1. Purchase and Sale of Bonds. Inasmuch as the purchase and sale of the Bonds represents a negotiated transaction, the Developer understands, and hereby confirms, that the Underwriter is not acting as a fiduciary of the Developer, but rather is acting solely in its capacity as Underwriter of the Bonds for its own account.

2. Updating of the Limited Offering Memorandum. If, after the date of this Developer Letter of Representations, up to and including the date the Underwriter is no longer

required to provide a Limited Offering Memorandum to potential customers who request the same pursuant to Rule 15c2-12 (the earlier of (i) ninety (90) days from the “end of the underwriting period” (as defined in Rule 15c2-12) and (ii) the time when the Limited Offering Memorandum is available to any person from the MSRB, but in no case less than twenty-five (25) days after the “end of the underwriting period” for the Bonds), the Developer becomes aware of any fact or event which might or would cause the Limited Offering Memorandum, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or if it is necessary to amend or supplement the Limited Offering Memorandum to comply with law, the Developer will notify the Underwriter promptly (and for the purposes of this clause provide the Underwriter with such information as it may from time to time request); however, that for the purposes of this Developer Letter of Representations and any certificate delivered by the Developer in accordance with the Bond Purchase Agreement, the Developer makes no representations with respect to the information appearing in the Preliminary Limited Offering Memorandum or the Limited Offering Memorandum except for the information set forth in the maps on pages (iii), through (v) and under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “ — Status of Major Improvements and Additional Improvements,” “ — Homebuilders and Status of Home Construction” and “ — Status of Multi-family, Industrial/Business Park and General Commercial,” “THE AUTHORIZED IMPROVEMENTS,” “THE DEVELOPMENT” and “THE DEVELOPER” and, to the Developer’s knowledge after due inquiry, under the captions “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Major Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation — The Developer,” “CONTINUING DISCLOSURE — The Developer” and “ — The Developer’s Compliance with Prior Undertakings,” “SOURCES OF INFORMATION — Developer,” “APPENDIX E-2” and “APPENDIX G” (collectively, the “Developer Disclosures”) in accordance with subsection 4(f) herein.

3. Developer Documents. The Developer has executed and delivered each of the below listed documents (individually, a “Developer Document” and collectively, the “Developer Documents”) in the capacity provided for in each such Developer Document, and each such Developer Document constitutes a valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms:

- a. this Developer Letter of Representations;
- b. the Amended and Restated Whisper Public Improvement District Financing Agreement, effective as of May 8, 2020 (the “Financing Agreement”), executed and delivered by the City, the Developer, Yarrington Partners, Ltd., a Texas limited partnership (“Yarrington”), Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“Whisper Industrial”) and 135 Residential Development, LLC, a Texas limited liability company (“135 Residential” and, together with the Developer, Yarrington, and Whisper Industrial, the “Landowners”);
- c. the Whisper Public Improvement District Acquisition and Reimbursement Agreement, dated as of effective as of May 8, 2020 (the “Reimbursement Agreement”), executed and delivered by the City and the Landowners;

d. the Whisper Public Improvement District Landowner Agreement and Notice of Special Assessments, dated as of [June 2], 2020 (the “Landowner Agreement”), executed and delivered by the City and the Landowners;

e. the Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (WHISPER PID) dated as of [June 2], 2020, executed and delivered by the City, the Developer, Yarrington, 135 Residential and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”); and

f. the Continuing Disclosure Agreement of the Developer with respect to the Bonds, dated as of June 2, 2020 (the “Continuing Disclosure Agreement of Developer”), executed and delivered by the Developer, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent.

The Developer has complied in all material respects with all of the Developer’s agreements and covenants and satisfied all conditions required to be complied with or satisfied by the Developer under the Developer Documents on or prior to the date hereof.

The representations and warranties of the Developer contained in the Developer Documents are true and correct in all material respects on and as of the date hereof.

4. Developer Representations, Warranties and Covenants. The Developer represents, warrants, and covenants to the City and the Underwriter that:

a. Due Organization and Existence. The Developer is duly formed and validly existing as a limited partnership under the laws of the State of Texas.

b. Organizational Documents. The copies of the organizational documents of the Developer provided by the Developer (the “Developer Organizational Documents”) to the City and the Underwriter are fully executed, true, correct, and complete copies of such documents and such documents have not been amended or supplemented since delivery to the City and the Underwriter and are in full force and effect as of the date hereof.

c. No Breach. The execution and delivery of the Developer Documents by Developer does not violate any judgment, order, writ, injunction or decree binding on Developer or any indenture, agreement, or other instrument to which the Developer is a party.

d. No Litigation. Other than as described in the Preliminary Limited Offering Memorandum and in the Limited Offering Memorandum, there are no proceedings pending or threatened in writing before any court or administrative agency against the Developer that are either not covered by insurance or which singularly or collectively would have a material, adverse effect on the ability of the Developer to perform its obligations under the Developer Documents in all material respects or that would reasonably be expected to prevent or prohibit the development of the District in accordance with the description thereof in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum.

e. Information. The information prepared and submitted by the Developer to the City or the Underwriter in connection with the preparation of the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum was, and is, as of this date, true and correct in all material respects.

f. Preliminary Limited Offering Memorandum and Limited Offering Memorandum. The Developer represents and warrants that the information set forth in the Developer Disclosures in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum is true and correct and does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Developer agrees to provide a certificate dated the Closing Date affirming, as of such date, the representations contained in this subsection (f) with respect to the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum.

g. Events of Default. No “Event of Default” or “event of default” by the Developer under any of the Developer Documents, any documents to which the Developer is a party described in the Limited Offering Memorandum, or under any material documents relating to the financing and construction of the Major Improvements to which the Developer is a party, or event that, with the passage of time or the giving of notice or both, would constitute such “Event of Default” or “event of default,” by the Developer has occurred and is continuing.

5. Indemnification.

a. The Developer will indemnify and hold harmless the City and the Underwriter and each of their officers, directors, employees and agents against any losses, claims, damages or liabilities to which any of them may become subject, under the Securities Act of 1933 or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained or incorporated by reference in the Developer Disclosures in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum, or any amendment or supplement to the Limited Offering Memorandum amending or supplementing the information contained under the aforementioned captions (as qualified above), or arise out of or are based upon the omission, untrue statement or alleged untrue statement or omission to state therein a material fact necessary to make the statements under the aforementioned captions (as qualified above) not misleading under the circumstances under which they were made and will reimburse any indemnified party for any reasonable legal or other expenses reasonably incurred by them in connection with investigating or defending any such action or claim as such expenses are incurred.

b. Promptly after receipt by an indemnified party under subsection (a) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to

notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party otherwise than under such subsection, unless such indemnifying party was prejudiced by such delay or lack of notice. In case any such action shall be brought against an indemnified party, it shall promptly notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such subsection for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. The indemnifying party shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the indemnifying party or if there is a final judgment for the plaintiff in any such action, the indemnifying party will indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment. The indemnity herein shall survive delivery of the Bonds and shall survive any investigation made by or on behalf of the City, the Developer or the Underwriter.

6. Survival of Representations, Warranties and Covenants. All representations, warranties, and agreements in this Developer Letter of Representations will survive regardless of (a) any investigation or any statement in respect thereof made by or on behalf of the Underwriter, (b) delivery of any payment by the Underwriter for the Bonds hereunder, and (c) any termination of the Bond Purchase Agreement.

7. Binding on Successors and Assigns. This Developer Letter of Representations will be binding upon the Developer and its successors and assigns and inure solely to the benefit of the Underwriter and the City, and no other person or firm or entity will acquire or have any right under or by virtue of this Developer Letter of Representations.

*[Signature page follows.]*

WHISPER MASTER COMMUNITY LIMITED  
PARTNERSHIP,  
a Texas limited partnership  
(as Developer)

By: Whisper M.C., LLC, a Texas  
limited liability company, Its General  
Partner

By: \_\_\_\_\_  
Robert W. McDonald III, Manager

## APPENDIX B

**[\$[PRINCIPAL]]**  
**CITY OF SAN MARCOS, TEXAS,**  
**SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020**  
**(WHISPER PUBLIC IMPROVEMENT DISTRICT)**

### ISSUE PRICE CERTIFICATE

The undersigned, as the duly authorized representative of FMSbonds, Inc., (“Purchaser”), with respect to the City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District) issued by the City of San Marcos, Texas (“Issuer”) in the principal amount of \$[PRINCIPAL] (“Bonds”), hereby certifies, based on its records and information, as follows:

(a) [Other than the Bonds maturing in \_\_\_\_\_ (“Hold-the-Price Maturities”), the][The first price at which at least ten percent (“Substantial Amount”) of the principal amount of each maturity of the Bonds having the same credit and payment terms (a “Maturity”) was sold to a person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter (the “Public”) is set forth in the final Limited Offering Memorandum relating to the Bonds.

(Add (b) and (c) only if there are Hold-the-Price maturities)

(b) On or before the first day on which the Bond Purchase Agreement is entered into (the “Sale Date”), the Purchaser offered to the Public each Maturity of the Hold-the-Price Maturities at their respective initial offering prices (the “Initial Offering Prices”), as listed in the final Limited Offering Memorandum relating to the Bonds.

(c) As set forth in the Bond Purchase Agreement, the Purchaser agreed in writing to neither offer nor sell any of the Hold-the-Price Maturities to any person at any higher price than the respective Initial Offering Price for such Maturity until a date that is the earlier of the close of the fifth business day after the Sale Date or the date on which the Purchaser sells a Substantial Amount of a Maturity of the Bonds to the Public at no higher price than the Initial Offering Price for such Maturity.

A copy of the pricing wire or equivalent communication for the Bonds is attached to this Certificate as Schedule A.

For purposes of this Issue Price Certificate, the term “Underwriter” means (1) (i) a person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, or (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (1)(i) of this paragraph (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public) to participate in the initial sale of the Bonds to the Public, and (2) any person who has more than 50% common ownership, directly or indirectly, with a person described in clause (1) of this paragraph.

*[Signature Page Follows.]*

The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Federal Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by McCall, Parkhurst & Horton L.L.P. in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds. Notwithstanding anything set forth herein, the Purchaser is not engaged in the practice of law and makes no representation as to the legal sufficiency of the factual matters set forth herein.

EXECUTED and DELIVERED as of this \_\_\_\_\_, 2020.

FMSbonds, Inc.,  
as Underwriter

By: \_\_\_\_\_

Name: Theodore A. Swinarski  
Title: Senior Vice President - Trading

SCHEDULE A  
PRICING WIRE OR EQUIVALENT COMMUNICATION

*(Attached)*

**APPENDIX C**

[LETTERHEAD OF CITY ATTORNEY]

\_\_\_\_\_, 2020

FMSbonds, Inc.  
5 Cowboys Way, Suite 300-V  
Frisco, Texas 75034

UMB Bank, N.A.  
6034 W. Courtyard Drive, Ste.370  
Austin, Texas 78730

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

§[PRINCIPAL]  
CITY OF SAN MARCOS, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020  
(WHISPER PUBLIC IMPROVEMENT DISTRICT)

Ladies and Gentlemen:

The undersigned serves as the City Attorney for the City of San Marcos, Texas (the “City”), and has, in that capacity, provided legal review in connection with the issuance and sale of §[PRINCIPAL] “City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District)” (the “Bonds”), by the City, a political subdivision of the State of Texas.

The Bonds are authorized pursuant to Ordinance No. \_\_\_\_\_ and enacted by the City Council of the City (the “City Council”) on June 2, 2020 (the “Bond Ordinance”) and shall be issued pursuant to the provisions of Subchapter A of the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code, as amended (the “Act”) and the Indenture of Trust dated as of June 2, 2020 (the “Indenture”), by and between the City and UMB Bank, N.A., Austin Texas (the “Trustee”). Capitalized terms not defined herein shall have the same meanings as in the Bond Ordinance and in the Indenture, unless otherwise stated herein.

In connection with rendering this opinion, we have reviewed the:

(a) The Resolution No. 2014-143R (the “Creation Resolution”) enacted by the City Council on October 6, 2014;

(b) The Ordinance No. 2020-\_\_\_\_ accepted and approved by City Council on June 2, 2020 (the “Assessment Ordinance”), and the service and assessment plan (the “Service and Assessment Plan”) attached as an exhibit thereto, as such Service and Assessment Plan was updated by the Bond Ordinance;

(c) The Bond Ordinance;

(d) The Indenture;

(e) the Amended and Restated Whisper Public Improvement District Financing Agreement, effective as of May 8, 2020 (the “Financing Agreement”), executed and delivered by the City, Whisper Master Developer Community, Limited Partnership, a Texas limited partnership (the “Developer”), Yarrington Partners, Ltd., a Texas limited partnership (“Yarrington”), Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“Whisper Industrial”) and 135 Residential Development, LLC, a Texas limited liability company (“135 Residential” and, together with the Developer, Yarrington and Whisper Industrial, the “Landowners”);

(f) the Whisper Public Improvement District Acquisition and Reimbursement Agreement, effective as of May 8, 2020 (the “Reimbursement Agreement”), executed and delivered by the City and the Landowners;

the Landowner Agreement, dated as of [June 2], 2020 (the “Landowner Agreement”), executed and delivered by the City and the Landowners;

(g) the Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (WHISPER PID) dated as of [June 2], 2020, executed and delivered by the City, the Developer, Yarrington, 135 Residential and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”); and

(h) the Continuing Disclosure Agreement of Issuer with respect to the Bonds, dated as of June 2, 2020 (the “Continuing Disclosure Agreement of Issuer”), executed and delivered by the City and UMB Bank, N.A., as Dissemination Agent.

The Creation Resolution, the Assessment Ordinance and Bond Ordinance shall herein after be referred to as the “Authorizing Documents” and the remaining documents shall herein after be collectively referred to as the “City Documents.”

In all such examinations, we have assumed that all signatures on documents and instruments executed by the City are genuine and that all documents submitted to me as copies conform to the originals. In addition, for purposes of this opinion, we have assumed the due authorization, execution and delivery of the City Documents by all parties other than the City.

Based upon and subject to the foregoing and the additional qualifications and assumptions set forth herein, we are of the opinion that:

1. The City is a home rule municipal corporation of the State of Texas and has all necessary power and authority to enter into and perform its obligations under the Authorizing Documents and the City Documents. The City has taken or obtained all actions, approvals, consents and authorizations required of it by applicable laws in connection with the execution of the Authorizing Documents and the City Documents and the performance of its obligations thereunder.

2. There is no action, suit, proceeding, inquiry or investigation at law or in equity, before or by any court, public board or body, pending, or, to the best of our knowledge,

threatened against the City: (a) affecting the existence of the City or the titles of its officers to their respective offices, (b) in any way questioning the formation or existence of the District, (c) affecting, contesting or seeking to prohibit, restrain or enjoin the delivery of any of the Bonds, or the payment, collection or application of any amounts pledged or to be pledged to pay the principal of and interest on the Bonds, including the Assessments in the District pursuant to the provisions of the Assessment Ordinance and the Service and Assessment Plan referenced therein, (d) contesting or affecting the validity or enforceability or the City's performance of the City Documents, (e) contesting the exclusion of the interest on the Bonds from federal income taxation, or (f) which may result in any material adverse change relating to the financial condition of the City.

3. The Authorizing Documents were duly enacted by the City and remain in full force and effect on the date hereof.

4. The City Documents have been duly authorized, executed and delivered by the City and remain legal, valid and binding obligations of the City enforceable against the City in accordance with their terms. However, the enforceability of the obligations of the City under such City Documents may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (b) principles of equity, whether considered at law or in equity, and (c) the application of Texas law relating to action by future councils and relating to governmental immunity applicable to governmental entities.

5. The performance by the City of the obligations under the Authorizing Documents and the City Documents will not violate any provision of any Federal or Texas constitutional or statutory provision.

6. No further consent, approval, authorization, or order of any court or governmental agency or body or official is required to be obtained by the City as a condition precedent to the performance by the City of its obligations under the Authorizing Documents and the City Documents.

7. The City has duly authorized, executed and delivered the Preliminary Limited Offering Memorandum.

8. Based upon our limited participation in the preparation of the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum (collectively, the "Limited Offering Memorandum"), the statements and information contained in the Limited Offering Memorandum with respect to the City under the captions and subcaptions "ASSESSMENT PROCEDURES — Assessment Methodology" and " — Assessment Amounts," "THE CITY," "THE DISTRICT," "LEGAL MATTERS — Litigation — The City" and "APPENDIX A" is a fair and accurate summary of the law and the documents and facts summarized therein.

9. The adoption of the Authorizing Documents and the execution and delivery of the City Documents and the compliance with the provisions of the Authorizing Documents and the City Documents under the circumstances contemplated thereby, to the best of our knowledge: (a) do not and will not in any material respect conflict with or constitute on the part of the City a

breach of or default under any agreement to which the City is a party or by which it is bound, and (b) do not and will not in any material respect conflict with or constitute on the part of the City a violation, breach of or default under any existing law, regulation, court order or consent decree to which the City is subject.

This opinion may not be relied upon by any other person except those specifically addressed in this letter. This opinion is made to the best of the undersigned's knowledge and belief and is not a substitute for the addressees' due diligence or independent review. The undersigned cannot and does not, by giving this opinion, represent the addressees and is not in any way providing legal advice or services to the addressees. It is not intended to serve as a substitute for the addressees' independent legal counsel; however, this opinion may be relied upon by the addressees hereof and other interested parties, but only with respect to those matters expressly set forth herein. This opinion does not and shall not be construed as any form of guaranty or warranty of the District, the Bonds referenced herein, the Authorizing Documents, or the City's obligations thereunder.

Sincerely,

Michael Cosentino

By: \_\_\_\_\_

**APPENDIX D**

[LETTERHEAD OF MCLEAN & HOWARD, LLP]

\_\_\_\_\_, 2020

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

FMSbonds, Inc.  
5 Cowboys Way, Suite 300-V  
Frisco, Texas 75034

McCall, Parkhurst & Horton L.L.P.  
600 Congress Ave., Suite 1800  
Austin, Texas 78701

UMB Bank, N.A.  
6034 W. Courtyard Drive, Ste.370  
Austin, Texas 78730

Michael Cosentino  
City Attorney's Office  
City of San Marcos  
630 E. Hopkins  
San Marcos, Texas 78666

\$[PRINCIPAL]  
CITY OF SAN MARCOS, TEXAS  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020  
(WHISPER PUBLIC IMPROVEMENT DISTRICT)

Ladies and Gentlemen:

We have served as special counsel for Whisper Master Community Limited Partnership, a Texas limited partnership (the "Developer") in connection with the issuance and sale by the City of San Marcos, Texas (the "City"), of \$\_\_\_\_\_ City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District Project) (the "Bonds"), pursuant to an Indenture of Trust dated as of June 2, 2020 (the "Indenture"), by and between the City and UMB Bank, N.A., as trustee (together with its successors, the "Trustee"). Proceeds from the sale of the Bonds will be used, in part, to fund certain public infrastructure improvements in the development known as "Whisper Public Improvement District" (the "Development") located in the City.

The Bonds are being sold to FMSbonds, Inc. (the "Underwriter"), pursuant to that certain Bond Purchase Agreement dated June 2, 2020 (the "Bond Purchase Agreement"), by and between the City and the Underwriter. This opinion is being delivered pursuant to Section 10(d) of the Bond Purchase Agreement.

All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Bond Purchase Agreement.

## **Assumptions and Bases for Opinions and Assurances**

In our capacity as special counsel to the Developer, and for purposes of rendering the opinions set forth herein, we have examined originals or copies, certified or otherwise identified to our satisfaction, of:

(a) The following documents being executed, entered into and/or issued, as the case may be, in connection with the issuance of the Bonds (collectively, the “Material Documents”):

- (1) The Bond Purchase Agreement;
- (2) Whisper Public Improvement District Acquisition and Reimbursement Agreement, effective as of May 8, 2020, executed and delivered by the City, the Developer, Yarrington Partners, Ltd. a Texas limited partnership (“Yarrington”), Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“Whisper Industrial”) and 135 Residential Development, LLC, a Texas limited liability company (“135 Residential,” and together with Developer, Yarrington and Whisper Industrial, the “Landowners”) (the “Reimbursement Agreement”);
- (3) Amended and Restated Whisper Public Improvement District Financing Agreement, effective as of May 8, 2020, executed and delivered by the City and the Landowners (the “Financing Agreement”);
- (4) The Whisper Public Improvement District Landowner Agreement, effective as of [June 2], 2020, executed and delivered by the City and the Landowners (the “Landowner Agreement”);
- (5) The Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (Whisper PID) dated as of [June 2], 2020, executed and delivered by the City, the UMB Bank, N.A, as Escrow Agent, the Developer, Yarrington and 135 Residential (the “Redemption Waiver Agreement”);
- (6) The Continuing Disclosure Agreement of Developer with respect to the Bonds, dated as of June 2, 2020, executed and delivered by the Developer, P3Works, LLC, as PID Administrator, and UMB Bank, N.A, as Dissemination Agent (the “Continuing Disclosure Agreement of Developer”);
- (7) Developer Letter of Representations dated [June 2], 2020 and the Closing Certificate of the Developer, dated as of the date hereof (together, the “Developer Certificate”); and

(b) The Preliminary Limited Offering Memorandum, dated May 21, 2020, relating to the issuance of the Bonds (the “Preliminary Limited Offering Memorandum”);

(c) The Final Limited Offering Memorandum, dated June 2, 2020, relating to the issuance of the Bonds (collectively with the Preliminary Limited Offering Memorandum, the “Limited Offering Memorandum”);

(d) Certificate of Fact for the Developer issued by the Texas Secretary of State on \_\_\_\_\_, 2020 and Certificate of Account Status for the Developer issued by the Texas

Comptroller of Public Accounts on \_\_\_\_\_, 2020 (collectively, the “Good Standing Certificate”); and

(e) Such other documents, records, agreements, and certificates of the Developer as we have deemed necessary or appropriate to enable us to render the opinions expressed below.

In basing the opinions and other matters set forth herein on “our knowledge,” or “the best of our present knowledge” the words “our knowledge” and “best of our present knowledge” signify that, in the course of our representation of the Developer, the principal attorneys of this firm involved in the current actual transaction do not have actual knowledge or actual notice that any such opinions or other matters are not accurate or that any of the documents, certificates, reports and information on which we have relied are not accurate and complete. Except as otherwise stated herein, we have undertaken no independent investigation or certification of such matters. The words “our knowledge,” “best of our present knowledge,” and similar language used herein are intended to be limited to the knowledge of the attorneys within our firm who have worked on the matters contemplated by our representation as special counsel.

In rendering the opinions set forth herein, we have assumed, without independent investigation, that: (i) the due authorization, execution, and delivery of each of the documents referred to in this opinion letter by all parties thereto (other than the authorization, execution, and delivery by the Developer) and that each such document constitutes a valid, binding, and enforceable obligation of each party (other than the Developer) thereto, (ii) all of the parties to the documents referred to in this opinion letter are duly organized, validly existing, in good standing and have the requisite power, authority (corporate, limited liability company, partnership or other) and legal right to execute, deliver, and perform its obligations under such documents (except to the extent set forth in our opinions set forth herein regarding valid existence and power and authority of the Developer to execute, deliver, and perform its obligations under the Material Documents), (iii) each certificate from governmental officials reviewed by us is accurate, complete, and authentic, and all official public records are accurate and complete, (iv) the legal capacity of all natural persons, (v) the genuineness of all signatures (other than those of the Developer in respect of the Material Documents), (vi) the authenticity and accuracy of all documents submitted to us as originals, (vii) the conformity to original documents of all documents submitted to us as photostatic or certified copies, (viii) that no laws or judicial, administrative, or other action of any Governmental Authority (as defined in Schedule I attached hereto) of any jurisdiction not expressly opined to herein would adversely affect the opinions set forth herein, and (ix) that the execution and delivery by each party of, and performance of its agreements in, the Material Documents do not breach or result in a default under any existing obligation of such party under any agreements, contracts or instruments to which such party is a party to or otherwise subject to or any order, writ, injunction or decree of any court applicable to such party.

### **Opinions and Assurances**

Based solely upon the foregoing, and subject to the assumptions and limitations set forth herein, we are of the opinion that:

1. Based solely on the Developer Certificate and Good Standing Certificate, the Developer is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Texas.
2. Based solely on the Developer Certificate and Good Standing Certificate, the Developer has the power and authority to execute and deliver the Material Documents to which it is a party, and to perform its obligations thereunder.
3. The execution and delivery by the Developer of the Material Documents to which it is a party will not (i) violate any applicable law; or (ii) to our knowledge, conflict with or result in the breach of any existing court decree or order of any governmental body identified in the Developer Certificate or otherwise actually known to the lawyers who have provided substantive attention to the representation reflected in this opinion binding upon or affecting the Developer, the conflict with which or breach of which would have a material, adverse effect on the ability of the Developer to perform its obligations under the Material Documents to which it is a party.
4. To our knowledge, no Governmental Approval (as defined in Schedule I attached hereto) from any Governmental Authority (as defined in Schedule I attached hereto) other than the City of San Marcos, Texas or the Attorney General of the State of Texas, which has not been obtained or taken is required to be obtained or taken by the Developer on or before the date hereof as a condition to the execution and delivery by the Developer of the Material Documents to which it is a party, except for Governmental Approvals that may be required to comply with certain covenants contained in the Material Documents (including, without limitation, covenants to comply with applicable laws).
5. The Developer has duly executed and delivered each of the Material Documents to which it is a party, and each of the Material Documents constitute the binding obligations of the Developer, enforceable against the Developer in accordance with their respective terms and subject to applicable law, subject to the following qualifications: (i) the effect of applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and (ii) the effect of the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity), and (iii) the effect that enforceability of the indemnification provisions therein may be limited, in whole or in part. The execution, delivery, and performance by the Developer of its obligations under the Material Documents do not violate any existing laws of the State of Texas applicable to the Developer.
6. There are no actions, suits or proceedings pending or, to our knowledge, threatened against the Developer identified in the Developer Certificate or otherwise actually known to the lawyers who have provided substantive attention to the representation reflected in this opinion in any court of law or equity, or before or by any governmental instrumentality with respect to (i) its organization or existence or qualification to do business in the State of Texas; (ii) its authority to execute or deliver the Material Documents to which it is a party; (iii) the titles of the parties executing the Material Documents; (iv) the execution, delivery, validity or enforceability of the Material Documents on behalf of the Developer; (v) the

operations or financial condition of the Developer that would materially adversely affect those operations or the financial condition of the Developer; or (vi) the acquisition and construction of the property and improvements identified in the Limited Offering Memorandum the cost of which is to be funded or reimbursed, in whole or in part, by proceeds of the Bonds.

7. To the best of our present knowledge, the information set forth in the Preliminary Limited Offering Memorandum and Limited Offering Memorandum in the maps on pages (iii) through (v) and under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “ — Status of Major Improvements and Additional Improvements,” “ — Homebuilders and Status of Home Construction” and “ — Status of Multi-family, Industrial/Business Park and General Commercial,” “THE AUTHORIZED IMPROVEMENTS,” “THE DEVELOPMENT” and “THE DEVELOPER,” “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Major Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation — The Developer,” “CONTINUING DISCLOSURE — The Developer” and “ — The Developer’s Compliance with Prior Undertakings,” “SOURCES OF INFORMATION — Developer,” “APPENDIX E-2” and “APPENDIX G” adequately and fairly describe the information summarized under such captions; provided that, we expressly exclude from the scope of this paragraph and express no view or opinion about (i) construction scope, status, or schedules related to the Major Improvements, the Additional Improvements, vertical construction, or construction by Homebuilders or other developers, (ii) forecasts or projections relating to planned or proposed development, (iii) estimated build-out, (iv) competitive projects in the area, (v) the tax implications associated with a Qualified Opportunity Fund, and (vi) financial information or costs of the Authorized Improvements or the Additional Improvements, which may be included or referred to under such captions and subcaptions.
8. In addition, based upon our conversations with representatives of the Developer at which the Preliminary Limited Offering and the Limited Offering Memorandum and related matters were discussed, and although we have not independently verified the information in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum, including without limitation the items set forth in Paragraph 7 above, and are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum and any amendment or supplement thereto, no facts have come to our attention that lead us to believe that the information set forth under the captions referenced in the preceding paragraph as of the date of the Preliminary Limited Offering Memorandum and the Limited Offering Memorandum and the date hereof, contained or contains any untrue statement of a material fact, or omitted or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

We express no opinion as to the laws of any jurisdiction other than the laws of Texas and the laws of the United States of America. The opinions expressed above concern only the effect of the laws (excluding the principles of conflict of laws) of Texas and the United States of

America as currently in effect. This opinion is rendered solely as the date hereof, and we assume no obligation to supplement this opinion if any applicable laws change after the date of this opinion, or if we become aware of any facts that might change the opinions expressed above after the date of this opinion.

This Opinion Letter and the opinions contained herein may be relied upon only by those persons specifically addressed in this Opinion Letter, and may not be relied upon by any other person or entity without our prior written consent and may not be used, circulated, furnished, quoted or otherwise referred to for any other purpose without our prior written consent.

### **Qualifications**

In addition to any assumptions, qualifications and other matters set forth elsewhere herein, the opinions set forth above are subject to the following assumptions and qualifications:

(a) We have not examined any court dockets, agency files or other public records regarding the entry of any judgments, writs, decrees or orders or the pendency of any actions, proceedings, investigations or litigation.

(b) We have relied upon the Developer Certificate as well as the representations of the Developer contained in the Material Documents with respect to certain facts material to our opinion. Except as otherwise specifically indicated herein, we have made no independent investigation regarding any of the foregoing documents or the representations contained therein.

(c) Our opinion in Paragraph 5 delivered above is subject to the effect of any applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other laws affecting creditors' rights generally and to the effect of general principles of equity, including (without limitation) remedies of specific performance and injunctive relief and concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law).

(d) Except for the Material Documents, and the additional documents listed as items (b) through (g) above, we have not reviewed, and express no opinion as to, any other contracts or agreements to which the Developer is a party or by which the Developer is or may be bound.

(e) This letter is strictly limited to the matters expressly set forth herein and no statements or opinions should be inferred beyond such matters.

(f) Notwithstanding anything contained herein to the contrary, we express no opinion whatsoever concerning the status of title to any real or personal property.

(g) The opinions expressed herein regarding the enforceability of the Material Documents is subject to the qualification that certain of the remedial, waiver or other provisions thereof may not be enforceable; but such unenforceability will not, in our judgment, render the Material Documents invalid as a whole or substantially interfere with the practical realization of the principal legal benefits provided in the Material Documents, except to the extent of any economic consequences of any procedural delays which may result therefrom.

(h) The opinion expressed herein as to the enforceability of the Material Documents is specifically subject to the qualification that enforceability of the Material Documents is limited by the following: (i) the rights of the United States under the Federal Tax Lien Act of 1966, as amended; (ii) principles of equity, public policy and unconscionability which may limit the availability of certain remedies; (iii) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, liquidation, probate, conservatorship and other laws applicable to creditors' rights or the collection of debtors' obligations generally; and (iv) requirements of due process under the United States Constitution, the Constitution of the State of Texas and other laws or court decisions limiting the rights of creditors to repossess, foreclose or otherwise realize upon the property of a debtor without appropriate notice or hearing or both.

(i) We express no opinion as to whether a court would grant specific performance or any other equitable remedy with respect to the enforcement of the Material Documents.

(j) We express no opinion as to the validity, binding effect, or enforceability of: (i) provisions which purport to waive rights or notices, including rights to trial by jury, counterclaims or defenses, jurisdiction or venue; (ii) provisions relating to consent judgments, waivers of defenses or the benefits of statutes of limitations, marshaling of assets, the transferability of any assets which by their nature are nontransferable, sales in inverse order of alienation, or severance; (iii) provisions purporting to waive the benefits of present or of future laws relating to exemptions, appraisal, valuation, stay of execution, redemption, extension of time for payment, setoff and similar debtor protection laws; or (iv) provisions requiring a party to pay fees and expenses regardless of the circumstances giving rise to such fees or expenses or the reasonableness thereof.

(k) The opinions expressed herein are subject to the effect of generally applicable rules of law that provide that forum selection clauses in contracts are not necessarily binding on the court(s) in the forum selected.

(l) We express no opinion as to the enforceability of any provisions in the Material Documents purporting to entitle a party to indemnification in respect of any matters arising in whole or in part by reason of any negligent, illegal or wrongful act or omission of such party.

(m) Our opinions are based upon and rely upon the current status of law, and in all respects are subject to and may be limited by future legislation or case law.

(n) The opinion expressed herein represent our reasonable professional judgment as to the matters of law addressed herein, based upon the facts presented or assumed, and are not guarantees that a court will reach any particular result.

Very truly yours,

MCLEAN & HOWARD, LLP

By: \_\_\_\_\_  
Jeffrey S. Howard, Partner

## **SCHEDULE I**

As used herein, “**Applicable Law**” means the laws, rules, and regulations of the State of Texas and the United States of America and the rules and regulations adopted thereunder; for the avoidance of doubt, the foregoing shall not include any local or municipal laws, environmental laws or regulations, development laws or regulations, land ordinances, or water management laws or regulations.

As used herein, “**Governmental Approval**” means any consent, approval, license, authorization or validation of, or filing, recording or registration with, any Governmental Authority of the State of Texas or any governmental authority or instrumentality of the United States of America pursuant to any Applicable Law.

As used herein. “**Governmental Authority**” means the government of the State of Texas, and any agency, authority, statewide subdivision instrumentality, regulatory body, court, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to such government.

## EXHIBIT E

### CLOSING CERTIFICATE OF DEVELOPER

Whisper Master Community Limited Partnership, a Texas limited partnership (the “Developer”), DOES HEREBY CERTIFY the following as of the date hereof. All capitalized terms not otherwise defined herein shall have the meaning given to such term in the Limited Offering Memorandum.

1. The Developer is a limited partnership organized, validly existing and in good standing under the laws of the State of Texas.

2. Representatives of the Developer have provided information to the City of San Marcos, Texas (the “City”) and FMSbonds, Inc. (the “Underwriter”) to be used in connection with the offering by the City of its \$[PRINCIPAL] aggregate principal amount of Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District) (the “Bonds”), pursuant to the Preliminary Limited Offering Memorandum, dated May 21, 2020 (the “Preliminary Limited Offering Memorandum”) and Limited Offering Memorandum dated June 2, 2020 (the “Limited Offering Memorandum”).

3. The Developer has delivered to the Underwriter and the City true, correct, complete and fully executed copies of the Developer’s organizational documents, and such documents have not been amended or supplemented since delivery to the Underwriter and the City and are in full force and effect as of the date hereof.

4. The Developer has delivered to the Underwriter and the City (i) a Certificate of Status from the Texas Secretary of State and (ii) a verification of franchise tax account status from the Texas Comptroller of Public Accounts for the Developer.

5. The Developer has executed and delivered each of the below listed documents (individually, a “Developer Document” and collectively, the “Developer Documents”) in the capacity provided for in each such Developer Document, and each such Developer Document constitutes a valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms:

(a) the Developer Letter of Representations dated June 2, 2020;

(b) the Amended and Restated Whisper Public Improvement District Financing Agreement, effective as of May 8, 2020 (the “Financing Agreement”), executed and delivered by the City, the Developer, Yarrington Partners, Ltd., a Texas limited partnership (“Yarrington”), Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“Whisper Industrial”) and 135 Residential Development, LLC, a Texas limited liability company (“135 Residential” and, together with the Developer, Yarrington and Whisper Industrial, the “Landowners”);

(c) the Whisper Public Improvement District Acquisition and Reimbursement Agreement, effective as of May 8, 2020 (the “Reimbursement Agreement”), executed and delivered by the City and the Landowners;

(d) the Landowner Agreement, dated as of [June 2], 2020 (the “Landowner Agreement”), executed and delivered by the City and the Landowners;

(e) the Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (WHISPER PID) dated as of [June 2], 2020, executed and delivered by the City, the Developer, Yarrington, 135 Residential and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”); and

(f) the Continuing Disclosure Agreement of the Developer with respect to the Bonds, dated as of June 2, 2020 (the “Continuing Disclosure Agreement of Developer”), executed and delivered by the Developer, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent.

6. The Developer or other development entities affiliated with the Developer owned all of the Developer Land, except for the Whisper Industrial Parcel (both as defined in the Limited Offering Memorandum) located in the District on the date that the Assessment Ordinance was adopted and such landowners are not entities that may claim a homestead right under Texas law.

7. The Developer has complied in all material respects with all of the Developer’s agreements and covenants and satisfied all conditions required to be complied with or satisfied by the Developer under the Developer Documents on or prior to the date hereof.

8. The representations and warranties of the Developer contained in the Developer Documents are true and correct in all material respects on and as of the date hereof.

9. The execution and delivery of the Developer Documents by the Developer does not violate any judgment, order, writ, injunction or decree binding on the Developer or any indenture, agreement, or other instrument to which the Developer is a party. There are no proceedings pending or threatened in writing before any court or administrative agency against the Developer that is either not covered by insurance or which singularly or collectively would have a material, adverse effect on the ability of the Developer to perform its obligations under the Developer Documents in all material respects or that would reasonably be expected to prevent or prohibit the development of the District in accordance with the description thereof in the Limited Offering Memorandum.

10. The Developer has reviewed and approved the information contained in the Preliminary Limited Offering Memorandum in the maps on pages (iii) through (v) and under the captions and subcaptions “PLAN OF FINANCE — Development Plan,” “ — Status of Major Improvements and Additional Improvements,” “ — Homebuilders and Status of Home Construction” and “ — Status of Multi-family, Industrial/Business Park and General Commercial,” “THE AUTHORIZED IMPROVEMENTS,” “THE DEVELOPMENT” and “THE DEVELOPER,” “BONDHOLDERS’ RISKS” (only as it pertains to the Developer, the Major Improvements and the Development, as defined in the Limited Offering Memorandum), “LEGAL MATTERS — Litigation — The Developer,” “CONTINUING DISCLOSURE — The Developer” and “ — The Developer’s Compliance with Prior Undertakings,” “SOURCES OF INFORMATION — Developer,” “APPENDIX E-2” and “APPENDIX G” (collectively, the

“Developer Disclosures”) and certifies that the same does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they are made, not misleading, as of the date of the Preliminary Limited Offering Memorandum and as of the date of the Limited Offering Memorandum; provided, however, that the foregoing certification is not a certification as to the accuracy, completeness or fairness of any of the other statements contained in the Preliminary Limited Offering Memorandum.

11. The Developer has reviewed and approved the information contained in the Developer Disclosures in the Limited Offering Memorandum and certifies that the same does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they are made, not misleading, as of the date of the Limited Offering Memorandum and as of the date hereof; provided, however, that the foregoing certification is not a certification as to the accuracy, completeness or fairness of any of the other statements contained in the Limited Offering Memorandum.

12. To the Developer’s knowledge, the Developer is in compliance in all material respects with all provisions of applicable law relating to the Developer in connection with the Development. Except as otherwise described in the Limited Offering Memorandum: (a) to the Developer’s knowledge, there is no default of any zoning condition, land use permit or development agreement binding upon the Developer or any portion of the Development that would materially and adversely affect the Developer’s ability to complete or cause to be completed the development of the property within the District as described in the Limited Offering Memorandum; and (b) the Developer has no reason to believe that any additional permits, consents and licenses required to complete the development of the property within the District as and in the manner described in the Limited Offering Memorandum will not be reasonably obtainable in due course.

13. The Developer is not insolvent and has not made an assignment for the benefit of creditors, filed or consented to a petition in bankruptcy, petitioned or applied (or consented to any third party petition or application) to any tribunal for the appointment of a custodian, receiver or any trustee or commenced any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction.

14. The levy of the Assessments on property in the District owned by the Developer, or any of its affiliates, will not conflict with or constitute a breach of or default under any agreement, mortgage, deed of trust, indenture or other instrument to which the Developer, or any of its affiliates, is a party or to which the Developer, or any of its affiliates, or any of their property or assets is subject.

15. The Developer is not in default under any mortgage, trust indenture, lease or other instrument to which it or any of its assets is subject, which default would have a material and adverse effect on the Bonds or the Developer’s ability to perform its obligations under the Developer Documents.

16. The Developer has no knowledge of any physical condition of the Development owned or to be developed by the Developer that currently requires, or currently is reasonably expected to require in the process of development investigation or remediation under any applicable federal, state or local governmental laws or regulations relating to the environment in any material and adverse respect.

Dated: \_\_\_\_\_, 2020

**DEVELOPER:**

WHISPER MASTER COMMUNITY LIMITED  
PARTNERSHIP,  
a Texas limited partnership  
(as Developer)

By: Whisper M.C., LLC, a Texas  
limited liability company, Its General  
Partner

By: \_\_\_\_\_  
Robert W. McDonald III, Manager

## EXHIBIT F

### CLOSING CERTIFICATE OF 135 RESIDENTIAL

135 Residential Development, LLC, a Texas limited liability company (“135 Residential”), DOES HEREBY CERTIFY the following as of the date hereof. All capitalized terms not otherwise defined herein shall have the meaning given to such term in the Limited Offering Memorandum.

1. 135 Residential is a limited liability company, validly existing and in good standing under the laws of the State of Texas.

2. Representatives of 135 Residential have provided information to the City of San Marcos, Texas (the “City”) and FMSbonds, Inc. (the “Underwriter”) to be used in connection with the offering by the City of its \$[PRINCIPAL] aggregate principal amount of Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District) (the “Bonds”), pursuant to the Preliminary Limited Offering Memorandum, dated May 21, 2020 (the “Preliminary Limited Offering Memorandum”) and Limited Offering Memorandum dated June 2, 2020 (the “Limited Offering Memorandum”).

3. 135 Residential has delivered to the Underwriter and the City true, correct, complete and fully executed copies of 135 Residential’s organizational documents, and such documents have not been amended or supplemented since delivery to the Underwriter and the City and are in full force and effect as of the date hereof.

4. 135 Residential has delivered to the Underwriter and the City (i) a Certificate of Status from the Texas Secretary of State and (ii) a verification of franchise tax account status from the Texas Comptroller of Public Accounts for 135 Residential.

5. 135 Residential has executed and delivered each of the below listed documents (individually, a “135 Residential Document” and collectively, the “135 Residential Documents”) in the capacity provided for in each such 135 Residential Document, and each such 135 Residential Document constitutes a valid and binding obligation of 135 Residential, enforceable against 135 Residential in accordance with its terms:

(a) the Amended and Restated Whisper Public Improvement District Financing Agreement, effective as of May 8, 2020 (the “Financing Agreement”), executed and delivered by the City, 135 Residential, Whisper Master Community Limited Partnership, a Texas limited partnership (the “Developer”), Yarrington Partners, Ltd., a Texas limited partnership (“Yarrington”) and Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“Whisper Industrial” and, together with 135 Residential, the Developer and Yarrington, the “Landowners”);

(b) the Whisper Public Improvement District Acquisition and Reimbursement Agreement, effective as of May 8, 2020 (the “Reimbursement Agreement”), executed and delivered by the City and the Landowners;

(c) the Landowner Agreement, dated as of [June 2], 2020 (the “Landowner Agreement”), executed and delivered by the City and the Landowners;

(d) the Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (WHISPER PID) dated as of [June 2], 2020, executed and delivered by the City, the Developer, Yarrington, 135 Residential and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”); and

(e) the Continuing Disclosure Agreement of 135 Residential with respect to the Bonds, dated as of June 2, 2020 (the “Continuing Disclosure Agreement of 135 Residential”), executed and delivered by 135 Residential, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent.

6. 135 Residential or other development entities affiliated with 135 Residential owned all of the Single-Family Parcel (as defined in the Limited Offering Memorandum) located in the District on the date that the Assessment Ordinance was adopted and such landowners are not entities that may claim a homestead right under Texas law.

7. 135 Residential has complied in all material respects with all of 135 Residential’s agreements and covenants and satisfied all conditions required to be complied with or satisfied by 135 Residential under the 135 Residential Documents on or prior to the date hereof.

8. The representations and warranties of 135 Residential contained in the 135 Residential Documents are true and correct in all material respects on and as of the date hereof.

9. The execution and delivery of the 135 Residential Documents by 135 Residential does not violate any judgment, order, writ, injunction or decree binding on 135 Residential or any indenture, agreement, or other instrument to which 135 Residential is a party. There are no proceedings pending or threatened in writing before any court or administrative agency against 135 Residential that is either not covered by insurance or which singularly or collectively would have a material, adverse effect on the ability of 135 Residential to perform its obligations under the 135 Residential Documents in all material respects or that would reasonably be expected to prevent or prohibit the development of the Single-Family Parcel in accordance with the description thereof in the Limited Offering Memorandum.

10. To 135 Residential’s knowledge, 135 Residential is in compliance in all material respects with all provisions of applicable law relating to 135 Residential in connection with the Single-Family Parcel. To 135 Residential’s knowledge, there is no default of any zoning condition, land use permit or development agreement binding upon 135 Residential or any portion of the Single-Family Parcel that would materially and adversely affect 135 Residential’s ability to complete or cause to be completed the development of the Single-Family Parcel as described in the Limited Offering Memorandum. 135 Residential has no reason to believe that any additional permits, consents and licenses required to complete the development of the Single-Family Parcel as and in the manner described in the Limited Offering Memorandum will not be reasonably obtainable in due course.

11. 135 Residential is not insolvent and has not made an assignment for the benefit of creditors, filed or consented to a petition in bankruptcy, petitioned or applied (or consented to

any third party petition or application) to any tribunal for the appointment of a custodian, receiver or any trustee or commenced any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction.

12. The levy of the Assessments on property in the Single-Family Parcel owned by 135 Residential, or any of its affiliates, will not conflict with or constitute a breach of or default under any agreement, mortgage, deed of trust, indenture or other instrument to which 135 Residential, or any of its affiliates, is a party or to which 135 Residential, or any of its affiliates, or any of their property or assets is subject.

13. 135 Residential is not in default under any mortgage, trust indenture, lease or other instrument to which it or any of its assets is subject, which default would have a material and adverse effect on the Bonds or 135 Residential's ability to perform its obligations under the 135 Residential Documents.

14. 135 Residential has no knowledge of any physical condition of the Single-Family Parcel owned by 135 Residential that currently requires, or currently is reasonably expected to require in the process of development investigation or remediation under any applicable federal, state or local governmental laws or regulations relating to the environment in any material and adverse respect.

Dated: \_\_\_\_\_, 2020

**135 RESIDENTIAL:**

135 RESIDENTIAL DEVELOPMENT, LLC, a  
Texas limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT G

### CLOSING CERTIFICATE OF YARRINGTON

Yarrington Partners, Ltd., a Texas limited liability company (“Yarrington”), DOES HEREBY CERTIFY the following as of the date hereof. All capitalized terms not otherwise defined herein shall have the meaning given to such term in the Limited Offering Memorandum.

1. Yarrington is a limited liability company, validly existing and in good standing under the laws of the State of Texas.

2. Representatives of Yarrington have provided information to the City of San Marcos, Texas (the “City”) and FMSbonds, Inc. (the “Underwriter”) to be used in connection with the offering by the City of its \$[PRINCIPAL] aggregate principal amount of Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District) (the “Bonds”), pursuant to the Preliminary Limited Offering Memorandum, dated May 21, 2020 (the “Preliminary Limited Offering Memorandum”) and Limited Offering Memorandum dated June 2, 2020 (the “Limited Offering Memorandum”).

3. Yarrington has delivered to the Underwriter and the City true, correct, complete and fully executed copies of Yarrington’s organizational documents, and such documents have not been amended or supplemented since delivery to the Underwriter and the City and are in full force and effect as of the date hereof.

4. Yarrington has delivered to the Underwriter and the City (i) a Certificate of Status from the Texas Secretary of State and (ii) a verification of franchise tax account status from the Texas Comptroller of Public Accounts for Yarrington.

5. Yarrington has executed and delivered each of the below listed documents (individually, a “Yarrington Document” and collectively, the “Yarrington Documents”) in the capacity provided for in each such Yarrington Document, and each such Yarrington Document constitutes a valid and binding obligation of Yarrington, enforceable against Yarrington in accordance with its terms:

(a) the Amended and Restated Whisper Public Improvement District Financing Agreement, effective as of May 8, 2020 (the “Financing Agreement”), executed and delivered by the City, Yarrington, Whisper Master Community Limited Partnership, a Texas limited partnership (the “Developer”), 135 Residential Development, LLC, a Texas limited liability company (“135 Residential”) and Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company (“Whisper Industrial” and, together with Yarrington, the Developer and 135 Residential, the “Landowners”);

(b) the Whisper Public Improvement District Acquisition and Reimbursement Agreement, dated as of effective as of May 8, 2020 (the “Reimbursement Agreement”), executed and delivered by the City and the Landowners;

(c) the Landowner Agreement, dated as of [June 2], 2020 (the “Landowner Agreement”), executed and delivered by the City and the Landowners;

(d) the Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation (WHISPER PID) dated as of [June 2], 2020, executed and delivered by the City, the Developer, Yarrington, 135 Residential and UMB Bank, N.A., as Escrow Agent (the “Redemption Waiver Agreement”); and

(e) the Continuing Disclosure Agreement of Yarrington with respect to the Bonds, dated as of June 2, 2020 (the “Continuing Disclosure Agreement of Yarrington”), executed and delivered by Yarrington, P3Works, LLC, as PID Administrator, and UMB Bank, N.A., as Dissemination Agent.

6. Yarrington or other development entities affiliated with Yarrington owned all of the Yarrington Land (as defined in the Limited Offering Memorandum) located in the District on the date that the Assessment Ordinance was adopted and such landowners are not entities that may claim a homestead right under Texas law.

7. Yarrington has complied in all material respects with all of Yarrington’s agreements and covenants and satisfied all conditions required to be complied with or satisfied by Yarrington under the Yarrington Documents on or prior to the date hereof.

8. The representations and warranties of Yarrington contained in the Yarrington Documents are true and correct in all material respects on and as of the date hereof.

9. The execution and delivery of the Yarrington Documents by Yarrington does not violate any judgment, order, writ, injunction or decree binding on Yarrington or any indenture, agreement, or other instrument to which Yarrington is a party. There are no proceedings pending or threatened in writing before any court or administrative agency against Yarrington that is either not covered by insurance or which singularly or collectively would have a material, adverse effect on the ability of Yarrington to perform its obligations under the Yarrington Documents in all material respects or that would reasonably be expected to prevent or prohibit the development of the Yarrington Land in accordance with the description thereof in the Limited Offering Memorandum.

10. To Yarrington’s knowledge, Yarrington is in compliance in all material respects with all provisions of applicable law relating to Yarrington in connection with the Yarrington Land. To Yarrington’s knowledge, there is no default of any zoning condition, land use permit or development agreement binding upon Yarrington or any portion of the Yarrington Land that would materially and adversely affect Yarrington’s ability to complete or cause to be completed the development of the Yarrington Land as described in the Limited Offering Memorandum. Yarrington has no reason to believe that any additional permits, consents and licenses required to complete the development of the Yarrington Land as and in the manner described in the Limited Offering Memorandum will not be reasonably obtainable in due course.

11. Yarrington is not insolvent and has not made an assignment for the benefit of creditors, filed or consented to a petition in bankruptcy, petitioned or applied (or consented to any third party petition or application) to any tribunal for the appointment of a custodian,

receiver or any trustee or commenced any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction.

12. The levy of the Assessments on property in the Yarrington Land owned by Yarrington, or any of its affiliates, will not conflict with or constitute a breach of or default under any agreement, mortgage, deed of trust, indenture or other instrument to which Yarrington, or any of its affiliates, is a party or to which Yarrington, or any of its affiliates, or any of their property or assets is subject.

13. Yarrington is not in default under any mortgage, trust indenture, lease or other instrument to which it or any of its assets is subject, which default would have a material and adverse effect on the Bonds or Yarrington's ability to perform its obligations under the Yarrington Documents.

14. Yarrington has no knowledge of any physical condition of the Yarrington Land owned by Yarrington that currently requires, or currently is reasonably expected to require in the process of development investigation or remediation under any applicable federal, state or local governmental laws or regulations relating to the environment in any material and adverse respect.

Dated: \_\_\_\_\_, 2020

**YARRINGTON:**

YARRINGTON PARTNERS, LTD., a Texas limited partnership

By: Texas Realty/Retail Partners, Inc., a Texas corporation, Its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: 501 W. 15<sup>th</sup>, Inc., a Texas corporation, Its General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPENDIX H**

[LETTERHEAD OF FLATO REALTY ADVISORS, LLC]

\_\_\_\_\_, 2020

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

FMSbonds, Inc.  
5 Cowboys Way, Suite 300-V  
Frisco, Texas 75034

McCall, Parkhurst & Horton L.L.P.  
600 Congress Ave., Suite 1800  
Austin, Texas 78701

UMB Bank, N.A.  
6034 W. Courtyard Drive, Ste.370  
Austin, Texas 78730

Re: City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020  
(Whisper Public Improvement District) (the “Bonds”)

Ladies and Gentlemen:

The undersigned, \_\_\_\_\_, representative of Flato Realty Advisors, LLC (“Flato Realty”), the appraiser of the undeveloped property contained in the Whisper Public Improvement District (the “District”), does hereby represent the following:

1. Flato Realty has supplied certain information contained in the Preliminary Limited Offering Memorandum for the Bonds, dated May 21, 2020 and the Limited Offering Memorandum for the Bonds, dated June 2, 2020 (together, the “Limited Offering Memorandum”), relating to the issuance of the Bonds by the City of San Marcos, Texas, as described above. The information Flato Realty provided for the Limited Offering Memorandum is the real estate appraisal of the property in the District (the “Appraisal”), located in APPENDIX F to the Limited Offering Memorandum, and the description thereof, set forth under the caption “APPRAISAL OF PROPERTY WITHIN THE DISTRICT — The Appraisal.”

2. To the best of my professional knowledge and belief, as of the date of the Appraisal, the portion of the Limited Offering Memorandum described above does not contain an untrue statement of a material fact as to the information and data set forth therein, and does not omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

3. Flato Realty agrees to the inclusion of the Appraisal in the Limited Offering Memorandum and the use of its name in the Limited Offering Memorandum for the Bonds.

4. Flato Realty agrees that, to the best of its ability, it will inform you immediately should it learn of any event(s) or information of which you are not aware subsequent to the date of this letter and prior to the actual time of delivery of the Bonds (anticipated to occur on or

about June 30, 2020) which would render any such information in the Limited Offering Memorandum untrue, incomplete, or incorrect, in a material fact or render any statement in the appraisal materially misleading.

5. The undersigned hereby represents that he or she has been duly authorized to execute this letter of representations.

Sincerely yours,

\_\_\_\_\_

FLATO REALTY ADVISORS, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## APPENDIX I

[LETTERHEAD OF P3WORKS, LLC]

\_\_\_\_\_, 2020

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

FMSbonds, Inc.  
5 Cowboys Way, Suite 300-V  
Frisco, Texas 75034

McCall, Parkhurst & Horton L.L.P.  
600 Congress Ave., Suite 1800  
Austin, Texas 78701

UMB Bank, N.A.  
6034 W. Courtyard Drive, Ste.370  
Austin, Texas 78730

Re: City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020  
(Whisper Public Improvement District) (the “Bonds”)

Ladies and Gentlemen:

The undersigned, \_\_\_\_\_, representative of P3Works LLC (“P3Works”), consultant in connection with the creation by the City of San Marcos, Texas (the “City”), of Whisper Public Improvement District (the “District”), does hereby represent the following:

1. P3Works has supplied certain information contained in the Preliminary Limited Offering Memorandum, dated May 21, 2020, and the final Limited Offering Memorandum, dated June 2, 2020 (together, the “Limited Offering Memorandum”), relating to the issuance of the Bonds by the City, as described above. The information P3Works provided for the Limited Offering Memorandum is located (a) under the captions “ASSESSMENT PROCEDURES” and “THE PID ADMINISTRATOR” and (b) in the Service and Assessment Plan (the “SAP”) for the City located in APPENDIX C to the Limited Offering Memorandum.

2. At the request of the City, P3Works has prepared the SAP and acknowledges and agrees that the SAP will be included in the Limited Offering Memorandum for the Bonds.

3. To the best of my professional knowledge and belief, the portions of the Limited Offering Memorandum described in paragraph 1 above do not contain an untrue statement of a material fact as to the information and data set forth therein, and does not omit to state a material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

4. P3Works agrees to the use of its name in the Limited Offering Memorandum for the Bonds.

5. P3Works agrees that, to the best of its ability, it will inform you immediately should it learn of any event(s) or information of which you are not aware subsequent to the date

of this letter and prior to the actual time of delivery of the Bonds (anticipated to occur on or about June 30, 2020) which would render any such information in the Limited Offering Memorandum untrue, incomplete, or incorrect, in a material fact or render any such information materially misleading.

6. The undersigned hereby represents that he or she has been duly authorized to execute this letter of representation.

Sincerely yours,

**P3Works, LLC**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

---

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**INDENTURE OF TRUST**

By and Between

**CITY OF SAN MARCOS, TEXAS**

and

**UMB BANK, N.A.  
as Trustee**

**DATED AS OF JUNE 2, 2020**

SECURING

\$\_\_\_\_\_

**CITY OF SAN MARCOS, TEXAS  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020  
(WHISPER PUBLIC IMPROVEMENT DISTRICT)**

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IMPROVEMENT DISTRICT

EXHIBIT B FORM OF CERTIFICATION FOR PAYMENT (DESIGN) AND CERTIFICATION  
FOR PAYMENT (CONSTRUCTION)

## INDENTURE OF TRUST

THIS INDENTURE, dated as of June 2, 2020, is by and between the CITY OF SAN MARCOS, TEXAS (the "*City*"), and UMB Bank, N.A., as trustee (together with its successors, the "*Trustee*"). Capitalized terms used in the preambles, recitals and granting clauses and not otherwise defined shall have the meanings assigned thereto in Article I.

WHEREAS, a petition was submitted and filed with the City Clerk of the City (the "*City Clerk*") pursuant to the Public Improvement District Assessment Act, Chapter 372, Texas Local Government Code, as amended (the "*PID Act*"), requesting the creation of a public improvement district located within the corporate limits of the City to be known as Whisper Public Improvement District (the "*District*" or "*PID*"); and

WHEREAS, the petition contained the signatures of the record owners of taxable real property representing more than 50% of the appraised value of the real property liable for assessments within the District, as determined by the then current ad valorem tax rolls of the Hays Central Appraisal District, and the signatures of record property owners who own taxable real property that constitutes more than 50% of the area of all taxable property that is liable for assessment by the District; and

WHEREAS, on October 6, 2014, after due notice, the City Council of the City (the "*City Council*") held the public hearing in the manner required by law on the advisability of the improvement projects and services described in the petition as required by Section 372.009 of the PID Act and on October 6, 2014 the City Council made the findings required by Section 372.009(b) of the PID Act and, by Resolution No. 2014-143R, adopted by a majority of the members of the City Council, authorized the formation of the District in accordance with its finding as to the advisability of the improvement projects and services; and

WHEREAS, on October 21, 2014, the City Council authorized the creation of the District pursuant to Resolution No. 2014-149R (the "*Creation Resolution*") in accordance with the PID Act;

WHEREAS, following the adoption of Resolution No. 2014-149R, the City published notice of its authorization of the creation of the District in the *San Marcos Daily Record*, a newspaper of general circulation in the City; and

WHEREAS, no written protests of the District from any owners of record of property within the District were filed with the City Clerk within 20 days after the date of publication of such notice; and

WHEREAS, on September 5, 2017, the City Council adopted a resolution approving the execution of the Financing Agreement, as subsequently amended and restated (as defined herein); and

WHEREAS, the City, pursuant to Section 372.016(b) of the PID Act, published notice on May 8, 2020 of a public hearing in the *San Marcos Daily Record*, a newspaper of general

circulation in the City to consider the proposed "*Assessment Roll*" and the "*Service and Assessment Plan*" and the levy of the "*Assessments*" in the estimated amount of \$14,075,000 on property in the District; and

WHEREAS, the City Council, pursuant to Section 372.016(c) of the PID Act, mailed notice of the public hearing to consider the proposed Assessment Roll and the Service and Assessment Plan and the levy of Assessments on property in the District to the last known address of the owners of the property liable for the Assessments; and

WHEREAS, the City Council convened the hearing on May 19, 2020, and such hearing remained open through the June 2, 2020 meeting of the City Council, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Service and Assessment Plan, the Assessment Roll, and the Assessments, and to offer testimony pertinent to any issue presented on the amount of the Assessments, the allocation of Actual Costs, the purposes of the Assessments, the special benefits of the Assessments, and the penalties and interest on annual installments and on delinquent annual installments of the Assessments; and

WHEREAS, at the public hearing referenced in the preceding paragraph, there were no written objections or evidence submitted to the City Clerk in opposition to the Service and Assessment Plan, the allocation of Actual Costs, the Assessment Roll, or the levy of the Assessments; and

WHEREAS, the City Council closed the hearing and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the City, at the meetings held on May 19, 2020 and June 2, 2020, respectively, approved and accepted the Service and Assessment Plan in conformity with the requirements of the PID Act and adopted the Assessment Ordinance, which Assessment Ordinance approved the Assessment Roll and levied the Assessments; and

WHEREAS, the City Council is authorized by the PID Act to issue its revenue bonds payable from the Assessments for the purpose of (i) paying the Actual Costs, (ii) funding a reserve fund for payment of principal and interest on the Bonds and (iii) for funding other funds as provided in Section 6.2(a); and

WHEREAS, the City Council now desires to issue its revenue bonds, in accordance with the PID Act, such bonds to be entitled "City of San Marcos, Texas Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District Improvement)" (the "*Bonds*"), such Bonds being payable solely from the Trust Estate and for the purposes set forth in this preamble; and

WHEREAS, the Trustee has agreed to accept the trusts herein created and to serve as Trustee upon the terms set forth in this Indenture;

NOW, THEREFORE, the City, in consideration of the foregoing premises and acceptance by the Trustee of the trusts herein created, of the purchase and acceptance of the

Bonds Similarly Secured by the Owners thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, CONVEY, PLEDGE, TRANSFER, ASSIGN, and DELIVER to the Trustee for the benefit of the Owners, a security interest in all of the moneys, rights and properties described in the Granting Clauses hereof, as follows (collectively, the "*Trust Estate*"):

#### FIRST GRANTING CLAUSE

The Pledged Revenues, as herein defined, including all moneys and investments held in the Pledged Funds, including any contract or any evidence of indebtedness related thereto or other rights of the City to receive any of such moneys or investments, whether now existing or hereafter coming into existence, and whether now or hereafter acquired; and

#### SECOND GRANTING CLAUSE

Any and all other property or money of every name and nature which is, from time to time hereafter by delivery or by writing of any kind, conveyed, pledged, assigned or transferred, to the Trustee as additional security hereunder by the City or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to receive any and all such property or money at any and all times and to hold and apply the same subject to the terms thereof; and

#### THIRD GRANTING CLAUSE

Any and all proceeds of the foregoing property and proceeds from the investment of the foregoing property;

TO HAVE AND TO HOLD the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its successors or assigns;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the benefit of all present and future Owners of the Bonds Similarly Secured from time to time issued under and secured by this Indenture, and for enforcement of the payment of the Bonds Similarly Secured in accordance with their terms, and for the performance of and compliance with the obligations, covenants, and conditions of this Indenture;

PROVIDED, HOWEVER, if the City or its assigns shall well and truly pay, or cause to be paid, the principal or Redemption Price of and the interest on the Bonds Similarly Secured at the times and in the manner stated in the Bonds Similarly Secured, according to the true intent and meaning thereof, then this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise this Indenture is to be and remain in full force and effect;

IN ADDITION, the Bonds Similarly Secured are special obligations of the City payable solely from the Trust Estate, as and to the extent provided in this Indenture. The Bonds Similarly Secured do not give rise to a charge against the general credit or taxing powers of the City and are not payable except as provided in this Indenture. Notwithstanding anything to the contrary herein, the Owners of the Bonds Similarly Secured shall never have the right to demand

payment thereof out of any funds of the City other than the Trust Estate. The City shall have no legal or moral obligation to pay for the Bonds Similarly Secured out of any funds of the City other than the Trust Estate.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds Similarly Secured issued and secured hereunder are to be issued, authenticated, and delivered and the Trust Estate hereby created, assigned, and pledged is to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the City has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Owners from time to time of the Bonds Similarly Secured as follows:

## ARTICLE I

### DEFINITIONS, FINDINGS AND INTERPRETATION

#### Section 1.1. **Definitions.**

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

“*10% or Greater Manner*” shall have the meaning assigned to such term in Section 4.5(a).

“*135 Residential*” shall mean 135 Residential Development, LLC, a Texas limited liability company and any successor-in-interest thereto.

“*Account*”, in the singular, means any of the accounts established pursuant to Section 6.1 of this Indenture, and “*Accounts*”, in the plural, means, collectively, all of the accounts established pursuant to Section 6.1 of this Indenture.

“*Actual Cost(s)*” means, with respect to the Authorized Improvements, (a) the costs incurred by or on behalf of the Developer for the design, planning, acquisition, installation, construction and/or implementation of such Authorized Improvement, including a 4% construction management fee, (b) the costs incurred in preparing the construction plans for such Authorized Improvement, (c) the fees paid for obtaining permits, licenses or other governmental approvals for such Authorized Improvement, (d) the costs incurred by or on behalf of the Developer for external professional costs, such as engineering, geotechnical, surveying, land planning, architectural landscapers, appraisals, legal, accounting and similar professional services, (e) taxes (property and franchise) related to the Authorized Improvements that benefit the properties within the boundaries of the District, (f) all labor, bonds and materials, including equipment and fixtures, incurred by contractors, builders and materialmen in connection with the acquisition, construction or implementation of the Authorized Improvement, (g) all related permitting, zoning and public approval expenses, architectural, engineering, legal and consulting fees, financing charges, taxes, governmental fees and charges, insurance premiums, and miscellaneous expenses, and (h) payment of expenses incurred in the establishment,

administration, and operation of the District. Amounts expended for costs described in subsections (c), (d), (g) and (h) above shall be excluded from the amount upon which any general contractor and construction management fees are calculated.

"*Additional Interest*" means the amount collected by application of the Additional Interest Rate.

"*Additional Interest Rate*" means the additional 0.50% interest charged on the Assessments as authorized by the PID Act.

"*Administrative Fund*" means that Fund established by Section 6.1 and administered pursuant to Section 6.9.

"*Administrator*" means initially P3Works, LLC, or thereafter an employee or designee of the City who shall have the responsibilities provided in the Service and Assessment Plan, this Indenture, or any other agreement or document approved by the City related to the duties and responsibilities of the administration of the District.

"*AG Landowners*" means (i) the Developer, (ii) Yarrington and (iii) 135 Residential, and any successor-in-interest thereto.

"*Annual Collection Costs*" means the administrative, organization, maintenance and operation costs and expenses associated with, or incident to, the administration, organization, maintenance and operation of the District, including, but not limited to, costs and expenses for: (1) the Administrator and City staff; (2) legal counsel, engineers, accountants, financial advisors, and other consultants engaged by the City; (3) calculating, collecting, and maintaining records with respect to Assessments and Annual Installments; (4) preparing and maintaining records with respect to Assessment Rolls and Annual Service Plan Updates; (5) paying, and redeeming Bonds; (6) investing or depositing Assessments and Annual Installments; and (7) the paying agent/registrar and Trustee in connection with the Bonds, including their respective legal counsel. Annual Collection Costs collected but not expended in any year shall be carried forward and applied to reduce Annual Collection Costs for subsequent years.

"*Annual Debt Service*" means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds Similarly Secured in such Bond Year (excluding interest paid from funds on deposit in the Capitalized Interest Account of the Bond Fund), assuming that the Outstanding Bonds Similarly Secured are retired as scheduled (including by reason of Sinking Fund Installments), and (ii) the principal amount of the Outstanding Bonds Similarly Secured due in such Bond Year (including any Sinking Fund Installments due in such Bond Year).

"*Annual Installment*" means, with respect to each Parcel, each annual payment of: (i) the Assessments (including the principal of and interest on), as shown on the Assessment Roll attached as Exhibit F to the Service and Assessment Plan and calculated as provided in Section VI of the Service and Assessment Plan, (ii) Annual Collection Costs, and (iii) the Additional Interest.

"*Annual Service Plan Update*" means the annual review and update of the Service and Assessment Plan required by the PID Act and the Service and Assessment Plan.

"*Applicable Laws*" means the PID Act, and all other laws or statutes, rules, or regulations, and any amendments thereto, of the State or of the United States, by which the City and its powers, securities, operations, and procedures are, or may be, governed or from which its powers may be derived.

"*Assessment Ordinance*" means Ordinance No. 2020-\_\_ adopted by the City Council on June 2, 2020 that levied the Assessments.

"*Assessed Property*" means property on which Assessments have been levied as shown on the Assessment Roll (as the same may be updated each year by an Annual Service Plan Update) and which includes any and all Parcels within the PID other than Non-Benefited Property as defined in the Service and Assessment Plan.

"*Assessment Revenues*" means the revenues received by the City from the collection of Assessments, including Prepayments, Annual Installments and Foreclosure Proceeds.

"*Assessment Roll*" means the document attached as Exhibit F to the Service and Assessment Plan, showing the total amount of the Assessments, as updated, modified, or amended from time to time in accordance with the terms of the Service and Assessment Plan and the PID Act.

"*Assessments*" means the assessments levied against Assessed Property in the PID, as provided for in the Assessment Ordinance and in the Service and Assessment Plan, and any supplemental assessments or reallocation of assessments levied in accordance with Sections 372.019 and 372.020 of the PID Act.

"*Attorney General*" means the Attorney General of the State.

"*Authorized Denomination*" means \$100,000 and any integral multiple of \$5,000 in excess thereof. The City prohibits any Bond to be issued in a denomination of less than \$100,000 and further prohibits the assignment of a CUSIP number to any Bond with a denomination of less than \$100,000, and, unless made pursuant to Section 4.5 herein, any attempt to accomplish either of the foregoing shall be void and of no effect.

"*Authorized Improvements*" means the improvements authorized by the PID Act, including the Major Improvements and District Formation and Bond Issuance Costs as described in Section III of the Service and Assessment Plan.

"*Bond*" means any of the Bonds.

"*Bond Counsel*" means McCall, Parkhurst & Horton L.L.P. or any other attorney or firm of attorneys designated by the City that are nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"*Bond Date*" means the date designated as the initial date of the Bonds by Section 3.2(a) of this Indenture.

"*Bond Fund*" means the Fund established pursuant to Section 6.1 and administered pursuant to Section 6.4.

"*Bond Ordinance*" means Ordinance No. \_\_\_\_\_ -\_\_ adopted by the City Council on June 2, 2020, authorizing the issuance of the Bonds pursuant to this Indenture.

"*Bonds*" means the City's bonds authorized to be issued by Section 3.1 of this Indenture entitled "City of San Marcos, Texas, Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District)."

"*Bonds Similarly Secured*" means, collectively, any Outstanding Bonds and Refunding Bonds.

"*Bond Year*" means the one-year period beginning on [October 1] in each year and ending on [September 30] in the following year.

"*Business Day*" means any day other than a Saturday, Sunday or legal holiday in the State observed as such by the City or the Trustee or any national holiday observed by the Trustee.

"*Capitalized Interest Account*" means the Account established pursuant to Section 6.1(b)(i)(A) of this Indenture.

"*Certification for Payment*" means a certificate given pursuant to the Reimbursement Agreement executed by an engineer, construction manager or other person or entity reasonably acceptable to the City, as evidenced by the written approval of a City Representative, specifying the amount of work performed and the cost thereof, presented to the Trustee to request funding for Actual Costs from money on deposit in the Project Fund. The Form of Certification for Payment is attached hereto as Exhibit B.

"*City Certificate*" means a certificate signed by the City Representative and delivered to the Trustee.

"*City Representative*" means that official or agent of the City authorized by the City Council to undertake the action referenced herein as evidenced by a written incumbency certificate provided to the Trustee. Such certificate may designate alternates, each of whom shall be entitled to perform all duties of the City Representative.

"*Closing Date*" means the date of the initial delivery of and payment for the Bonds.

"*Code*" means the Internal Revenue Code of 1986, as amended, including applicable regulations, published rulings and court decisions.

"*Comptroller*" means the Comptroller of Public Accounts of the State.

"*Costs of Issuance Account*" means the Account established pursuant to Section 6.1(b)(iii)(B) of this Indenture.

"*Defeasance Securities*" means Investment Securities then authorized by applicable law for the investment of funds to defease public securities.

"*Delinquency & Prepayment Reserve Account*" means the Account established pursuant to Section 6.1(b)(ii)(B) of this Indenture.

"*Delinquency & Prepayment Reserve Requirement*" means an amount equal to 5.5% of the principal amount of the then Outstanding Bonds Similarly Secured, which amount will be funded from Assessments and Annual Installments deposited to the Pledged Revenue Fund for subsequent transfer to the Delinquency & Prepayment Reserve Account of the Reserve Fund, and any excess funds to be deposited to the Redemption Fund, in accordance with the terms of this Indenture.

"*Delinquent Collection Costs*" means, for a Parcel, interest, penalties, attorneys' fees and other costs that are authorized by the PID Act and by the Assessment Ordinance and that directly or indirectly relate to the collection of delinquent Assessments, delinquent Annual Installments, or any other delinquent payments due under the SAP, including costs and expenses related to the foreclosure of liens.

"*Designated Payment/Transfer Office*" means (i) with respect to the initial Paying Agent/Registrar named in this Indenture, the transfer/payment office designated by the Paying Agent/Registrar, initially Austin, Texas and (ii) with respect to any successor Paying Agent/Registrar, the office of such successor designated and located as may be agreed upon by the City and such successor.

"*Developer*" means Whisper Master Community Limited Partnership, a Texas limited partnership, and any successor thereto under the Financing Agreement.

"*Developer District Formation Costs*" mean the costs incurred by the Developer and associated with forming the District, levying the Assessments, and issuing the PID Bonds.

"*Developer Property Tax Delinquency Amount*" means, as of any date of determination, any amount of ad valorem taxes levied by any taxing entity on Parcels subject to an agricultural valuation for purposes of such ad valorem taxes remaining unpaid on or after \_\_\_\_\_ of the year after such ad valorem taxes are due.

"*Developer Property Tax Reserve Fund*" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.10.

"*Developer Property Tax Reserve Fund Transfer Date*" means the date specified in a City Certificate pursuant to Section 6.10(a).

"*District Formation and Bond Issuance Costs*" means the costs associated with forming the District and issuing the Bonds, including but not limited to attorney fees, financial advisory fees, consultant fees, appraisal fees, printing costs, publication costs, City costs, capitalized interest, reserve fund requirements, underwriter's discount, cost of issuance, fees charged by the Texas Attorney General, 1st year Annual Collection Costs, Developer District Formation Costs and any other cost or expense directly associated with the establishment of the District and/or the issuance of the Bonds.

"*DTC*" means The Depository Trust Company of New York, New York, or any successor securities depository.

"*DTC Participant*" means brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions.

"*Escrow Agent*" means UMB Bank, N.A., Austin, Texas, and its successors under the Redemption Waiver Agreement, acting solely as Escrow Agent thereunder and not as Trustee.

"*Event of Default*" means such events as described in Section 11.1 of this Indenture.

"*Financing Agreement*" means the Whisper Public Improvement District Financing Agreement between the City, the Developer and Yarrington, dated as of September 5, 2017, as amended by the Amended and Restated Financing Agreement between the City and the Property Owners dated May 8, 2020, and as may be further amended and supplemented from time to time.

"*Foreclosure Proceeds*" means the proceeds, including interest and penalty interest, received by the City from the enforcement of the Assessments, whether by foreclosure of lien or otherwise, but excluding and net of all Delinquent Collection Costs.

"*Fund*", in the singular, means any of the funds established pursuant to Section 6.1 of this Indenture, and "*Funds*", in the plural, means, collectively, all of the funds established pursuant to Section 6.1 of this Indenture.

"*Indenture*" means this Indenture of Trust as originally executed or as it may be from time to time supplemented or amended by one or more indentures supplemental hereto and entered into pursuant to the applicable provisions hereof.

"*Independent Financial Consultant*" means any consultant or firm of such consultants appointed by the City who, or each of whom: (i) is judged by the City, as the case may be, to have experience in matters relating to the issuance and/or administration of the Bonds; (ii) is in fact independent and not under the domination of the City; (iii) does not have any substantial interest, direct or indirect, with or in the City, or any owner of real property in the District, or any real property in the District; and (iv) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

"*Initial Bonds*" means the Initial Bonds authorized by Section 5.2 of this Indenture.

"*Interest Payment Date*" means the date or dates upon which interest on the Bonds is scheduled to be paid until their respective dates of maturity or prior redemption, such dates being on March 1 and September 1 of each year, commencing September 1, 2020.

"*Investment Securities*" means those authorized investments determined by the City and described in the Public Funds Investment Act, Chapter 2256, Government Code, as amended, which investments are, at the time made, included in and authorized by the City's official investment policy as approved by the City Council from time to time.

"*Less Than 10% Manner*" shall have the meaning assigned to such term in Section 4.5(a).

"*Major Improvements*" means the Authorized Improvements that benefit the entire District.

"*Maximum Annual Debt Service*" means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds Similarly Secured.

"*Outstanding*" means, as of any particular date when used with reference to Bonds Similarly Secured, all Bonds Similarly Secured authenticated and delivered under this Indenture except (i) any Bond Similarly Secured that has been canceled by the Trustee (or has been delivered to the Trustee for cancellation) at or before such date, (ii) any Bond Similarly Secured for which the payment of the principal or Redemption Price of and interest on such Bond Similarly Secured shall have been made as provided in Article IV, (iii) any Bond Similarly Secured in lieu of or in substitution for which a new Bond Similarly Secured shall have been authenticated and delivered pursuant to Section 3.10, and (iv) Bond Similarly Secured alleged to have been mutilated, destroyed, lost or stolen which have been paid as provided in this Indenture.

"*Owner*" or "*Holder*" means the Person who is the registered owner of a Bond or Bonds, as shown in the Register, which shall be Cede & Co., as nominee for DTC, so long as the Bonds are in book-entry only form and held by DTC as securities depository in accordance with Section 3.11. The term "*Owner*" or "*Holder*", when used in connection with the Bonds Similarly Secured, shall also include the Person who is the registered owner of a Bond Similarly Secured under the terms of any indenture relating thereto.

"*Parcel*" or "*Parcels*" means a parcel or parcels within the PID identified by either a tax map identification number assigned by the Hays Central Appraisal District for real property tax purposes, by metes and bounds description, or by lot and block number in a final subdivision plat recorded in the real property records of Hays County or by any other means determined by the City.

"*Paying Agent/Registrar*" means initially the Trustee, or any successor thereto as provided in this Indenture.

"*Person*" or "*Persons*" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"*PID Act*" means Chapter 372, Texas Local Government Code, as amended.

"*Pledged Funds*" means, collectively, the Pledged Revenue Fund, the Bond Fund, the Project Fund, the Reserve Fund, and the Redemption Fund.

"*Pledged Revenue Fund*" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.3.

"*Pledged Revenues*" means, collectively, the (i) Assessment Revenues (excluding the portion of the Assessments and Annual Installments collected for the payment of Annual Collection Costs and Delinquent Collection Costs, as set forth in the Service and Assessment Plan), (ii) the moneys held in any of the Pledged Funds and (iii) any additional revenues that the City may pledge to the payment of the Bonds or other Bonds Similarly Secured.

"*Prepayment*" means the payment of all or a portion of an Assessment before the due date thereof. Amounts received at the time of a Prepayment which represent a payment of principal, interest or penalties on a delinquent installment of an Assessment are not to be considered a Prepayment, but rather are to be treated as the payment of the regularly scheduled Annual Installment.

"*Prepayment Costs*" means interest, including Additional Interest and Annual Collection Costs and expenses to the date of Prepayment, plus any additional expenses related to the Prepayment, reasonably expected to be incurred by or imposed upon the City as a result of any Prepayment.

"*Project Fund*" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.5.

"*Projects*" mean Major Improvements plus the District Formation and Bond Issuance Costs.

"*Property Owners*" means (i) Yarrington; (ii) the Developer; (iii) Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company; and (iv) 135 Residential, and any successor-in-interest thereto.

"*Purchaser*" means the initial purchaser of the Bonds.

"*Quarter in Interest*" means as of any particular date of calculation, the Owners of no less than twenty-five percent (25%) of the principal amount of the then Outstanding Bonds Similarly Secured. In the event that two or more groups of Owners satisfy the percentage requirement set forth in the immediately preceding sentence and act (or direct the Trustee in writing to act) in a conflicting manner, only the group of Owners with the greatest percentage of then Outstanding

Bonds Similarly Secured (as measured in accordance with the immediately preceding sentence) shall, to the extent of such conflict, be deemed to satisfy such requirement.

"*Rebatable Arbitrage*" means rebatable arbitrage as defined in Section 1.148-3 of the Treasury Regulations.

"*Rebate Fund*" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.8.

"*Record Date*" means the close of business on the 15th calendar day, whether or not a Business Day, of the month next preceding an Interest Payment Date.

"*Redemption Fund*" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.6.

"*Redemption Price*" means, when used with respect to any Bond or portion thereof, the principal amount of such Bond or such portion thereof plus the applicable premium, if any, plus accrued and unpaid interest on such Bond to the date fixed for redemption payable upon redemption thereof pursuant to this Indenture.

"*Redemption Waiver Agreement*" means the Agreement Regarding Waiver of Right of Redemption and Waiver of Agricultural Valuation – Whisper PID by and between the City, the Escrow Agent, Yarrington, 135 Residential and the Developer, dated as of \_\_\_\_\_, 20\_\_, as may be amended and supplemented from time to time.

"*Refunding Bonds*" means bonds issued to refund all or any portion of the Outstanding Bonds and secured by a parity lien with the Outstanding Bonds on the Trust Estate, as more specifically described in the indenture authorizing such Refunding Bonds.

"*Register*" means the register specified in Article III of this Indenture.

"*Reimbursement Agreement*" means the Whisper Public Improvement District Reimbursement Agreement by and between the City and the Developer, effective as of May 8, 2020, as may be further amended and supplemented from time to time.

"*Reserve Account Requirement*" means the least of: (i) Maximum Annual Debt Service on the Bonds Similarly Secured as of the date of issuance, (ii) 125% of average Annual Debt Service on the Bonds Similarly Secured as of the date of issuance, and (iii) 10% of the proceeds of the Bonds Similarly Secured; provided, however, that such amount shall be reduced by the amount of any transfers made pursuant to Section 6.7(b); and provided further that as a result of (1) a mandatory sinking fund redemption pursuant to Section 4.2, (2) an optional redemption pursuant to Section 4.3 or (3) an extraordinary optional redemption pursuant to Section 4.4, the Reserve Account Requirement shall be reduced by a percentage equal to the pro rata principal amount of Bonds Similarly Secured redeemed by such redemption divided by the total principal amount of the Outstanding Bonds Similarly Secured prior to such redemption. As of the date of delivery of the Bonds, the Reserve Account Requirement is \$\_\_\_\_\_ which is an amount equal to Maximum Annual Debt Service on the Bonds Similarly Secured as of the date of

issuance. The City Representative shall provide the Trustee with written confirmation of the Reserve Account Requirement and any modifications related thereto.

"*Reserve Fund*" means that fund established pursuant to Section 6.1 and administered pursuant to Section 6.7.

"*Service and Assessment Plan*" and "*SAP*" each mean the document, including the Assessment Roll, which is attached as Exhibit A to the Assessment Ordinance, as amended and restated, as may be updated, amended and supplemented from time to time.

"*Sinking Fund Installment*" means the amount of money to redeem or pay at maturity the principal of a Stated Maturity of Bonds payable from such installments at the times and in the amounts provided in Section 4.2.

"*Special Record Date*" means in the event of nonpayment of interest on a scheduled Interest Payment Date, and for 30 days thereafter, a new record date for such interest payment that will be established by the Trustee, if and when funds for the payment of such interest have been received from the City.

"*State*" means the State of Texas.

"*Stated Maturity*" means the date the Bonds, or any portion of the Bonds, as applicable are scheduled to mature without regard to any redemption or prepayment.

"*Supplemental Indenture*" means an indenture which has been duly executed by the City Representative and the Trustee pursuant to an ordinance adopted by the City Council and which indenture amends or supplements this Indenture, but only if and to the extent that such indenture is specifically authorized hereunder.

"*Tax Certificate*" means a certificate of the City setting forth the facts, estimates and circumstances in existence on the date of closing, which establish that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be "arbitrage bonds" within the meaning of the Code and any applicable regulations (whether final, temporary or proposed) issued pursuant to the Code.

"*Treasury Regulations*" shall have the meaning assigned to such term in Section 7.5(c).

"*Trust Estate*" means the Trust Estate described in the granting clauses of this Indenture.

"*Trustee*" means UMB Bank, N.A., Austin, Texas, and its successors, and any other corporation or association that may at any time be substituted in its place, as provided in Article IX, such entity to serve as Trustee and Paying Agent/Registrar for the Bonds Similarly Secured.

"*Value of Investment Securities*" means the amortized value of any Investment Securities, provided, however, that all United States of America, United States Treasury Obligations – State

and Local Government Series shall be valued at par and those obligations which are redeemable at the option of the holder shall be valued at the price at which such obligations are then redeemable. The computations shall include accrued interest on the investment securities paid as a part of the purchase price thereof and not collected. For the purposes of this definition "amortized value," when used with respect to a security purchased at par means the purchase price of such security and when used with respect to a security purchased at a premium above or discount below par, means as of any subsequent date of valuation, the value obtained by dividing the total premium or discount by the number of interest payment dates remaining to maturity on any such security after such purchase and by multiplying the amount as calculated by the number of interest payment dates having passed since the date of purchase and (i) in the case of a security purchased at a premium, by deducting the product thus obtained from the purchase price, and (ii) in the case of a security purchased at a discount, by adding the product thus obtained to the purchase price. The Trustee retains the ability, and may rely upon the City's financial advisor to provide a determination as to the foregoing.

“*Yarrington*” means Yarrington Partners, Ltd., a Texas limited partnership and any successor-in-interest thereto.

**Section 1.2. Findings.**

The declarations, determinations and findings declared, made and found in the preamble to this Indenture are hereby adopted, restated and made a part of the operative provisions hereof.

**Section 1.3. Table of Contents, Titles and Headings.**

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

**Section 1.4. Interpretation.**

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

(b) Words importing persons include any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or agency or political subdivision thereof.

(c) Any reference to a particular Article or Section shall be to such Article or Section of this Indenture unless the context shall require otherwise.

(d) When used in Article XI of this Indenture in connection with the Bonds Similarly Secured, any reference to this Indenture, Article XI of this Indenture or any Section thereunder, and/or any events of default or remedies set forth therein, such terms and references shall be read and interpreted to include any indenture relating to any Bonds Similarly Secured, the related Article or Section in such indenture, and/or the events of default and remedies set forth therein.

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

## **ARTICLE II**

### **THE BONDS**

#### **Section 2.1. Security for the Bonds.**

(a) The Bonds Similarly Secured, as to both principal and interest, are and shall be equally and ratably secured by and payable from a first lien on and pledge of the Trust Estate.

(b) The lien on and pledge of the Trust Estate shall be valid and binding and fully perfected from and after the Closing Date, without physical delivery or transfer of control of the Trust Estate, the filing of this Indenture or any other act; all as provided in Chapter 1208 of the Texas Government Code, as amended, which applies to the issuance of the Bonds and the pledge of the Trust Estate granted by the City under this Indenture, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds are Outstanding such that the pledge of the Trust Estate granted by the City under this Indenture is to be subject to the filing requirements of Chapter 9, Texas Business and Commerce Code, as amended, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business and Commerce Code, as amended, and enable a filing to perfect the security interest in said pledge to occur.

#### **Section 2.2. Limited Obligations.**

The Bonds Similarly Secured are special and limited obligations of the City, payable solely from and secured solely by the Trust Estate, including the Pledged Revenues and the Pledged Funds; and the Bonds Similarly Secured shall never be payable out of funds raised or to be raised by taxation or from any other revenues, properties or income of the City.

#### **Section 2.3. Authorization for Indenture.**

The terms and provisions of this Indenture and the execution and delivery hereof by the City to the Trustee have been duly authorized by official action of the City Council of the City. The City has ascertained and it is hereby determined and declared that the execution and delivery of this Indenture is necessary to carry out and effectuate the purposes set forth in the preambles of this Indenture and that each and every covenant or agreement herein contained and made is

necessary, useful and/or convenient in order to better secure the Bonds Similarly Secured and is a contract or agreement necessary, useful and/or convenient to carry out and effectuate the purposes herein described.

**Section 2.4. Contract with Owners and Trustee.**

(a) The purposes of this Indenture are to establish a lien and the security for, and to prescribe the minimum standards for the authorization, issuance, execution and delivery of, the Bonds Similarly Secured and to prescribe the rights of the Owners, and the rights and duties of the City and the Trustee.

(b) In consideration of the purchase and acceptance of any or all of the Bonds Similarly Secured by those who shall purchase and hold the same from time to time, the provisions of this Indenture shall be a part of the contract of the City with the Owner, and shall be deemed to be and shall constitute a contract among the City, the Owners, and the Trustee.

**ARTICLE III**

**AUTHORIZATION; GENERAL TERMS AND PROVISIONS REGARDING THE BONDS**

**Section 3.1. Authorization.**

The Bonds are hereby authorized to be issued and delivered in accordance with the Constitution and laws of the State, including particularly the PID Act, as amended. The Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_ for the purpose of paying a portion of the Actual Costs of the Projects (including (a) the Major Improvements, and (b) the District Formation and Bond Issuance Costs).

**Section 3.2. Date, Denomination, Maturities, Numbers and Interest.**

(a) The Bonds shall be dated the date of the initial delivery thereof (the "*Bond Date*") and shall be issued in Authorized Denominations. The Bonds shall be in fully registered form, without coupons, and shall be numbered separately from R-1 upward, except the Initial Bond, which shall be numbered T-1.

(b) Interest shall accrue and be paid on each Bond from the later of the Bond Date or the most recent Interest Payment Date to which interest has been paid or provided for, at the rate per annum set forth below until the principal thereof has been paid on the maturity date specified below or otherwise provided for. Such interest shall be payable semiannually on March 1 and September 1 of each year, commencing \_\_\_\_\_, 20\_\_, computed on the basis of a 360-day year of twelve 30-day months.

(c) The Bonds shall mature on September 1 in the years and in the principal amounts and shall bear interest at the rates set forth below:

<u>Maturity</u> <u>Year</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
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(d) The Bonds shall be subject to mandatory sinking fund redemption, optional redemption, and extraordinary optional redemption prior to maturity as provided in Article IV, and shall otherwise have the terms, tenor, denominations, details, and specifications as set forth in the form of Bond set forth in Section 5.2.

**Section 3.3. Conditions Precedent to Delivery of Bonds.**

The Bonds shall be executed by the City and delivered to the Trustee, whereupon the Trustee shall authenticate the Bonds and, upon payment of the purchase price of the Bonds, shall deliver the Bonds upon the order of the City, but only upon delivery to the Trustee of:

- (a) a certified copy of the Assessment Ordinance;
- (b) a certified copy of the Bond Ordinance;
- (c) a copy of the executed Financing Agreement and any amendments;
- (d) a copy of the Redemption Waiver Agreement;
- (e) a copy of a Continuing Disclosure Agreement between the City and the dissemination agent thereunder and a Continuing Disclosure Agreement between the Developer, the Administrator and the dissemination agent thereunder;
- (f) a copy of this Indenture executed by the Trustee and the City;
- (g) an executed City Certificate directing the authentication and delivery of the Bonds, describing the Bonds to be authenticated and delivered, designating the purchasers to whom the Bonds are to be delivered, stating the purchase price of the Bonds and stating that all items required by this Section are therewith delivered to the Trustee in form and substance satisfactory to the City;
- (h) an executed Signature and No-Litigation Certificate;
- (i) satisfactory evidence, in the City's sole discretion, from the Developer delivered to the City of financial ability to complete all improvements not funded from Bond proceeds;

- (j) executed opinions of Bond Counsel and the City Attorney; and
- (k) the approving opinion of the Attorney General of the State and the State Comptroller's registration certificate.

**Section 3.4. Medium, Method and Place of Payment.**

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

(b) Interest on the Bonds shall be payable to the Owners thereof as shown in the Register at the close of business on the relevant Record Date or Special Record Date, as applicable.

(c) Interest on the Bonds shall be paid by check, dated as of the Interest Payment Date, and sent, first class United States mail, postage prepaid, by the Paying Agent/Registrar to each Owner at the address of each as such appears in the Register or by such other customary banking arrangement acceptable to the Paying Agent/Registrar and the Owner; provided, however, the Owner shall bear all risk and expense of such other banking arrangement.

(d) The principal of each Bond shall be paid to the Owner of such Bond on the due date thereof, whether at the maturity date or the date of prior redemption thereof, upon presentation and surrender of such Bond at the Designated Payment/Transfer Office of the Paying Agent/Registrar.

(e) If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located are required or authorized by law or executive order to close, the date for such payment shall be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which banking institutions are required or authorized to close, and payment on such date shall for all purposes be deemed to have been made on the due date thereof as specified in Section 3.2 of this Indenture.

(f) Unclaimed payments of amounts due hereunder shall be segregated in a special account and held in trust, uninvested by the Paying Agent/Registrar, for the account of the Owner of the Bonds to which such unclaimed payments pertain. Subject to any escheat, abandoned property, or similar law of the State, any such payments remaining unclaimed by the Owners entitled thereto for three (3) years after the applicable payment or redemption date shall be applied to the next payment or payments on the Bonds thereafter coming due and, to the extent any such money remains after the retirement of all Outstanding Bonds, shall be paid to the City to be used for any lawful purpose. Thereafter, none of the City, the Paying Agent/Registrar, or any other Person shall be liable or responsible to any Holders of such Bonds for any further payment of such unclaimed moneys or on account of any such Bonds, subject to any applicable escheat law or similar law of the State.

### Section 3.5. **Execution and Registration of Bonds.**

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

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

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

(d) On the Closing Date, one Initial Bond representing the entire principal amount of all Bonds, payable in stated installments to the Purchaser, or its designee, executed with the manual or facsimile signatures of the Mayor and the City Clerk, approved by the Attorney General, and registered and manually signed by the Comptroller, will be delivered to the Purchaser or its designee. Upon payment for the Initial Bond, the Trustee shall cancel the Initial Bond and upon City order deliver to DTC on behalf of the Purchaser one registered definitive Bond for each year of maturity of the Bonds, in the aggregate principal amount of all Bonds for such maturity, registered in the name of Cede & Co., as nominee of DTC.

### Section 3.6 **Refunding Bonds.**

(a) Except in accordance with the provisions of this Indenture, including Section 13.2, the City shall not issue additional bonds, notes or other obligations payable from any portion of the Trust Estate, other than Refunding Bonds. The City reserves the right to issue Refunding Bonds, the proceeds of which would be utilized to refund all or any portion of the Outstanding Bonds or Outstanding Refunding Bonds and to pay all costs incident to the Refunding Bonds, as authorized by the laws of the State of Texas. Except as limited by the terms of this Indenture, including Section 13.2, the City reserves the right to incur debt payable from sources other than the Trust Estate, including revenue derived from contracts with other

entities, including private corporations, municipalities and political subdivisions issued particularly for the purchase, construction, improvement, extension, replacement, enlargement or repair of the facilities needed in performing any such contract.

(b) The principal of all Refunding Bonds must be scheduled to be paid, be subject to mandatory sinking fund redemption or mature on September 1 of the years in which such principal is scheduled to be paid. All Refunding Bonds must bear interest at a fixed rate and any interest payment dates for Refunding Bonds must be March 1 and September 1. The date, rate or rates of interest on, interest payment dates, maturity dates, redemption and all other terms and provisions of Refunding Bonds shall be set forth in a Supplemental Indenture.

(c) Upon their authorization by the City, the Refunding Bonds of a Series issued under this Section 3.6 and in accordance with Article IV hereof shall be issued and shall be delivered to the purchasers or owners thereof, but before, or concurrently with, the delivery of said Refunding Bonds to such purchasers or owners there shall have been filed with the Trustee the items required by Section 3.3 above.

#### **Section 3.7. Ownership.**

(a) The City, the Trustee, the Paying Agent/Registrar and any other Person may treat the Person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of making and receiving payment as provided herein (except interest shall be paid to the Person in whose name such Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not such Bond is overdue, and none of the City, the Trustee or the Paying Agent/Registrar shall be bound by any notice or knowledge to the contrary.

(b) All payments made to the Owner of any Bond shall be valid and effectual and shall discharge the liability of the City, the Trustee and the Paying Agent/Registrar upon such Bond to the extent of the sums paid.

#### **Section 3.8. Registration, Transfer and Exchange.**

(a) So long as any Bond remains outstanding, the City shall cause the Paying Agent/Registrar to keep at the Designated Payment/Transfer Office a Register in which, subject to such reasonable regulations as it may prescribe, the Paying Agent/Registrar shall provide for the registration and transfer of Bonds in accordance with this Indenture. The Paying Agent/Registrar represents and warrants that it will maintain a copy of the Register, and shall cause the Register to be current with all registration and transfer information as from time to time may be applicable.

(b) A Bond shall be transferable only upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar with such endorsement or other evidence of transfer as is acceptable to the Paying Agent/Registrar. No transfer of any Bond shall be effective until entered in the Register.

(c) The Bonds shall be exchangeable upon the presentation and surrender thereof at the Designated Payment/Transfer Office of the Paying Agent/Registrar for a Bond or Bonds of the same maturity and interest rate and in any Authorized Denomination and in an aggregate principal amount equal to the unpaid principal amount of the Bond presented for exchange. The Trustee is hereby authorized to authenticate and deliver Bonds exchanged for other Bonds in accordance with this Section.

(d) The Trustee is hereby authorized to authenticate and deliver Bonds transferred or exchanged in accordance with this Section. A new Bond or Bonds will be delivered by the Paying Agent/Registrar, in lieu of the Bond being transferred or exchanged, at the Designated Payment/Transfer Office, or sent by United States mail, first class, postage prepaid, to the Owner or his designee. Each transferred Bond delivered by the Paying Agent/Registrar in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such transferred Bond is delivered.

(e) Each exchange Bond delivered in accordance with this Section shall constitute an original contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such exchange Bond is delivered.

(f) No service charge shall be made to the Owner for the initial registration, subsequent transfer, or exchange for a different Authorized Denomination of any of the Bonds. The Paying Agent/Registrar, however, may require the Owner to pay a sum sufficient to cover any tax or other governmental charge that is authorized to be imposed in connection with the registration, transfer, or exchange of a Bond.

(g) Neither the City nor the Paying Agent/Registrar shall be required to issue, transfer, or exchange any Bond or portion thereof called for redemption prior to maturity within forty-five (45) days prior to the date fixed for redemption; provided, however, such limitation shall not be applicable to an exchange by the Owner of the uncalled principal balance of a Bond.

### Section 3.9. **Cancellation.**

All Bonds paid or redeemed before scheduled maturity in accordance with this Indenture, and all Bonds in lieu of which exchange Bonds or replacement Bonds are authenticated and delivered in accordance with this Indenture, shall be cancelled, and proper records shall be made regarding such payment, redemption, exchange, or replacement. Whenever in this Indenture provision is made for the cancellation by the Trustee of any Bonds, the Trustee shall destroy such Bonds and deliver a certificate of such destruction to the City.

### Section 3.10. **Temporary Bonds.**

(a) Following the delivery and registration of the Initial Bond and pending the preparation of definitive Bonds, the proper officers of the City may execute and, upon the City's request, the Trustee shall authenticate and deliver, one or more temporary Bonds that are printed,

lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Bonds in lieu of which they are delivered, without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers of the City executing such temporary Bonds may determine, as evidenced by their signing of such temporary Bonds.

(b) Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit and security of this Indenture.

(c) The City, without unreasonable delay, shall prepare, execute and deliver to the Trustee the Bonds in definitive form; thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form to the Paying Agent/Registrar, the Paying Agent/Registrar shall cancel the Bonds in temporary form and the Trustee shall authenticate and deliver in exchange therefor a Bond or Bonds of the same maturity and series, in definitive form, in the Authorized Denomination, and in the same aggregate principal amount, as the Bond or Bonds in temporary form surrendered. Such exchange shall be made without the making of any charge therefor to any Owner.

#### Section 3.11. **Replacement Bonds.**

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

(b) In the event that any Bond is lost, apparently destroyed or wrongfully taken, the City shall provide and the Trustee, pursuant to the Applicable Laws of the State and in the absence of notice or knowledge that such Bond has been acquired by a bona fide purchaser, shall authenticate and deliver a replacement Bond of like tenor and principal amount bearing a number not contemporaneously outstanding, provided that the Owner first complies with the following requirements:

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

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

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

(iv) satisfies any other reasonable requirements imposed by the City and the Trustee.

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

(d) In the event that any such mutilated, lost, apparently destroyed or wrongfully taken Bond has become or is about to become due and payable, the Paying Agent/Registrar, in its discretion, instead of issuing a replacement Bond, may pay such Bond if it has become due and payable or may pay such Bond when it becomes due and payable.

(e) Each replacement Bond delivered in accordance with this Section shall constitute an original additional contractual obligation of the City and shall be entitled to the benefits and security of this Indenture to the same extent as the Bond or Bonds in lieu of which such replacement Bond is delivered.

#### **Section 3.12. Book-Entry Only System.**

(a) The Bonds shall initially be issued in book-entry-only form and shall be deposited with DTC, which is hereby appointed to act as the securities depository therefor, in accordance with the letter of representations from the City to DTC. On the Closing Date the definitive Bonds shall be issued in the form of a single typewritten certificate for each maturity thereof registered in the name of Cede & Co., as nominee for DTC.

(b) With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any Person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other Person, other than an Owner, as shown on the Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other Person, other than an Owner, as shown in the Register of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Indenture to the contrary, the City and the Paying Agent/Registrar shall be entitled to treat and consider the Person in whose name each Bond is registered in the Register as the absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfer with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Owners as shown in the Register, as provided in this Indenture, and all such payments shall be valid and effective to fully satisfy and discharge the City's

obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No Person other than an Owner, as shown in the Register, shall receive a Bond certificate evidencing the obligation of the City to make payments of amounts due pursuant to this Indenture. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Indenture with respect to interest checks or drafts being mailed to the registered owner at the close of business on the Record Date or Special Record Date, as applicable, the word "Cede & Co." in this Indenture shall refer to such new nominee of DTC.

**Section 3.13. Successor Securities Depository: Transfer Outside Book-Entry-Only System.**

In the event that the City determines that DTC is incapable of discharging its responsibilities described herein and in the letter of representations from the City to DTC, the City shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository; or (ii) notify DTC and DTC Participants of the availability through DTC of certificated Bonds and cause the Paying Agent/Registrar to transfer one or more separate registered Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

**Section 3.14. Payments to Cede & Co.**

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

## **ARTICLE IV**

### **REDEMPTION OF BONDS BEFORE MATURITY**

**Section 4.1. Limitation on Redemption.**

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

**Section 4.2. Mandatory Sinking Fund Redemption.**

(a) The Bonds maturing on \_\_\_\_\_ in the years 20\_\_ and 20\_\_ (collectively, "*Term Bonds*"), are subject to mandatory sinking fund redemption prior to their respective maturities and will be redeemed by the City in part at the Redemption Price from moneys available for such purpose in the Principal and Interest Account of the Bond Fund pursuant to Article VI, on the dates and in the respective Sinking Fund Installments as set forth in the following schedule:

Term Bonds Maturing _____, 20__	
<u>Redemption Date</u>	<u>Sinking Fund Installments</u>
_____, 20__	\$ _____
_____, 20__	_____

†Final Maturity

Term Bonds Maturing _____, 20__	
<u>Redemption Date</u>	<u>Sinking Fund Installments</u>
_____, 20__	\$ _____
_____, 20__	_____

†Final Maturity

(b) At least 30 days prior to each mandatory sinking fund redemption date, and subject to any prior reduction authorized by this Indenture, the Trustee shall select for redemption by lot a principal amount of Term Bonds of such maturity equal to the Sinking Fund Installment of such Term Bonds to be redeemed, shall call such Term Bonds for redemption on such scheduled mandatory sinking fund redemption date, and shall give notice of such redemption, as provided in Section 4.6.

(c) The principal amount of Term Bonds required to be redeemed on any mandatory sinking fund redemption date pursuant to subparagraph (a) of this Section 4.2 shall be reduced, at the option of the City, by the principal amount of any Term Bonds of such maturity which, at least 30 days prior to the mandatory sinking fund redemption date shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued unpaid interest to the date of purchase thereof, and delivered to the Trustee for cancellation.

(d) The Sinking Fund Installments of Term Bonds required to be redeemed on any mandatory sinking fund redemption date pursuant to subparagraph (a) of this Section 4.2 shall be reduced in integral multiples of \$5,000 by any portion of such Bonds, which, at least 30 days prior to the mandatory sinking fund redemption date, shall have been redeemed pursuant to the optional redemption or extraordinary optional redemption provisions in Sections 4.3 and 4.4, respectively, hereof, and not previously credited to a mandatory sinking fund redemption, as follows:

(i) if the Bonds to be redeemed are selected in accordance with the 10% or Greater Manner (as defined and described below), the Sinking Fund Installment of Term Bonds required to be redeemed for each mandatory sinking fund redemption date shall be reduced by the principal amount called for redemption and allocated to such Bond on a pro rata basis among the scheduled Sinking Fund Installments to be mandatorily redeemed on the mandatory sinking fund redemption dates; or

(ii) if the Bonds to be redeemed are selected in accordance with the Less Than 10% Manner (as defined and described below), the Sinking Fund Installment of Term Bonds required to be redeemed for each mandatory sinking fund redemption date shall be reduced by the principal amount called for redemption and allocated to such Bond in the inverse order of mandatory sinking fund redemption dates.

#### **Section 4.3. Optional Redemption.**

The Bonds may be redeemed prior to their scheduled maturities on any date on or after \_\_\_\_\_, 20\_\_, at the option of the City, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the particular Bonds, or portions thereof, to be redeemed shall be selected and designated by the City, at the Redemption Price.

#### **Section 4.4. Extraordinary Optional Redemption.**

The City reserves the right and option to redeem Bonds before their respective scheduled maturity dates, in whole or in part, on any date, at the Redemption Price from amounts on deposit in the Redemption Fund as a result of Prepayments or any other transfers to the Redemption Fund under the terms of this Indenture.

#### **Section 4.5. Partial Redemption.**

(a) If less than all of the Bonds are called for optional redemption or extraordinary optional redemption pursuant to Sections 4.3 and 4.4, respectively, hereof, the Bonds or portion of a Bond of any one maturity to be redeemed shall be selected in the following manner:

(i) If the principal amount called for redemption is greater than or equal to ten percent (10%) of the original aggregate principal amount of the Bonds, the principal amount called for redemption shall be allocated on a pro rata basis among all Outstanding Bonds and a portion of all Outstanding Bonds shall be redeemed in the principal amount allocated to such Bond (the “10% or Greater Manner”); and

(ii) If the principal amount called for redemption is less than ten percent (10%) of the original aggregate principal amount of the Bonds, the Outstanding Bonds shall be redeemed in inverse order of maturity (the “Less Than 10% Manner”).

Bonds may be redeemed in minimum principal amounts of \$5,000 or any integral thereof. Each Bond shall be treated as representing the number of Bonds that is obtained by dividing the principal amount of such Bond by \$5,000.

(b) A portion of an Outstanding Bond of any one maturity may be redeemed, but only in a principal amount equal to \$5,000 or any integral thereof. If a portion of an Outstanding Bond of a maturity is selected for redemption pursuant to subsection 4.5(a) hereof, the Trustee shall select the Outstanding Bonds of such maturity to be redeemed by lot or in any manner deemed fair by the Trustee. The Trustee shall treat each \$5,000 portion of such Bond as though it were a single Bond for purposes of selection for redemption. No redemption shall result in a Bond in a denomination of less than an Authorized Denomination; provided, however, if the amount of Outstanding Bonds is less than an Authorized Denomination after giving effect to such partial redemption, a Bond in the principal amount equal to the unredeemed portion, but not less than \$5,000, may be issued.

(c) Upon surrender of any Bond for redemption in part, the Trustee in accordance with Section 3.7 of this Indenture, shall authenticate and deliver an exchange Bond or Bonds in an aggregate principal amount equal to the unredeemed portion of the Bond so surrendered, such exchange being without charge.

#### **Section 4.6. Notice of Redemption to Owners.**

(a) Upon notification by the City to the Trustee of the exercise of any redemption, the Trustee shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond or portion thereof to be redeemed, at the address shown in the Register.

(b) The notice shall state the redemption date, the Redemption Price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds Outstanding are to be redeemed, and subject to Section 4.5, an identification of the Bonds or portions thereof to be redeemed, any conditions to such redemption and that on the redemption date, if all conditions, if any, to such redemption have been satisfied, such Bond shall become due and payable.

(c) Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

(d) The City has the right to rescind any optional redemption or extraordinary optional redemption described in Section 4.3 or 4.4 by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under this Indenture. The Trustee shall mail notice of rescission of redemption in the same manner notice of redemption was originally provided.

(e) With respect to any optional redemption of the Bonds, unless the Trustee has received funds sufficient to pay the Redemption Price of the Bonds to be redeemed before giving of a notice of redemption, the notice may state the City may condition redemption on the receipt of such funds by the Trustee on or before the date fixed for the redemption, or on the satisfaction of any other prerequisites set forth in the notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption are not satisfied and sufficient

funds are not received, the notice shall be of no force and effect, the City shall not redeem the Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that the Bonds have not been redeemed.

**Section 4.7. Payment Upon Redemption.**

(a) The Trustee shall make provision for the payment of the Bonds to be redeemed on such date by setting aside and holding in trust an amount from the Redemption Fund or otherwise received by the Trustee from the City and shall use such funds solely for the purpose of paying the Redemption Price on the Bonds being redeemed.

(b) Upon presentation and surrender of any Bond called for redemption at the designated corporate trust office of the Trustee on or after the date fixed for redemption, the Trustee shall pay the Redemption Price on such Bond to the date of redemption from the moneys set aside for such purpose.

**Section 4.8. Effect of Redemption.**

Notice of redemption having been given as provided in Section 4.6 of this Indenture, the Bonds or portions thereof called for redemption shall become due and payable on the date fixed for redemption provided that funds for the payment of the principal amount plus accrued unpaid interest on such Bonds to the date fixed for redemption are on deposit with the Trustee; thereafter, such Bonds or portions thereof shall cease to bear interest from and after the date fixed for redemption, whether or not such Bonds are presented and surrendered for payment on such date.

**ARTICLE V**

**FORM OF THE BONDS**

**Section 5.1. Form Generally.**

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

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

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

(d) The Initial Bond submitted to the Attorney General may be typewritten and photocopied or otherwise reproduced.

**Section 5.2. Form of the Bonds.**

(a) Form of Bond.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, THE CITY, HAYS COUNTY, OR ANY OTHER POLITICAL CORPORATION, SUBDIVISION OR AGENCY THEREOF, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS BOND.

REGISTERED  
NO. \_\_\_\_\_

United States of America  
State of Texas

REGISTERED  
\$ \_\_\_\_\_

CITY OF SAN MARCOS, TEXAS  
SPECIAL ASSESSMENT REVENUE BOND, SERIES 2020  
(WHISPER PUBLIC IMPROVEMENT DISTRICT)

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATE OF DELIVERY</u>	<u>CUSIP NUMBER</u>
_____ %	_____, 20__	_____, 20__	_____

The City of San Marcos, Texas (the "City"), for value received, hereby promises to pay, solely from the Trust Estate, to

\_\_\_\_\_

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

\_\_\_\_\_ DOLLARS

unless this Bond shall have been sooner called for redemption and the payment of the principal hereof shall have been paid or provision for such payment shall have been made, and to pay interest on the unpaid principal amount hereof from the later of the Date of Delivery, as specified above, or the most recent Interest Payment Date to which interest has been paid or provided for until such principal amount shall have been paid or provided for, at the per annum rate of interest specified above, computed on the basis of a 360-day year of twelve 30-day months, such interest to be paid semiannually on March 1 and September 1, of each year, commencing \_\_\_\_\_, 20\_\_.

Capitalized terms appearing herein that are defined terms in the Indenture (defined below), have the meanings assigned to them in the Indenture. Reference is made to the Indenture for such definitions and for all other purposes.

The principal of this Bond shall be payable without exchange or collection charges in lawful money of the United States of America upon presentation and surrender of this Bond at the corporate trust office in Austin, Texas (the "*Designated Payment/Transfer Office*"), of UMB Bank, N.A., as trustee and paying agent/registrars (the "*Trustee*"), or, with respect to a successor trustee and paying agent/registrars, at the Designated Payment/Transfer Office of such successor. Interest on this Bond is payable by check dated as of the Interest Payment Date, mailed by the Trustee to the registered owner at the address shown on the registration books kept by the Trustee or by such other customary banking arrangements acceptable to the Trustee, requested by, and at the risk and expense of, the Person to whom interest is to be paid. For the purpose of the payment of interest on this Bond, the registered owner shall be the Person in whose name this Bond is registered at the close of business on the "Record Date," which shall be the 15th calendar day of the month next preceding such Interest Payment Date; provided, however, that in the event of nonpayment of interest on a scheduled Interest Payment Date, and for 30 days thereafter, a new record date for such interest payment (a "*Special Record Date*") will be established by the Trustee, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five Business Days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Owner of a Bond appearing on the books of the Trustee at the close of business on the last Business Day preceding the date of mailing such notice.

If a date for the payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or a day on which banking institutions in the city in which the Designated Payment/Transfer Office is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding Business Day, and payment on such date shall have the same force and effect as if made on the original date payment was due.

This Bond is one of a duly authorized issue of assessment revenue bonds of the City having the designation specified in its title (herein referred to as the "Bonds"), dated as of the Date of Delivery and issued in the aggregate principal amount of \$\_\_\_\_\_ and issued, with the limitations described herein, pursuant to an Indenture of Trust, dated as of \_\_\_\_\_, 20\_\_ (the "*Indenture*"), by and between the City and the Trustee, to which Indenture reference is hereby made for a description of the amounts thereby pledged and assigned, the nature and extent of the lien and security, the respective rights thereunder to the holders of the Bonds, the Trustee, and the City, and the terms upon which the Bonds are, and are to be, authenticated and delivered and by this reference to the terms of which each holder of this Bond hereby consents. All Bonds issued under the Indenture are equally and ratably secured by the amounts thereby pledged and assigned. The Bonds are being issued for the purpose of paying a portion of the Actual Costs of the Projects (including (a) Major Improvements, and (b) the District Formation and Bond Issuance Costs).

The Bonds are limited obligations of the City payable solely from the Trust Estate. Reference is hereby made to the Indenture, copies of which are on file with and available upon request from the Trustee, for the provisions, among others, with respect to the nature and extent of the duties and obligations of the City, the Trustee and the Owners. The Owner of this Bond, by the acceptance hereof, is deemed to have agreed and consented to the terms, conditions and provisions of the Indenture.

Subject to the restrictions contained in the Indenture, the City has reserved the right to issue Refunding Bonds payable from and secured by a lien on a pledge of the sources described above on a parity with this Bond.

Notwithstanding any provision hereof, the Indenture may be released and the obligation of the City to make money available to pay this Bond may be defeased by the deposit of money and/or certain direct or indirect Defeasance Securities sufficient for such purpose as described in the Indenture.

The Bonds are issuable as fully registered bonds only in denominations of \$100,000 and any multiple of \$5,000 in excess thereof ("*Authorized Denominations*"). The City prohibits the breaking up or allocation of CUSIP numbers to any Bond or Bonds in denominations of less than \$100,000, and any attempt to do so will be void and of no effect, except as may be the result of a partial redemption of a single Bond as provided in the Indenture.

The Bonds maturing on \_\_\_\_\_ in the years 20\_\_ and 20\_\_ (collectively, "*Term Bonds*"), are subject to mandatory sinking fund redemption prior to their respective maturities and will be redeemed by the City in part at the Redemption Price from moneys available for such purpose in the Principal and Interest Account of the Bond Fund pursuant to Article VI of the Indenture, on the dates and in the respective Sinking Fund Installments as set forth in the following schedule:

Term Bonds Maturing _____, 20__	
<u>Redemption Date</u>	<u>Sinking Fund Installments</u>
_____, 20__	\$ _____
_____, 20__	_____

†Final Maturity

Term Bonds Maturing _____, 20__	
<u>Redemption Date</u>	<u>Sinking Fund Installments</u>
_____, 20__	\$ _____
_____, 20__	_____

†Final Maturity

At least 30 days prior to each mandatory sinking fund redemption date, the Trustee shall select for redemption by lot a principal amount of Term Bonds of such maturity equal to the Sinking Fund Installment of such Term Bonds to be redeemed, shall call such Term Bonds for

redemption on such scheduled mandatory sinking fund redemption date, and shall give notice of such redemption, as provided in the Indenture.

The principal amount of Term Bonds required to be redeemed on any mandatory sinking fund redemption date shall be reduced, at the option of the City, by the principal amount of any Term Bonds of such maturity which, at least 30 days prior to the mandatory sinking fund redemption date shall have been acquired by the City at a price not exceeding the principal amount of such Term Bonds plus accrued unpaid interest to the date of purchase thereof, and delivered to the Trustee for cancellation.

The Sinking Fund Installments of Term Bonds required to be redeemed on any mandatory sinking fund redemption date shall be reduced in integral multiples of \$5,000 by any portion of such Bonds, which, at least 30 days prior to the mandatory sinking fund redemption date, shall have been redeemed pursuant to the optional redemption or extraordinary optional redemption provisions in Sections 4.3 and 4.4, respectively, of the Indenture, and not previously credited to a mandatory sinking fund redemption, as follows:

- (i) if the Bonds to be redeemed are selected in accordance with the 10% or Greater Manner (as defined and described below), the Sinking Fund Installment of Term Bonds required to be redeemed for each mandatory sinking fund redemption date shall be reduced by the principal amount called for redemption and allocated to such Bond on a pro rata basis among the scheduled Sinking Fund Installments to be mandatorily redeemed on the mandatory sinking fund redemption dates; or
- (ii) if the Bonds to be redeemed are selected in accordance with the Less Than 10% Manner (as defined and described below), the Sinking Fund Installment of Term Bonds required to be redeemed for each mandatory sinking fund redemption date shall be reduced by the principal amount called for redemption and allocated to such Bond in the inverse order of mandatory sinking fund redemption dates.

The Bonds may be redeemed prior to their scheduled maturities on any date on or after \_\_\_\_\_, \_\_\_\_\_, at the option of the City, with funds derived from any available and lawful source, as a whole, or in part, and, if in part, the particular Bonds, or portions thereof, to be redeemed shall be selected and designated by the City, at the Redemption Price.

The Bonds are subject to extraordinary optional redemption prior to maturity in whole or in part, on any date, at the Redemption Price from amounts on deposit in the Redemption Fund as a result of Prepayments or any other transfers to the Redemption Fund under the terms of the Indenture.

If less than all of the Bonds are called for optional redemption or extraordinary optional redemption pursuant to Sections 4.3 and 4.4 of the Indenture, the Bonds or portion of a Bond of any one maturity to be redeemed shall be selected in the following manner:

- (a) If the principal amount called for redemption is greater than or equal to ten percent (10%) of the original aggregate principal amount of the Bonds, the principal

amount called for redemption shall be allocated on a pro rata basis among all Outstanding Bonds and a portion of all Outstanding Bonds shall be redeemed in the principal amount allocated to such Bond (the “10% or Greater Manner”); and

(b) If the principal amount called for redemption is less than ten percent (10%) of the original aggregate principal amount of the Bonds, the Outstanding Bonds shall be redeemed in inverse order of maturity (the “Less Than 10% Manner”).

Bonds may be redeemed in minimum principal amounts of \$5,000 or any integral thereof. Each Bond shall be treated as representing the number of Bonds that is obtained by dividing the principal amount of such Bond by \$5,000.

A portion of an Outstanding Bond of any one maturity may be redeemed, but only in a principal amount equal to \$5,000 or any integral thereof. If a portion of an Outstanding Bond of a maturity is selected for redemption pursuant to the Indenture, the Trustee shall select the Outstanding Bonds of such maturity to be redeemed by lot or in any manner deemed fair by the Trustee. The Trustee shall treat each \$5,000 portion of such Bond as though it were a single Bond for purposes of selection for redemption. No redemption shall result in a Bond in a denomination of less than an Authorized Denomination; provided, however, if the amount of Outstanding Bonds is less than an Authorized Denomination after giving effect to such partial redemption, a Bond in the principal amount equal to the unredeemed portion, but not less than \$5,000, may be issued.

The Trustee shall give notice of any redemption of Bonds by sending notice by first class United States mail, postage prepaid, not less than 30 days before the date fixed for redemption, to the Owner of each Bond or portion thereof to be redeemed, at the address shown in the Register.

The notice shall state the redemption date, the Redemption Price, the place at which the Bonds are to be surrendered for payment, and, if less than all the Bonds Outstanding are to be redeemed, and subject to any other term of the Indenture, an identification of the Bonds or portions thereof to be redeemed, any conditions to such redemption and that on the redemption date, if all conditions, if any, to such redemption have been satisfied, such Bond shall become due and payable.

Any notice given shall be conclusively presumed to have been duly given, whether or not the Owner receives such notice.

The City has the right to rescind any optional redemption or extraordinary optional redemption by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default under this Indenture. The Trustee shall mail notice of rescission of redemption in the same manner notice of redemption was originally provided.

With respect to any optional redemption of the Bonds, unless the Trustee has received funds sufficient to pay the Redemption Price of the Bonds to be redeemed before giving of a notice of redemption, the notice may state the City may condition redemption on the receipt of such funds by the Trustee on or before the date fixed for the redemption, or on the satisfaction of any other prerequisites set forth in the notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption are not satisfied and sufficient funds are not received, the notice shall be of no force and effect, the City shall not redeem the Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that the Bonds have not been redeemed.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the City and the rights of the holders of the Bonds under the Indenture at any time Outstanding affected by such modification. The Indenture also contains provisions permitting the holders of specified percentages in aggregate principal amount of the Bonds at the time Outstanding, on behalf of the holders of all the Bonds, to waive compliance by the City with certain past defaults under the Bond Ordinance or the Indenture and their consequences. Any such consent or waiver by the holder of this Bond or any predecessor Bond evidencing the same debt shall be conclusive and binding upon such holder and upon all future holders thereof and of any Bond issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such consent or waiver is made upon this Bond.

As provided in the Indenture, this Bond is transferable upon surrender of this Bond for transfer at the Designated Payment/Transfer Office, with such endorsement or other evidence of transfer as is acceptable to the Trustee, and upon delivery to the Trustee of such certifications and/or opinion of counsel as may be required under the Indenture for the transfer of this Bond. Upon satisfaction of such requirements, one or more new fully registered Bonds of the same Stated Maturity, of Authorized Denominations, bearing the same rate of interest, and for the same aggregate principal amount will be issued to the designated transferee or transferees.

Neither the City nor the Trustee shall be required to issue, transfer or exchange any Bond called for redemption where such redemption is scheduled to occur within 45 calendar days of the transfer or exchange date; provided, however, such limitation shall not be applicable to an exchange by the registered owner of the uncalled principal balance of a Bond.

The City, the Trustee, and any other Person may treat the Person in whose name this Bond is registered as the owner hereof for the purpose of receiving payment as herein provided (except interest shall be paid to the Person in whose name this Bond is registered on the Record Date or Special Record Date, as applicable) and for all other purposes, whether or not this Bond be overdue, and neither the City nor the Trustee shall be affected by notice to the contrary.

The City has reserved the right to issue Refunding Bonds on the terms and conditions specified in the Indenture.

NEITHER THE FULL FAITH AND CREDIT NOR THE GENERAL TAXING POWER OF THE CITY, HAYS COUNTY, OR THE STATE OF TEXAS, OR ANY POLITICAL SUBDIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE BONDS.

IT IS HEREBY CERTIFIED AND RECITED that the issuance of this Bond and the series of which it is a part is duly authorized by law; that all acts, conditions and things required to be done precedent to and in the issuance of the Bonds have been properly done and performed and have happened in regular and due time, form and manner, as required by law; and that the total indebtedness of the City, including the Bonds, does not exceed any Constitutional or statutory limitation.

IN WITNESS WHEREOF, the City Council of the City has caused this Bond to be executed under the official seal of the City.

\_\_\_\_\_  
City Clerk, City of San Marcos, Texas

\_\_\_\_\_  
Mayor, City of San Marcos, Texas

[CITY SEAL]

(b) Form of Comptroller's Registration Certificate.

The following Registration Certificate of Comptroller of Public Accounts shall appear on the Initial Bond:

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER            §  
OF PUBLIC ACCOUNTS                    §     REGISTER NO. \_\_\_\_\_  
THE STATE OF TEXAS                    §

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

WITNESS MY SIGNATURE AND SEAL OF OFFICE this \_\_\_\_\_

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

[SEAL]

(c) Form of Certificate of Trustee.

CERTIFICATE OF TRUSTEE

It is hereby certified that this is one of the Bonds of the series of Bonds referred to in the within mentioned Indenture.

UMB Bank, N.A., as Trustee

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Signatory

(d) Form of Assignment.

ASSIGNMENT

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

\_\_\_\_\_  
\_\_\_\_\_

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

Dated: \_\_\_\_\_

Signature Guaranteed by:

\_\_\_\_\_  
\_\_\_\_\_

Authorized Signatory

NOTICE: The signature on this Assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular and must be guaranteed in a manner acceptable to the Trustee.

(e) The Initial Bond shall be in the form set forth in paragraphs (a) through (d) of this section, except for the following alterations:

(i) immediately under the name of the Bond the heading "INTEREST RATE" and "MATURITY DATE" shall both be completed with the expression "As Shown Below," and the reference to the "CUSIP NUMBER" shall be deleted;

(ii) the Initial Bond shall be numbered T-1; and

(ii) in the first paragraph of the Bond, the words "on the Maturity Date, as specified above, the sum of \_\_\_\_\_ DOLLARS" shall be deleted and the following will be inserted: "on \_\_\_\_\_ in each of the years, in the principal installments and bearing interest at the per annum rates set forth in the following schedule:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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### Section 5.3. **CUSIP Registration.**

The City may secure identification numbers through CUSIP Global Services, managed by S&P Global Market Intelligence on behalf of the American Bankers Association, New York, New York, and may authorize the printing of such numbers on the face of the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and none of the City, the attorneys approving said Bonds as to legality or the Trustee are to be held responsible for CUSIP numbers incorrectly printed on the Bonds. The City prohibits any Bond to be issued in a denomination of less than \$100,000 and further prohibits the assignment of a CUSIP number to any Bond with a denomination of less than \$100,000, and any attempt to accomplish either of the foregoing shall be void and of no effect, except as provided in Section 4.5 hereof. The Trustee may include in any redemption notice a statement to the effect that the CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither the City nor the Trustee shall be liable for any inaccuracies in such numbers.

### Section 5.4. **Legal Opinion.**

The approving legal opinion of Bond Counsel may be printed on or attached to each Bond over the certification of the City Clerk of the City, which may be executed in facsimile.

**ARTICLE VI**  
**FUNDS AND ACCOUNTS**

**Section 6.1. Establishment of Funds and Accounts.**

(a) Creation of Funds. The following Funds are hereby created and established under this Indenture:

- (i) Pledged Revenue Fund;
- (ii) Bond Fund;
- (iii) Project Fund;
- (iv) Reserve Fund;
- (v) Redemption Fund;
- (vi) Rebate Fund;
- (vii) Administrative Fund; and
- (viii) Developer Property Tax Reserve Fund.

(b) Creation of Accounts.

(i) The following Accounts are hereby created and established under the Bond Fund:

- (A) Capitalized Interest Account; and
- (B) Principal and Interest Account.

(ii) The following Accounts are hereby created and established under the Reserve Fund:

- (A) Reserve Account; and
- (B) Delinquency & Prepayment Reserve Account.

(iii) The following Accounts are hereby created and established under the Project Fund:

- (A) Improvement Account; and

(B) Costs of Issuance Account.

(iv) The following Account is hereby created and established under the Pledged Revenue Fund:

(A) Bond Pledged Revenue Account.

(c) Each Fund and each Account created within such Fund shall be maintained by the Trustee separate and apart from all other funds and accounts of the City. The Pledged Funds shall constitute trust funds which shall be held in trust by the Trustee as part of the Trust Estate solely for the benefit of the Owners of the Bonds Similarly Secured. Amounts on deposit in the Funds and Accounts shall be used solely for the purposes set forth herein.

(d) Interest earnings and profit on each respective Fund and Account established by this Indenture shall be applied or withdrawn for the purposes of such Fund or Account as specified below.

**Section 6.2. Initial Deposits to Funds and Accounts.**

(a) The proceeds from the sale of the Bonds shall be paid to the Trustee and deposited or transferred by the Trustee as follows:

- (i) to the Capitalized Interest Account of the Bond Fund: \$\_\_\_\_\_;
- (ii) to the Reserve Account of the Reserve Fund \$\_\_\_\_\_ which is equal to the initial Reserve Account Requirement;
- (ii) to the Costs of Issuance Account of the Project Fund: \$\_\_\_\_\_;
- (iii) to the Improvement Account of the Project Fund: \$\_\_\_\_\_; and
- (iv) to the Administrative Fund: \$\_\_\_\_\_.

(b) Funds received from the AG Landowners on the Business Day prior to the Closing Date in the amount of \$\_\_\_\_\_ (the "Initial Deposit") shall be deposited to the Developer Property Tax Reserve Fund.

**Section 6.3. Pledged Revenue Fund.**

(a) Immediately upon receipt thereof, the City shall transfer to the Trustee for deposit to the Pledged Revenue Fund the Pledged Revenues, as set forth in the Service and Assessment Plan. Specifically, the Trustee shall deposit or cause to be deposited the foregoing amounts as follows: (i) first, to the Bond Pledged Revenue Account of the Pledged Revenue Fund in an amount sufficient to pay debt service on the Bonds Similarly Secured next coming due, (ii) second, to the Reserve Account of the Reserve Fund in an amount to cause the amount in the Reserve Account to equal the Reserve Account Requirement, (iii) third to pay other Actual Costs

of the Projects, and (iv) fourth to pay other costs permitted by the PID Act. Notwithstanding the foregoing, the Additional Interest of the Annual Installments shall only be utilized for the purposes set forth in Section 6.7(a-1) hereof and, on each \_\_\_\_\_, beginning \_\_\_\_\_, 20\_\_, and on any other day set forth in a City Certificate, the amount of Additional Interest of the Annual Installments confirmed by the City pursuant to a City Certificate, will be deposited into the Delinquency & Prepayment Reserve Account and/or the Redemption Fund, as applicable.

(b) From time to time as needed to pay the obligations relating to the Bonds Similarly Secured, but no later than five (5) Business Days before each Interest Payment Date, the Trustee shall withdraw from the Bond Pledged Revenue Account of the Pledged Revenue Fund and transfer to the Principal and Interest Account of the Bond Fund, an amount, taking into account any amounts then on deposit in such Principal and Interest Account and any expected transfers from the Capitalized Interest Account to the Principal and Interest Account, such that the amount on deposit in the Principal and Interest Account equals the principal (including any Sinking Fund Installments) and interest due on the Bonds Similarly Secured on the next Interest Payment Date.

(c) If, after the foregoing transfers and any transfer from the Reserve Fund as provided in Section 6.7, there are insufficient funds to make the payments provided in paragraph (b) above, the Trustee shall apply the available funds in the Principal and Interest Account first to the payment of interest, then to the payment of principal (including any Sinking Fund Installments) on the Bonds Similarly Secured.

(d) The Trustee shall transfer the amounts determined in writing by the City as Prepayments to the Redemption Fund promptly after deposit of such amounts into the Pledged Revenue Fund.

(e) Upon receipt of Foreclosure Proceeds, the Trustee shall transfer such amount of Foreclosure Proceeds determined in writing by the City, first to the Accounts within the Reserve Fund to restore any transfers from the Reserve Fund made to which the Foreclosure Proceeds relate (first, to replenish the Reserve Account Requirement and second, to replenish the Delinquency & Prepayment Reserve Requirement), and second, to the Redemption Fund.

(f) After satisfaction of the requirement to provide for the payment of the principal and interest on the Bonds Similarly Secured and to fund any deficiency that may exist in the Reserve Fund, the Trustee shall, at the written request of the City, transfer any Pledged Revenues remaining in the Pledged Revenue Fund to the City, which monies may be used for Actual Costs of the Projects and any other lawful purpose for which Assessments may be used under the PID Act. The Trustee may rely upon any such request of the City and shall have no obligation to determine the lawful purposes permitted under the PID Act.

#### **Section 6.4. Bond Fund.**

(a) On each Interest Payment Date, the Trustee shall withdraw from the Principal and Interest Account and transfer to the Paying Agent/Registrar the principal (including any Sinking Fund Installments) and interest then due and payable on the Bonds Similarly Secured, less any

amount to be used to pay interest on the Bonds Similarly Secured on such Interest Payment Date from the Capitalized Interest Account as provided below.

(b) If amounts in the Principal and Interest Account are insufficient for the purposes set forth in paragraph (a) above, the Trustee shall withdraw first, from the Delinquency & Prepayment Reserve Account and second, from the Reserve Account of the Reserve Fund amounts to cover the amount of such insufficiency. Amounts so withdrawn from the Reserve Fund shall be deposited in the Principal and Interest Account and transferred to the Paying Agent/Registrar.

(c) Moneys in the Capitalized Interest Account shall be used for the payment of all interest due on the Bonds on \_\_\_\_\_, 20\_\_ and \_\_\_\_\_, 20\_\_. Not later than five Business Days prior to the Interest Payment Date specified above, the Trustee shall withdraw from the Capitalized Interest Account and transfer to the Principal and Interest Account of the Bond Fund all interest due on the Bonds on such Interest Payment Dates. Any amounts on deposit in the Capitalized Interest Account after the payment of interest on the dates and in the amounts listed above shall be transferred to the Improvement Account of the Project Fund, or if the Improvement Account of the Project Fund has been closed as provided in Section 6.5(d), such amounts shall be transferred to the Redemption Fund to be used to redeem Bonds and the Capitalized Interest Account shall be closed.

(d) If, after the foregoing transfers and any transfer from the Reserve Fund as provided in Section 6.7, there are insufficient funds to make the payments provided in paragraph (a) above, the Trustee shall apply the available funds in the Principal and Interest Account first to the payment of interest, then to the payment of principal (including any Sinking Fund Installments) on the Bonds Similarly Secured.

#### **Section 6.5. Project Fund.**

(a) Money on deposit in the Project Fund shall be used for the purposes specified in Section 3.1.

(b) Disbursements from the Costs of Issuance Account of the Project Fund shall be made by the Trustee to pay costs of issuance of the Bonds pursuant to one or more City Certificates. Disbursements from the Improvement Account of the Project Fund to pay Actual Costs shall be made by the Trustee upon receipt by the Trustee of a properly executed and completed Certification for Payment. Each such Certification for Payment shall include a list of the payees and the payments to be made to such payees as well as a statement that all payments shall be made by check or wire transfer in accordance with the payment instructions set forth in such written request and the Trustee may rely on such payment instructions though given by the City with no duty to investigate or inquire as to the authenticity of or authorization for the invoice or the payment instructions contained therein.

(c) Except as provided in Section 6.5(d) and (f), money on deposit in the Improvement Account shall be used solely to pay Actual Costs provided the Trustee shall have

no responsibility for the application of any funds disbursed from the Improvement Account in reliance upon a Certification for Payment approved by the City.

(d) If the City Representative determines in his or her sole discretion that amounts then on deposit in the Improvement Account of the Project Fund are not expected to be expended for purposes of the Improvement Account of the Project Fund due to the completion, abandonment, or constructive abandonment, of one or more of the Major Improvements such that, in the reasonable opinion of the City Representative, it is unlikely that the amounts in the Improvement Account of the Project Fund will ever be expended for the purposes of the Improvement Account of the Project Fund, the City Representative shall file a City Certificate with the Trustee which identifies the amounts then on deposit in the Improvement Account of the Project Fund that are not expected to be used for purposes of the Improvement Account of the Project Fund. If such City Certificate is so filed, the amounts on deposit in the Improvement Account of the Project Fund shall be transferred to the Redemption Fund to redeem Bonds Similarly Secured on the earliest practicable date after notice of redemption has been provided in accordance with this Indenture. Upon such transfers, the Improvement Account of the Project Fund shall be closed.

(e) In making any determination pursuant to this Section, the City Representative may conclusively rely upon a certificate of an Independent Financial Consultant.

(f) Upon the Trustee's receipt of a written determination by the City Representative that all costs of issuance of the Bonds have been paid, any amounts remaining in the Costs of Issuance Account shall be transferred to (i) the Improvement Account of the Project Fund and used to pay Actual Costs of the Major Improvements or (ii) if no Major Improvements remain to be funded, to the Principal and Interest Account and used to pay interest on the Bonds, as directed in a City Certificate filed with the Trustee and the Costs of Issuance Account shall be closed.

#### **Section 6.6. Redemption Fund.**

Subject to adequate amounts on deposit in the Pledged Revenue Fund, the Trustee shall cause to be deposited to the Redemption Fund from the Pledged Revenue Fund an amount sufficient to redeem Bonds as provided in Sections 4.3 and 4.4 on the dates specified for redemption as provided in Sections 4.3 and 4.4. Amounts on deposit in the Redemption Fund shall be used and withdrawn by the Trustee to redeem Bonds as provided in Article IV.

#### **Section 6.7. Reserve Fund.**

(a) The City agrees with the Owners of the Bonds Similarly Secured to accumulate and, when accumulated, maintain in the Reserve Account, an amount equal to not less than the Reserve Account Requirement. All amounts deposited in the Reserve Account shall be used and withdrawn by the Trustee for the purpose of making transfers to the Principal and Interest Account of the Bond Fund as provided in this Indenture.

(a-1) Subject to 6.3(a) herein, the Trustee will transfer from the Bond Pledged Revenue Account of the Pledged Revenue Fund to the Delinquency & Prepayment Reserve Account on \_\_\_\_\_ of each year, commencing \_\_\_\_\_, and on any other day set forth in a City Certificate, an amount equal to the Additional Interest until the Delinquency & Prepayment Reserve Requirement has been accumulated in the Delinquency & Prepayment Reserve Account. At any time after the forgoing transfers, the amount on deposit in the Delinquency & Prepayment Reserve Account is less than Delinquency & Prepayment Reserve Requirement, the Trustee shall resume transferring such Additional Interest into the Delinquency & Prepayment Reserve Account on \_\_\_\_\_ of each year, and on any other day set forth in a City Certificate, until the Delinquency & Prepayment Reserve Requirement has been met. Furthermore, once the Delinquency & Prepayment Reserve Requirement has accumulated in the Delinquency & Prepayment Reserve Account, any amounts in excess of the Delinquency & Prepayment Reserve Requirement shall be transferred by the Trustee to the Redemption Fund to redeem Bonds Similarly Secured as provided in Article IV; provided, however, that at any time the amount on deposit in the Delinquency & Prepayment Reserve Account is less than the Delinquency & Prepayment Reserve Requirement, the Trustee shall resume depositing such Additional Interest into the Delinquency & Prepayment Reserve Account until the Delinquency & Prepayment Reserve Requirement has accumulated in the Delinquency & Prepayment Reserve Account. In determining the amounts to be transferred pursuant to this Section, the Trustee may conclusively rely on a City Certificate specifying the amounts to transfer.

(b) Whenever a transfer is made from the Reserve Fund to the Bond Fund due to a deficiency in the Bond Fund, the Trustee shall provide written notice thereof to the City, specifying the amount withdrawn and the source of said funds.

(c) In the event of an extraordinary optional redemption of Bonds Similarly Secured as a result of a Prepayment pursuant to Section 4.4, the Trustee, pursuant to written directions from the City, shall transfer from the Reserve Account of the Reserve Fund to the Redemption Fund the amount specified in such directions, which shall be an amount equal to the principal amount of Bonds Similarly Secured to be redeemed multiplied by the lesser of: (i) the amount required to be in the Reserve Account of the Reserve Fund divided by the principal amount of Outstanding Bonds Similarly Secured prior to the redemption, and (ii) the amount actually in the Reserve Account of the Reserve Fund divided by the principal amount of Outstanding Bonds Similarly Secured prior to the redemption. If after such transfer, and after applying investment earnings on the Prepayment toward payment of accrued interest, there are insufficient funds to pay the principal amount plus accrued and unpaid interest on such Bonds Similarly Secured to the date fixed for redemption of the Bonds Similarly Secured to be redeemed as a result of such Prepayment, the Trustee shall transfer an amount equal to the shortfall from the Delinquency & Prepayment Reserve Account to the Redemption Fund to be applied to the redemption of the Bonds Similarly Secured.

(d) Whenever, on any Interest Payment Date, or on any other date at the request of a City Representative, the value of cash and Value of Investment Securities on deposit in the Reserve Account exceeds the Reserve Account Requirement, the Trustee shall provide written notice to the City Representative of the amount of the excess. Such excess shall be transferred to the Principal and Interest Account to be used for the payment of interest on the Bonds Similarly

Secured on the next Interest Payment Date in accordance with Section 6.4, unless prior to the next Interest Payment Date, the Trustee receives a City Certificate instructing the Trustee to apply such excess: (i) to pay amounts due under Section 6.8 hereof, (ii) to the Administrative Fund in an amount not more than the Annual Collection Costs for the Bonds Similarly Secured or (iii) to the Improvement Account of the Project Fund to pay Actual Costs of the Major Improvements if such application and the expenditure of funds is expected to occur within three years of the date hereof.

(d-1) Whenever, on any Interest Payment Date, or on any other date at the written request of the City Representative, the amount in the Delinquency & Prepayment Reserve Account exceeds the Delinquency & Prepayment Reserve Requirement, the Trustee shall provide written notice to the City of the amount of the excess, and the Trustee shall transfer such excess pursuant to Section 6.7(a-1) hereof.

(e) Whenever, on any Interest Payment Date, the amount on deposit in the Bond Fund is insufficient to pay the debt service on the Bonds Similarly Secured due on such date, the Trustee shall transfer first from the Delinquency & Prepayment Reserve Account of the Reserve Fund, and second from the Reserve Account of the Reserve Fund to the Bond Fund the amounts necessary to cure such deficiency.

(f) At the final maturity of the Bonds Similarly Secured, the amount on deposit in the Reserve Account and the Delinquency & Prepayment Reserve Account shall be transferred to the Principal and Interest Account of the Bond Fund and applied to the payment of the principal of the Bonds Similarly Secured.

(g) If, after a Reserve Account withdrawal, the amount on deposit in the Reserve Account is less than the Reserve Account Requirement, the Trustee shall transfer from the Pledged Revenue Fund to the Reserve Account the amount of such deficiency, but only to the extent that such amount is not required for the timely payment of principal, interest, or Sinking Fund Installments.

(h) If the amount held in the Reserve Fund together with the amount held in the Pledged Revenue Fund, the Bond Fund and Redemption Fund is sufficient to pay the principal amount and of all Outstanding Bonds Similarly Secured on the next date the Bonds Similarly Secured may be optionally redeemed by the City at a redemption price of par, together with the unpaid interest accrued on such Outstanding Bonds Similarly Secured as of such date, the moneys shall be transferred to the Redemption Fund and thereafter used to redeem all Bonds Similarly Secured on such date.

#### **Section 6.8. Rebate Fund: Rebatable Arbitrage.**

(a) The Rebate Fund is to be held by the Trustee in accordance with the terms and provisions of this Indenture. Amounts on deposit in the Rebate Fund shall be used solely for the purpose of paying amounts due the United States Government in accordance with the Code. The Rebate Fund shall not be part of the Trust Estate and shall not be security for the Bonds Similarly Secured.

(b) In order to assure that Rebatable Arbitrage is paid to the United States rather than to a third party, investments of funds on deposit in the Rebate Fund shall be made in accordance with the Code and the Tax Certificate.

(c) The Trustee conclusively shall be deemed to have complied with the provisions of this Section and shall not be liable or responsible if it follows the instructions of the City and shall not be required to take any action under this Section in the absence of instructions from the City.

(d) If, on the date of each annual calculation, the amount on deposit in the Rebate Fund exceeds the amount of the Rebatable Arbitrage, the City may direct the Trustee, pursuant to a City Certificate, to transfer the amount in excess of the Rebatable Arbitrage to the Bond Fund.

#### **Section 6.9. Administrative Fund.**

(a) Immediately upon receipt thereof, the City shall deposit or cause to be deposited to the Administrative Fund the portion of the Annual Installments allocated to the payment of Annual Collection Costs and Delinquent Collection Costs, as set forth in the Service and Assessment Plan and any other funds directed by this Indenture to be deposited therein.

(b) Moneys in the Administrative Fund shall be held by the Trustee separate and apart from the other Funds created and administered hereunder and used as directed by a City Certificate solely for the purposes set forth in the Service and Assessment Plan, including payment of Annual Collection Costs and Delinquent Collection Costs or may be withdrawn by the Trustee without further authorization for the payment of the fees, expenses, advances and indemnities owed to the Trustee in accordance with Section 9.6. The Administrative Fund shall not be part of the Trust Estate and shall not be security for the Bonds Similarly Secured.

#### **Section 6.10. Developer Property Tax Reserve Fund.**

(a) The AG Landowners shall deposit or cause to be deposited the Initial Deposit into the Developer Property Tax Reserve Fund at least one Business Day prior to the issuance of the Bonds. Prior to the Developer Property Tax Reserve Fund Transfer Date, the City shall provide a City Certificate to the Trustee specifying (1) the amount of funds deposited in the Developer Property Tax Reserve Fund to be transferred to the City and that such amount is equal to all outstanding Developer Property Tax Delinquency Amounts and (2) the date on which such transfer shall be made (the "Developer Property Tax Reserve Fund Transfer Date"). Upon receipt of such City Certificate and on the Developer Property Tax Reserve Fund Transfer Date, the Trustee shall transfer the amount of funds specified in such City Certificate to the City for payment of the related unpaid delinquent ad valorem taxes levied by any taxing entity on any property located in the District and any penalties, costs and interest related thereto. Upon any transfer of funds deposited in the Developer Property Tax Reserve Fund to the City in accordance with this clause (a), the applicable AG Landowner shall deposit or cause to be deposited an equivalent amount of funds into the Developer Property Tax Reserve Fund to replenish such Fund, all in accordance with the Redemption Waiver Agreement.

(b) Upon termination of the Redemption Waiver Agreement, the City shall provide the Trustee with a City Certificate authorizing the release of the funds remaining in the Developer Property Tax Reserve Fund to the applicable AG Landowner under the Redemption Waiver Agreement. The Trustee may conclusively rely on such City Certificate in disbursing the amounts remaining in the Developer Property Tax Reserve Fund to the applicable AG Landowner.

At such time as the Trustee receives a City Certificate confirming the condition for release of the funds to the applicable AG Landowner under the Redemption Waiver Agreement is met, any amounts deposited in the Developer Property Tax Reserve Fund shall be irrevocably and unconditionally released to the applicable AG Landowner, or their successors and assigns or designees as identified in a written notice from such AG Landowner to the Trustee and the City. The City and the Trustee shall solely and conclusively rely as to payment of amounts released from the Developer Property Tax Reserve Fund on any such written notice from such AG Landowner as to their successors and assigns or designees. The Developer Property Tax Reserve Fund shall not be a part of the Trust Estate and shall not be security for the Bonds Similarly Secured.

#### **Section 6.11. Investment of Funds.**

(a) Money in any Fund or Account, other than the Reserve Account, shall be invested by the Trustee as directed by the City pursuant to a City Certificate filed with the Trustee in Investment Securities; provided that all such deposits and investments shall be made in such manner that the money required to be expended from any Fund or Account will be available at the proper time or times. Money in the Reserve Account shall be invested in such Investment Securities as directed by the City pursuant to a City Certificate filed with the Trustee, provided that the final maturity of any individual Investment Security shall not exceed 270 days and the average weighted maturity of any investment pool or no-load money market mutual fund shall not exceed 90 days. Each such City Certificate shall be a certification that the investment directed therein constitutes an Investment Security and that such investments meet the maturity and average weighted maturity requirements set forth in the preceding sentence. Such investments shall be valued each year in terms of the Value of Investment Securities as of September 30. For purposes of maximizing investment returns, to the extent permitted by law, money in the Funds and Accounts may be invested in common investments of the kind described above, or in a common pool of such investment which shall be kept and held at an official depository bank, which shall not be deemed to be or constitute a commingling of such money or funds provided that safekeeping receipts or certificates of participation clearly evidencing the investment or investment pool in which such money is invested and the share thereof purchased with such money or owned by such Fund or Account are held by or on behalf of each such Fund or Account. If necessary, such investments shall be promptly sold, in order to make the disbursements required or permitted by this Indenture, to prevent any default under this Indenture. To ensure that cash on hand is invested, if the City does not give the Trustee written or timely instructions with respect to investments of funds, the Trustee shall invest and re-invest cash balances in money market mutual funds that are rated in either of the two highest categories by a rating agency, including funds for which the Trustee and/or its affiliates provide investment

advisory or other management services which are authorized and permitted investments under the Public Funds Investment Act, Texas Government Code, Chapter 2256, as amended, or any successor law, as in effect from time to time, until directed otherwise by the City Certificate.

(b) Obligations purchased as an investment of moneys in any Fund or Account shall be deemed to be part of such Fund or Account, subject, however, to the requirements of this Indenture for transfer of interest earnings and profits resulting from investment of amounts in Funds and Accounts. Whenever in this Indenture any moneys are required to be transferred by the City to the Trustee, such transfer may be accomplished by transferring a like amount of Investment Securities as determined and directed in writing by the City.

(c) The Trustee and its affiliates may act as sponsor, advisor, depository, principal or agent in the acquisition or disposition of any investment. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades. The Trustee shall not incur any liability for losses arising from any investments made pursuant to this Section. The Trustee shall not be required to determine the legality of any investments.

(d) Investments in any and all Funds and Accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular Funds or Accounts of amounts received or held by the Trustee hereunder, provided that the Trustee shall at all times account for such investments strictly in accordance with the Funds and Accounts to which they are credited and otherwise as provided in this Indenture.

(e) The Trustee will furnish to the City, upon the City's written request, periodic cash transaction statements which include detail for all investment transactions effected by the Trustee or brokers selected by the City. Upon the City's election, such statements will be delivered via the Trustee's online service and upon electing such service, paper statements will be provided only upon request. The City waives the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, to the extent permitted by law. The City further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

(f) In the event it is found, after an annual calculation has been done pursuant to Section 6.8 hereof, that the City owes Rebtable Arbitrage to the United States Government, the City shall direct the Trustee, pursuant to a City Certificate, to transfer to the Rebate Fund the investment earnings on funds on deposit in the Pledged Funds in an amount equal to the Rebtable Arbitrage owed by the City. The City Certificate shall specify the amount to be transferred and the Pledged Fund or Pledged Funds from which the investment earnings shall be transferred.

#### **Section 6.12. Security of Funds.**

All Funds heretofore created or reaffirmed, to the extent not invested as herein permitted,

shall be secured in the manner and to the fullest extent required by law for the security of public funds, and such Funds shall be used only for the purposes and in the manner permitted or required by this Indenture.

## **ARTICLE VII**

### **COVENANTS**

#### **Section 7.1. Confirmation of Assessments.**

The City hereby confirms, covenants, and agrees that, in the Assessment Ordinance, it has levied the Assessments against the Assessed Property from which the Assessment Revenues will be collected and received.

#### **Section 7.2. Collection and Enforcement of Assessments.**

(a) For so long as any Bonds Similarly Secured are Outstanding and amounts are due to the Developer under the Reimbursement Agreement to reimburse it for its funds it has contributed to pay Actual Costs of the Projects, the City covenants, agrees and warrants that it will take and pursue all reasonable actions permissible under Applicable Laws to cause the Assessments to be collected and the liens thereof enforced continuously, in the manner and to the maximum extent permitted by Applicable Laws, and to cause no reduction, abatement or exemption in the Assessments.

(b) To the extent permitted by law, notice of the Annual Installments shall be sent by, or on behalf of, the City to the affected property owners on the same statement or such other mechanism that is used by the City, so that such Annual Installments are collected simultaneously with ad valorem taxes and shall be subject to the same penalties, procedures, and foreclosure sale in case of delinquencies as are provided for ad valorem taxes of the City.

(c) The City will determine or cause to be determined, no later than February 15 of each year, whether or not any Annual Installment is delinquent and, if such delinquencies exist, the City will order and cause to be commenced as soon as practicable any and all appropriate and legally permissible actions to obtain such Annual Installment, and any delinquent charges and interest thereon, including diligently prosecuting an action in district court to foreclose the currently delinquent Annual Installment. Notwithstanding the foregoing, the City shall not be required under any circumstances to purchase or make payment for the purchase of the delinquent Assessments or the corresponding property.

(d) The City shall not be required under any circumstances to expend any funds for Delinquent Collection Costs or Annual Collection Costs in connection with its covenants and agreements under this Section or otherwise other than funds on deposit in the Administrative Fund.

#### **Section 7.3. Against Encumbrances.**

(a) The City shall not create and shall not suffer to remain, any lien, encumbrance or charge upon the Trust Estate or upon any other property pledged under this Indenture, except the pledge created for the security of the Bonds or any Refunding Bonds, and other than a lien or pledge subordinate to the lien and pledge of such property related to the Bonds Similarly Secured.

(b) So long as Bonds Similarly Secured are Outstanding hereunder, the City shall not issue any bonds, notes or other evidences of indebtedness, other than the Bonds and Refunding Bonds, secured by any pledge of or other lien or charge on the Pledged Revenues or other property pledged under this Indenture, other than a lien or pledge subordinate to the lien and pledge of such property related to the Bonds Similarly Secured.

#### **Section 7.4. Records, Accounts, Accounting Reports.**

The City hereby covenants and agrees that so long as any Bonds Similarly Secured are Outstanding, it will keep and maintain a proper and complete system of records and accounts pertaining to the Assessments. The Trustee and Holder or Holders of any Bonds Similarly Secured or any duly authorized agent or agents of such Holders shall have the right at all reasonable times to inspect all such records, accounts, and data relating thereto, upon written request to the City by the Trustee or duly authorized representative, as applicable. The City shall provide the Trustee or duly authorized representative, as applicable, an opportunity to inspect such books and records relating to the Bonds Similarly Secured during the City's regular business hours and on a mutually agreeable date not later than thirty days after the City receives such request.

#### **Section 7.5. Covenants Regarding Tax Exemption of Interest on Bonds.**

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

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

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

"disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

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

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

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

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

(A) proceeds of the Bonds invested for a reasonable temporary period of 3 years or less or, for a period of 90 days or less until such proceeds are needed for the purpose for which the Bonds is issued,

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

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

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

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

(9) to refrain from using the proceeds of the Bonds or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Bonds in contravention of the requirements of section 149(d) of the Code.

(b) In order to facilitate compliance with the above covenant (a)(8), the Rebate Fund is established by the City pursuant to Section 6.1 for the sole benefit of the United States of America, and such Rebate Fund shall not be subject to the claim of any other person, including without limitation the Registered Owner. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

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

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

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

## **ARTICLE VIII**

### **LIABILITY OF CITY**

#### **Section 8.1. Liability of City.**

(a) Neither the full faith and credit nor the general taxing power of the City is pledged to the payment of the Bonds Similarly Secured, and except for the Trust Estate, no City taxes, fee or revenues from any source are pledged to the payment of, or available to pay any portion of, the Bonds Similarly Secured or any other obligations relating to the District. The City shall never be liable for any obligations relating to the Bonds Similarly Secured or other obligations relating to the District, other than as specifically provided for in this Indenture.

(b) The City shall not incur any responsibility in respect of the Bonds Similarly Secured or this Indenture other than in connection with the duties or obligations explicitly herein or in the Bonds Similarly Secured assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own willful default or act of bad faith. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions covenants or agreements of the Trustee herein or of any of the documents executed by the Trustee in connection with the Bonds Similarly Secured, or as to the existence of a default or event of default thereunder.

(c) In the absence of bad faith, the City may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City and conforming to the requirements of this Indenture. The City shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts.

(d) No provision of this Indenture, the Bonds Similarly Secured, the Assessment Ordinance, or any agreement, document, instrument, or certificate executed, delivered or approved in connection with the issuance, sale, delivery, or administration of the Bonds Similarly Secured (collectively, the "*Bond Documents*"), shall require the City to expend or risk its own general funds or other funds or otherwise incur any financial liability (other than with respect to the Trust Estate and the Annual Collection Costs) in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if in the judgment of the

City there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it.

(e) Neither the Owners nor any other Person shall have any claim against the City or any of its officers, officials, agents, or employees for damages suffered as a result of the City's failure to perform in any respect any covenant, undertaking, or obligation under any Bond Documents or as a result of the incorrectness of any representation in, or omission from, any of the Bond Documents, except to the extent that any such claim relates to an obligation, undertaking, representation, or covenant of the City, in accordance with the Bond Documents and the PID Act. Any such claim shall be payable only from Trust Estate or the amounts collected to pay Annual Collection Costs on deposit in the Administrative Fund. Nothing contained in any of the Bond Documents shall be construed to preclude any action or proceeding in any court or before any governmental body, agency, or instrumentality against the City or any of its officers, officials, agents, or employees to enforce the provisions of any of the Bond Documents or to enforce all rights of the Owners of the Bonds Similarly Secured by mandamus or other proceeding at law or in equity.

(f) The City may rely on and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith. Whenever in the administration of its duties under this Indenture the City shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the City, be deemed to be conclusively proved and established by a certificate of the Trustee, an Independent Financial Consultant, an independent inspector or City Manager or other independent person designated by the City Council to so act on behalf of the City, and such certificate shall be full warrant to the City for any action taken or suffered under the provisions of this Indenture upon the faith thereof, but in its discretion the City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

(g) In order to perform its duties and obligations hereunder, the City may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations, and directions of such persons or entities.

## **ARTICLE IX**

### **THE TRUSTEE**

#### **Section 9.1. Acceptance of Trust; Trustee as Registrar and Paying Agent.**

(a) The Trustee accepts and agrees to execute the respective trusts imposed upon it by this Indenture, but only upon the terms and conditions and subject to the provisions of this Indenture to all of which the parties hereto and the respective Owners of the Bonds Similarly Secured agree.

(b) The Trustee is hereby designated and agrees to act as Paying Agent/Registrar for and in respect to the Bonds Similarly Secured.

#### **Section 9.2. Trustee Entitled to Indemnity.**

The Trustee shall be under no obligation to institute any suit, or to undertake any proceeding under this Indenture, or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified, to the extent permitted by law, to its satisfaction against any and all costs and expenses, outlays, and counsel fees and other reasonable disbursements, and against all liability except as a consequence of its own negligence or willful misconduct; provided, however, that in no event shall the Trustee request or require indemnification as a condition to making scheduled debt service payments prior to the occurrence of a default, or to delivering any notice when required hereunder. To the extent permitted by law and during the occurrence of a default, the Trustee shall be entitled to indemnification as a condition to making any deposits, payments or transfers when required hereunder, or to delivering any notice when required hereunder. Nevertheless, the Trustee may begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as the Trustee, without indemnity, and in such case the Trustee may make transfers from the Administrative Fund, and to the extent money in the Administrative Fund is insufficient, from the Pledged Revenue Fund, to pay all fees, costs, and expenses, outlays, and counsel fees and other reasonable disbursements properly incurred in connection therewith and shall, to the extent permitted by law, be entitled to a preference therefor over any Bonds Similarly Secured Outstanding hereunder.

#### **Section 9.3. Responsibilities of the Trustee.**

(a) The recitals contained in this Indenture and in the Bonds Similarly Secured shall be taken as the statements of the City and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or the Bonds Similarly Secured or with respect to the security afforded by this Indenture, and the Trustee shall incur no liability with respect thereto. The Trustee shall have no responsibility or duty with respect to: (i) the issuance of Bonds Similarly Secured for value; (ii) the application of the proceeds thereof, except to the extent that such proceeds are received by it in its capacity as Trustee; (iii) the application of any moneys paid to the City or others in

accordance with this Indenture, except as to the application of any moneys paid to it in its capacity as Trustee; (iv) any calculation of arbitrage or rebate under the Code; or (v) any loss suffered in connection with any investment of funds.

(b) The duties and obligations of the Trustee shall be determined by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture.

(c) The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture, except for its own negligence or willful misconduct. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from this Indenture for the existence, furnishing or use of the Major Improvements and shall not be responsible for any misconduct or negligence on the part of any agent, attorney, or receiver appointed or chosen with due care.

(d) The Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it shall be established that the Trustee was negligent in ascertaining the pertinent facts.

(e) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of at least a Quarter in Interest of the Bonds Similarly Secured relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default unless the Trustee has actual knowledge thereof or shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the City or by the Owners of at least Quarter in Interest of the Bonds Similarly Secured at that time. The Trustee may assume conclusively that there is no Event of Default, except as noted above.

(g) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture, and final payment of the Bonds Similarly Secured.

(h) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys, or receivers, and shall not be responsible for any misconduct or negligence on the part of any agent, attorney, or receiver appointed or chosen by it with due care, and the Trustee shall be entitled to rely and act upon the opinion or advice of counsel, who may be counsel to the City, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys, and receivers as may reasonably be employed in connection with the

trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel.

(i) The Trustee shall not be responsible for any recital herein (except with respect to the authentication certificate of the Trustee endorsed on the Bonds) or for the recording, filing, or re-filing of this Indenture in connection therewith, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency or security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Indenture.

(j) The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the validity or sufficiency of this Indenture or of the Bonds. The Trustee shall not be accountable for the use or application of any Bonds or the proceeds thereof or of any money paid to or upon the order of the City under any provision of this Indenture.

#### **Section 9.4. Property Held in Trust.**

All moneys and securities held by the Trustee at any time pursuant to the terms of this Indenture shall be held by the Trustee in trust for the purposes and under the terms and conditions of this Indenture.

#### **Section 9.5. Trustee Protected in Relying on Certain Documents.**

(a) The Trustee may conclusively rely upon any order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond, or other document provided to the Trustee in accordance with the terms of this Indenture that it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or Person or to have been prepared and furnished pursuant to any of the provisions of this Indenture, or upon the written opinion of any counsel, architect, engineer, insurance consultant, management consultant, or accountant believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry into any statements contained or matters referred to in any such instrument. The Trustee may consult with counsel selected by the Trustee with due care that is nationally recognized in the field of municipal bond law, who may or may not be Bond Counsel, and any advice from such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder, reasonably and in good faith, in accordance with such advice.

(b) Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under this Indenture, such matter may be deemed to be conclusively proved and established by a City Certificate, unless other evidence in respect thereof be hereby specifically prescribed. Such City Certificate shall be full warrant for any action taken or suffered in good faith under the provisions hereof, but in its discretion the Trustee may in lieu thereof accept other evidence of such fact or matter or may require such

further or additional evidence as it may deem reasonable. Except as otherwise expressly provided herein, any request, order, notice, or other direction required or permitted to be furnished pursuant to any provision hereof by the City to the Trustee shall be sufficiently executed if executed in the name of the City by the City Representative. the Trustee shall be entitled to conclusively rely upon the foregoing as sufficient evidence of the facts set forth herein. The execution of any City Certificate shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent thereto have occurred.

(c) The Trustee shall not be under any obligation to see to the recording or filing of this Indenture, or otherwise to the giving to any Person of notice of the provisions hereof except as expressly required in Section 9.13.

#### **Section 9.6. Compensation.**

Unless otherwise provided by contract with the Trustee, the Trustee shall transfer from the Administrative Fund, from time to time, reasonable compensation for all services rendered by it hereunder, including its services as Paying Agent/Registrar, together with all its reasonable expenses, charges, and other disbursements and those of its counsel, agents and employees, incurred in and about the administration and execution of the trusts hereby created and the exercise of its powers and the performance of its duties hereunder, which, with respect to ordinary fees and expenses incurred prior to an Event of Default hereunder, shall be transferred pursuant to a City Certificate and subject to any limit on the amount of such compensation or recovery of expenses or other charges as shall be prescribed by such City Certificate, and the Trustee shall have a lien therefor on any and all funds at any time held by it in the Administrative Fund prior to any Bonds Similarly Secured Outstanding. Following an Event of Default, the foregoing limitation on expenses shall not apply, however any such fees or expenses must be reasonable. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if in the judgment of the Trustee there are reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it. If the City shall fail to make any payment required by this Section, the Trustee may make such payment from any moneys in the Administrative Fund, and to the extent moneys in the Administrative Fund are insufficient, then from any moneys in its possession under the provision of this Indenture and shall be entitled to a preference therefor over any Bonds Outstanding hereunder. The right of the Trustee to fees, expense, and indemnification shall survive the release, discharge, and satisfaction of the Indenture.

#### **Section 9.7. Permitted Acts.**

The Trustee and its directors, officers, employees, or agents may become the owner of or may in good faith buy, sell, own, hold and deal in Bonds Similarly Secured and may join in any action that any Owner of Bonds Similarly Secured may be entitled to take as fully and with the same rights as if it were not the Trustee. The Trustee may act as depository, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, the City or any committee formed to protect the rights of holders of Bonds Similarly Secured or to effect or aid in any reorganization growing out of the enforcement of the Bonds Similarly Secured or this

Indenture, whether or not such committee shall represent the holders of a Quarter in Interest of the Bonds Similarly Secured. The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

**Section 9.8. Resignation of Trustee.**

The Trustee may at any time resign and be discharged of its duties and obligations hereunder by giving not fewer than 60 days' written notice, specifying the date when such resignation shall take effect, to the City and each Owner of any Outstanding Bonds Similarly Secured. Such resignation shall take effect upon the appointment of a successor as provided in Section 9.10 and the acceptance of such appointment by such successor.

**Section 9.9. Removal of Trustee.**

The Trustee may be removed at any time by (i) the Owners of at least a Quarter in Interest of the Bonds Similarly Secured by an instrument or concurrent instruments in writing signed and acknowledged by such Owners or by their attorneys-in-fact, duly authorized and delivered to the City, or (ii) so long as the City is not in default under this Indenture, the City. Copies of each such instrument shall be delivered by the City to the Trustee and any successor thereof. The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the City or the Owners of not less than 10% of the aggregate principal amount of Bonds Similarly Secured then Outstanding.

**Section 9.10. Successor Trustee.**

(a) If the Trustee shall resign, be removed, be dissolved, or become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator, or conservator of the Trustee or of its property shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of the Trustee hereunder shall thereupon become vacant.

(b) If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason, a successor Trustee may be appointed within one year after any such vacancy shall have occurred by the Owners of at least a Quarter in Interest of the Bonds Similarly Secured by an instrument or concurrent instruments in writing signed and acknowledged by such Owners of at least a Quarter in Interest of the Bonds Similarly Secured, or their attorneys-in-fact, duly authorized and delivered to such successor Trustee, with notification thereof being given to the predecessor Trustee and the City. The Trustee will, during the existence of an Event of Default, exercise such rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) Until such successor Trustee shall have been appointed by the Owners of at least a Quarter in Interest of the Bonds Similarly Secured, as provided herein, the City shall forthwith (and in no event in excess of 30 days after such vacancy occurs) appoint a Trustee to act hereunder. Copies of any instrument of the City providing for any such appointment shall be delivered by the City to the Trustee so appointed. The City shall mail notice of any such appointment to each Owner of any Outstanding Bonds Similarly Secured within 30 days after such appointment. Any appointment of a successor Trustee made by the City immediately and without further act shall be superseded and revoked by an appointment subsequently made by the Owners of Bonds Similarly Secured.

(d) If in a proper case no appointment of a successor Trustee shall be made within 45 days after the giving by any Trustee of any notice of resignation in accordance with Section 9.8 or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any Owner of Bonds Similarly Secured may apply to any court of competent jurisdiction for the appointment of such a successor, and the court may thereupon, after such notice, if any, as the court may deem proper, appoint such successor and the City shall be responsible for the costs of such appointment process. Any duties and obligations of such predecessor Trustee shall thereafter cease and terminate, and the payment of the fees and expenses owed to the predecessor Trustee shall be paid in full.

(e) Any successor Trustee appointed under the provisions of this Section shall be a commercial bank or trust company or national banking association (i) having a capital and surplus and undivided profits aggregating at least \$50,000,000, if there be such a commercial bank or trust company or national banking association willing and able to accept the appointment on reasonable and customary terms, and (ii) authorized by law to perform all the duties of the Trustee required by this Indenture.

(f) Each successor Trustee shall mail, in accordance with the provisions of the Bonds Similarly Secured, notice of its appointment to the Trustee, any rating agency which, at the time of such appointment, is providing a rating on the Bonds Similarly Secured and each of the Owners of the Bonds Similarly Secured.

#### **Section 9.11. Transfer of Rights and Property to Successor Trustee.**

Any successor Trustee appointed under the provisions of Section 9.10 shall execute, acknowledge, and deliver to its predecessor and the City an instrument in writing accepting such appointment, and thereupon such successor, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers, duties, obligations, and trusts of its predecessor hereunder, with like effect as if originally appointed as Trustee. However, the Trustee then ceasing to act shall nevertheless, on request of the City or of such successor and upon receipt of its outstanding charges, execute, acknowledge, and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor all the rights, immunities, powers, and trusts of such Trustee and all the right, title, and interest of such Trustee in and to the Trust Estate, and shall pay over, assign, and deliver to such successor any moneys or other properties subject to the trusts and conditions herein set forth. Should any

deed, conveyance, or instrument in writing from the City be required by such successor for more fully and certainly vesting in and confirming to it any such moneys, estates, properties, rights, powers, duties, or obligations, any and all such deeds, conveyances, and instruments in writing, on request and so far as may be authorized by law, shall be executed, acknowledged, and delivered by the City.

**Section 9.12. Merger, Conversion or Consolidation of Trustee.**

Any corporation or association into which the Trustee may be merged or with which it may be consolidated or any corporation or association resulting from any merger, conversion or consolidation to which it shall be a party or any corporation or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business shall be the successor to such Trustee hereunder, without any further act, deed or conveyance, provided that such corporation or association shall be a commercial bank or trust company or national banking association qualified to be a successor to such Trustee under the provisions of Section 9.10, or a trust company that is a wholly-owned subsidiary of any of the foregoing.

**Section 9.13. Trustee To File Continuation Statements.**

Chapter 1208, Texas Government Code, applies to the issuance of the Bonds and the pledge of the Trust Estate provided for herein, and such pledge is, under current law, valid, effective and perfected. The City will cause to be filed all appropriate financing statements. If necessary, the Trustee shall file or cause to be filed, at the City's expense, such continuation statements as may be delivered to the Trustee and which may be required by the Texas Uniform Commercial Code, as from time to time in effect (the "UCC"), in order to continue perfection of the security interest and rights of the Trustee in such items of tangible or intangible personal property and any fixtures as may have been granted to the Trustee pursuant to this Indenture in the time, place and manner required by the UCC. Unless otherwise notified in writing by the City or an Owner, the Trustee may conclusively rely upon the initial financing statements in filing any continuation statements hereunder.

If applicable, but immediately upon its receipt thereof, the City, or an authorized third-party representative thereof, shall deliver to the Trustee file-stamped copies of each UCC initial financing statement recorded in the jurisdictions applicable thereto.

The Trustee's UCC filing requirements are limited to those responsibilities as set forth in this Section 9.13.

**Section 9.14 Offering Documentation.**

The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum, or any other disclosure material prepared or distributed with respect to the Bonds Similarly Secured and shall have no responsibility for compliance with any State or federal securities laws in connection with the Bonds Similarly Secured.

**Section 9.15 Expenditure of Funds and Risk.**

None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of its rights or powers if the Trustee shall have reasonable grounds for believing that the repayment of such funds or indemnity against such risk or liability is not assured.

**Section 9.16 Environmental Hazards.**

The Trustee may inform any Owner of environmental hazards that the Trustee has reason to believe exist, and the Trustee has the right to take no further action and in such event, no fiduciary duty exists which imposes any obligation for further action with respect to the Trust Estate or any portion thereof if the Trustee, in its individual capacity, determines that any such action would materially and adversely subject the Trustee to environmental or other liability for which the Trustee has not been adequately indemnified.

The Trustee shall not be responsible or liable for the environmental condition related to the improvements to any real property or for diminution in value of the same, or for any claims by or on behalf of the owners thereof as the result of any contamination by a hazardous substance, hazardous material, pollutant, or contaminant. The Trustee assumes no duty or obligation to assess the environmental condition of any improvements or with respect to compliance thereof under State or federal laws pertaining to the transport, storage, treatment, or disposal of hazardous substances, hazardous materials, pollutants, or contaminants or regulations, permits, or licenses issued under such laws.

**Section 9.17. Accounts, Periodic Reports and Certificates.**

The Trustee shall keep or cause to be kept proper books of record and account (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Funds and Accounts established by this Indenture and which shall at all times be subject to inspection by the City, and the Owner or Owners of not less than 10% in principal amount of the Bonds Similarly Secured then Outstanding or their representatives duly authorized in writing.

**Section 9.18. Construction of Indenture.**

The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Owners of the Bonds Similarly Secured.

## ARTICLE X

### MODIFICATION OR AMENDMENT OF THIS INDENTURE

#### Section 10.1. Amendments Permitted.

(a) This Indenture and the rights and obligations of the City and of the Owners of the Bonds Similarly Secured may be modified or amended at any time by a Supplemental Indenture, except as provided below, pursuant to the affirmative vote at a meeting of Owners of the Bonds Similarly Secured, or with the written consent without a meeting, of the Owners of the Bonds Similarly Secured of at least a majority of the aggregate outstanding principal of the Bonds Similarly Secured at that time and City approval of such modification or amendment. No such modification or amendment shall (i) extend the maturity of any Bond Similarly Secured or reduce the principal of or interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond Similarly Secured, without the express consent of the Owner of such Bond Similarly Secured, (ii) permit the creation by the City of any pledge or lien upon the Trust Estate, or any portion thereof, superior to or on a parity with the pledge and lien created for the benefit of the Bonds Similarly Secured (except for the issuance of Refunding Bonds or as otherwise permitted by Applicable Laws and this Indenture), or (iii) reduce the percentage of the Owners of the Bonds Similarly Secured required for the amendment of this Indenture. Any such amendment shall not modify any of the rights or obligations of the Trustee without its written consent. In executing or accepting any Supplemental Indenture, the Trustee shall be fully protected in relying upon an opinion of qualified counsel addressed and delivered to the Trustee stating that (a) the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture, (b) the execution and delivery of will not adversely affect the exclusion from federal gross income of the interest on the Bonds Similarly Secured, and (c) such Supplemental Indenture will, upon the execution and delivery thereof, to be a valid and binding obligation of the City.

(b) This Indenture and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Owners, only to the extent permitted by Applicable Laws, and only for any one or more of the following purposes:

(i) to add to the covenants and agreements of the City in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;

(ii) to make modifications not adversely affecting any Outstanding Bonds Similarly Secured in any material respect;

(iii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in regard to questions arising under this Indenture, as the City may deem necessary or desirable and not inconsistent with this Indenture, and that shall not adversely affect the rights of the Owners of the Bonds Similarly Secured;

(iv) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest on the Bonds Similarly Secured; and

(v) to authorize Refunding Bonds in accordance with the provisions of this Indenture.

(c) Notwithstanding anything to the contrary herein, no Supplemental Indenture entered into in accordance with Section 10.1(b) above shall be effective unless the City first delivers to the Trustee an opinion of Bond Counsel to the effect that such amendment is permitted and will not adversely affect the: (i) interests of the Owners in any material respect, or (ii) exclusion of interest on any Bond Similarly Secured from gross income for purposes of federal income taxation.

#### **Section 10.2. Owners' Meetings.**

The City may at any time call a meeting of the Owners of the Bonds Similarly Secured. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof, and to fix and adopt reasonable rules and regulations for the conduct of said meeting; provided, however, that the same may not conflict with the terms of this Indenture. Without limiting the generality of the immediately preceding sentence, such rules and regulations may not reduce the percentage of Owners of Bonds required for the amendment of this Indenture as provided herein.

#### **Section 10.3. Procedure for Amendment with Written Consent of Owners.**

(a) The City and the Trustee may at any time adopt a Supplemental Indenture amending the provisions of the Bonds Similarly Secured or of this Indenture, to the extent that such amendment is permitted by Section 10.1, to take effect when and as provided in this Section. A copy of such Supplemental Indenture, together with a request to Owners for their consent thereto, if such consent is required pursuant to Section 10.1, shall be mailed by first class mail, by the Trustee to each Owner of Bonds Similarly Secured from whom consent is required under this Indenture, but failure to mail copies of such Supplemental Indenture and request shall not affect the validity of the Supplemental Indenture when assented to as in this Section provided.

(b) Such Supplemental Indenture shall not become effective unless there shall be filed with the Trustee the written consents of the Owners as required by this Indenture and a notice shall have been mailed as hereinafter in this Section provided and the City has delivered to the Trustee an opinion of Bond Counsel to the effect that such amendment is permitted and will not adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds Similarly Secured for which such consent is given, which proof shall be such as is permitted by Section 11.6. Any such consent shall be binding upon the Owner of the Bonds Similarly Secured giving such consent and on any subsequent Owner (whether or not such

subsequent Owner has notice thereof), unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

(c) After the Owners of the required percentage of Bonds Similarly Secured shall have filed their consents to the Supplemental Indenture, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Indenture, stating in substance that the Supplemental Indenture has been consented to by the Owners of the required percentage of Bonds Similarly Secured and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of the Supplemental Indenture or consents thereto). Proof of the mailing of such notice shall be filed with the Trustee. A record, consisting of the papers required by this Section 10.3 to be filed with the Trustee, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Indenture shall become effective upon the filing with the Trustee of the proof of mailing of such notice, and the Supplemental Indenture shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds Similarly Secured at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty-day period.

#### **Section 10.4. Procedure for Amendment Not Requiring Owner Consent.**

(a) The City and the Trustee may at any time adopt a Supplemental Indenture amending the provisions of the Bonds Similarly Secured or of this Indenture, to the extent that such amendment is permitted by Section 10.1, to take effect when and as provided in this Section. A copy of such Supplemental Indenture, together with a notice stating that the Supplemental Indenture does not require Owner consent, shall be mailed by first class mail by the Trustee to each Owner of Bonds Similarly Secured, but failure to mail copies of such Supplemental Indenture shall not affect the validity of the Supplemental Indenture. The Trustee shall retain the proof of its mailing of such notice. A record, consisting of the papers required by this Section 10.4, shall be proof of the matters therein stated until the contrary is proved.

(b) The Supplemental Indenture shall become effective upon the execution and delivery of such Supplemental Indenture by the Trustee and the City, and the Supplemental Indenture shall be deemed conclusively binding upon the City, the Trustee and the Owners of all Bonds Similarly Secured as of the date of such execution and delivery.

#### **Section 10.5. Effect of Supplemental Indenture.**

From and after the time any Supplemental Indenture becomes effective pursuant to this Article X, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties, and obligations under this Indenture of the City, the Trustee and all Owners of Bonds Similarly Secured Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the

terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**Section 10.6. Endorsement or Replacement of Bonds Similarly Secured Issued After Amendments.**

The City may determine that Bonds Similarly Secured issued and delivered after the effective date of any action taken as provided in this Article X shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bonds Similarly Secured Outstanding at such effective date and presentation of his Bond Similarly Secured for that purpose at the designated office of the Trustee or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond Similarly Secured. The City may determine that new Bonds Similarly Secured, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed, and delivered. In that case, upon demand of the Owner of any Bonds Similarly Secured then Outstanding, such new Bonds Similarly Secured shall be exchanged at the designated office of the Trustee without cost to any Owner, for Bonds Similarly Secured then Outstanding, upon surrender of such Bonds Similarly Secured.

**Section 10.7. Amendatory Endorsement of Bonds Similarly Secured.**

The provisions of this Article X shall not prevent any Owner from accepting any amendment as to the particular Bonds Similarly Secured held by such Owner, provided that due notation thereof is made on such Bonds Similarly Secured.

**Section 10.8. Waiver of Default.**

Subject to Section 10.1, with the written consent of the Owners of at least a majority of the aggregate Outstanding principal of the Bonds Similarly Secured at that time, the Owners may waive compliance by the City with certain past defaults under this Indenture and their consequences. Any such consent shall be conclusive and binding upon the Owners and upon all future Owners.

**Section 10.9. Execution of Supplemental Indenture.**

In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

## **ARTICLE XI**

### **DEFAULT AND REMEDIES**

#### **Section 11.1. Events of Default.**

Each of the following occurrences or events shall be and is hereby declared to be an "Event of Default," to wit:

(i) The failure of the City to deposit the Pledged Revenues to the Pledged Revenue Fund;

(ii) The failure of the City to enforce the collection of the Assessments including the prosecution of foreclosure proceedings, in accordance with Section 7.2;

(iii) Default in the performance or observance of any covenant, agreement or obligation of the City under this Indenture other than a default under (i) above or (iv) below, and the continuation thereof for a period of ninety (90) days after written notice specifying such default and requiring same to be remedied shall have been given to the City by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the Owners of at least a majority of the aggregate outstanding principal of the Bonds Similarly Secured then Outstanding; and

(iv) The failure to make payment of the principal of or interest on any of the Bonds Similarly Secured when the same becomes due and payable and such failure is not remedied within thirty (30) days thereafter.

#### **Section 11.2. Immediate Remedies for Default.**

(a) Subject to Article VIII, upon the happening and continuance of any of the Events of Default described in Section 11.1, then and in every such case the Trustee may proceed, and upon the written request of the Owners of at least a Quarter in Interest of the Bonds Similarly Secured then Outstanding hereunder and its receipt of indemnity satisfactory to it shall proceed, to protect and enforce the rights of the Owners under this Indenture, by action seeking mandamus or by other suit, action, or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief to the extent permitted by Applicable Laws, including, but not limited to, the specific performance of any covenant or agreement contained herein, or injunction; provided, however, that no action for money damages against the City may be sought or shall be permitted. The Trustee retains the right to obtain the advice of counsel in its exercise of remedies for default.

(b) PURSUANT TO SECTION 11.7, THE PRINCIPAL OF THE BONDS SIMILARLY SECURED SHALL NOT BE SUBJECT TO ACCELERATION UNDER ANY CIRCUMSTANCES.

(c) Whenever moneys are to be applied pursuant to this Article XI, irrespective of and whether other remedies authorized under this Indenture shall have been pursued in whole or in part, the Trustee may cause any or all of the assets of the Trust Estate, including Investment Securities, to be sold. The Trustee may so sell the assets of the Trust Estate and all right, title, interest, claim and demand thereto and the right of redemption thereof, in one or more parts, at any such place or places, and at such time or times and upon such notice and terms as the Trustee may deem appropriate and as may be required by law and apply the proceeds thereof in accordance with the provisions of this Section. The Trustee shall sell Trust Estate assets, according to the appraised value thereof, beginning with the asset of the highest value and continuing such sales in the order of next succeeding most valuable asset until satisfaction of debts pertaining to the outstanding Bonds Similarly Secured. Upon such sale, the Trustee may make and deliver to the purchaser or purchasers a good and sufficient assignment or conveyance for the same, which sale shall be a perpetual bar both at law and in equity against the City, and all other Persons claiming such properties. No purchaser at any sale shall be bound to see to the application of the purchase money proceeds thereof or to inquire as to the authorization, necessity, expediency, or regularity of any such sale. Nevertheless, if so requested by the Trustee, the City shall ratify and confirm any sale or sales by executing and delivering to the Trustee or to such purchaser or purchasers all such instruments as may be necessary or, in the reasonable judgment of the Trustee, proper for the purpose which may be designated in such request.

(d) In an Event of Default shall have occurred and be continuing, the City, upon demand of the Trustee, shall surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers, and accounts of the City pertaining thereto, and including the rights and the position of the City, and to hold, operate, and manage the same, and from time to time make all needed repairs and improvements, as well as set up proper reserve for the payment of all proper costs and expenses, holding and managing the same, including (i) reasonable compensation to the Trustee, its agents, and counsel, (ii) any reasonable charges of the Trustee hereunder, (iii) any taxes and assessments and other charges prior to the lien of this of Indenture, and (iv) all expenses of such repairs and improvements. After payment in full of the foregoing, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns.

### **Section 11.3. Restriction on Owner's Action.**

(a) No Owner shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust thereof or any other remedy hereunder, unless (i) a default has occurred and is continuing of which the Trustee has actual knowledge thereof or has been notified in writing as provided in Section 9.3(f), or of which by such Section it is deemed to have notice, (ii) such default has become an Event of Default and the Owners of at least a Quarter in Interest of the Bonds Similarly Secured then Outstanding have made written request to the Trustee and offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, (iii) the Owners have furnished to the Trustee indemnity as provided in Section 9.2, (iv) the Trustee has for 60 days after such notice failed or refused to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name,

(v) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Owners of at least a Quarter in Interest of the Bonds Similarly Secured then Outstanding, and (vi) notice of such action, suit, or proceeding is given to the Trustee; however, no one or more Owners of the Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner provided herein and that all proceedings at law or in equity shall be instituted and maintained in the manner provided herein and for the equal benefit of the Owners of all Bonds Similarly Secured then Outstanding. The notification, request and furnishing of indemnity set forth above shall, at the option of the Trustee, after being advised by counsel in their discretion, be conditions precedent to the execution of the powers and trusts of this Indenture and to any action or cause of action for the enforcement of this Indenture or for any other remedy hereunder.

(b) Subject to Article VIII, nothing in this Indenture shall affect or impair the right of any Owner to enforce, by action at law, payment of any Bond Similarly Secured at and after the maturity thereof, or on the date fixed for redemption or the obligation of the City to pay each Bond Similarly Secured issued hereunder to the respective Owners thereof at the time and place, from the source and in the manner expressed herein and in the Bonds Similarly Secured.

(c) In case the Trustee or any Owners of Bonds Similarly Secured shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or any Owners of Bonds Similarly Secured, then and in every such case the City, the Trustee and the Owners of Bonds Similarly Secured shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

#### **Section 11.4. Application of Revenues and Other Moneys After Default.**

(a) All moneys, securities, funds and Pledged Revenues and the income therefrom received by the Trustee pursuant to any right given or action taken under the provisions of this Article together with all amounts held by the Trustee hereunder as part of the Trust Estate shall, after payment of the cost, liabilities, advances and expenses of the proceedings resulting in the collection of such amounts, the expenses (including fees and expenses of its counsel), liabilities, and advances incurred or made by the Trustee and the fees of the Trustee in carrying out this Indenture, during the continuance of an Event of Default, notwithstanding Section 11.2, be applied by the Trustee, on behalf of the City, to the payment of interest and principal or Redemption Price then due on Bonds Similarly Secured, as follows:

FIRST: To the payment to the Owners entitled thereto all installments of interest then due in the direct order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the Owners entitled thereto, without any discrimination or preference; and

SECOND: To the payment to the Owners entitled thereto of the unpaid principal of Outstanding Bonds Similarly Secured, or Redemption Price of any Bonds Similarly Secured which shall have become due, whether at maturity or by call for redemption, in the direct order of their due dates and, if the amounts available shall not be sufficient to pay in full all the Bonds Similarly Secured due on any date, then to the payment thereof ratably, according to the amounts of principal due and to the Owners entitled thereto, without any discrimination or preference.

Within thirty (30) days of receipt of such good and available funds, the Trustee may fix a record date and a payment date for any payment to be made to Owners of Bonds Similarly Secured pursuant to this Section 11.4.

(b) In the event funds are not adequate to cure any of the Events of Default described in Section 11.1, the available funds shall be allocated to the Bonds Similarly Secured that are Outstanding in proportion to the quantity of Bonds Similarly Secured that are currently due and in default under the terms of this Indenture.

(c) The restoration of the City to its prior position after any and all defaults have been cured, as provided in Section 11.3, shall not extend to or affect any subsequent default under this Indenture or impair any right consequent thereon.

#### **Section 11.5. Effect of Waiver.**

The Trustee may, with the prior written consent of at least a majority of the aggregate outstanding principal of the Bonds Similarly Secured at that time, waive an Event of Default occurring hereunder. No delay or omission of the Trustee, or any Owner, to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient.

#### **Section 11.6. Evidence of Ownership of Bonds Similarly Secured.**

(a) Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by the Owners of Bonds Similarly Secured may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners in person or by their attorneys duly appointed in writing. Proof of the execution of any such instrument, or of any instrument appointing any such attorney, or the holding by any Person of the Bonds Similarly Secured shall be sufficient for any purpose of this Indenture (except as otherwise herein expressly provided) if made in the following manner:

(i) The fact and date of the execution of such instruments by any Owner of Bonds Similarly Secured or the duly appointed attorney authorized to act on behalf of such Owner may be provided by a guarantee of the signature thereon by a bank or trust company or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument

acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership, such signature guarantee, certificate, or affidavit shall also constitute sufficient proof of his authority.

(ii) The ownership of Bonds Similarly Secured and the amount, numbers and other identification and date of holding the same shall be proved by the Register.

(b) Except as otherwise provided in this Indenture with respect to revocation of a consent, any request or consent by an Owner of any Bond Similarly Secured shall bind all future Owners of the same Bond Similarly Secured in respect of anything done or suffered to be done by the City or the Trustee in accordance therewith.

**Section 11.7. No Acceleration.**

In the event of the occurrence of an Event of Default under Section 11.1, the right of acceleration of any Stated Maturity is not granted as a remedy hereunder and the right of acceleration under this Indenture is expressly denied.

**Section 11.8. Mailing of Notice.**

Any provision in this Article for the mailing of a notice or other document to Owners shall be fully complied with if it is mailed, first class postage prepaid, only to each Owner at the address appearing upon the Register.

**Section 11.9. Exclusion of Bonds Similarly Secured.**

Bonds Similarly Secured owned or held by or for the account of the City will not be deemed Outstanding for any purpose. The City shall promptly deliver any such Bonds Similarly Secured to the Trustee for cancellation.

**Section 11.10. Remedies Not Exclusive.**

No remedy herein conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity, by statute or by contract.

**Section 11.11. Direction by Owners.**

Anything herein to the contrary notwithstanding, the Owners of a Quarter in Interest of the Outstanding Bonds Similarly Secured shall have the right by an instrument in writing executed and delivered to the Trustee, to direct the choice of remedies and the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, under each Supplemental Indenture or otherwise, or exercising any trust or power conferred upon the

Trustee, including the power to direct or withhold directions with respect to any remedy available to the Trustee or the Owners, provided, (i) such direction shall not be otherwise than in accordance with law and the provisions hereof, (ii) that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, (iii) that the Trustee may require satisfactory indemnity prior to taking such action, and (iv) that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Owners not parties to such direction.

## **ARTICLE XII**

### **GENERAL COVENANTS AND REPRESENTATIONS**

#### **Section 12.1. Representations as to the Trust Estate.**

(a) The City represents and warrants that it is authorized by Applicable Laws to authorize and issue the Bonds Similarly Secured, to execute and deliver this Indenture and to pledge the Trust Estate in the manner and to the extent provided in this Indenture, and that the Trust Estate is and will be and remain free and clear of any pledge, lien, charge, or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge and lien created in or authorized by this Indenture except as expressly provided herein.

(b) The City shall at all times, to the extent permitted by Applicable Laws, defend, preserve and protect the pledge of the Trust Estate and all the rights of the Owners and the Trustee, under this Indenture against all claims and demands of all Persons whomsoever.

(c) Subject to Section 7.2(d), the City will take all steps reasonably necessary and appropriate, and will direct the Trustee to take all steps reasonably necessary and appropriate, to collect all delinquencies in the collection of the Assessments and any other amounts pledged to the payment of the Bonds Similarly Secured to the fullest extent permitted by the PID Act and other Applicable Laws.

#### **Section 12.2. General.**

The City shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the City under the provisions of this Indenture.

## **ARTICLE XIII**

### **SPECIAL COVENANTS**

#### **Section 13.1. Further Assurances; Due Performance.**

(a) At any and all times the City will duly execute, acknowledge and deliver, or will cause to be done, executed and delivered, all and every such further acts, conveyances, transfers, and assurances in a manner as the Trustee shall reasonably require for better conveying,

transferring, pledging, and confirming unto the Trustee, all and singular, the revenues, Funds, Accounts and properties constituting the Pledged Revenues, and the Trust Estate hereby transferred and pledged, or intended so to be transferred and pledged.

(b) The City will duly and punctually keep, observe and perform each and every term, covenant and condition on its part to be kept, observed and performed, contained in this Indenture.

### Section 13.2. **Other Obligations or Other Liens; Refunding Bonds.**

(a) The City reserves the right to issue obligations under other indentures, assessment ordinances, or similar agreements or other obligations which do not constitute or create a lien on the Trust Estate and are not payable from the Trust Estate or any portion of the Trust Estate.

(b) Other than Refunding Bonds, the City will not create or voluntarily permit to be created any debt, lien or charge on the Trust Estate or any portion thereof, and will not do or omit to do or suffer to be done or omit to be done any matter or things whatsoever whereby the lien of this Indenture or the priority hereof might or could be lost or impaired; and further covenants that it will pay or cause to be paid or will make adequate provisions for the satisfaction and discharge of all lawful claims and demands which if unpaid might by law be given precedence over or any equality with this Indenture as a lien or charge upon the Trust Estate; provided, however, that nothing in this Section shall require the City to apply, discharge, or make provision for any such lien, charge, claim, or demand so long as the validity thereof shall be contested by it in good faith, unless thereby, in the opinion of counsel to the Trustee, the same would endanger the security for the Bonds Similarly Secured.

(c) Notwithstanding any contrary provision of this Indenture, the City shall not issue additional bonds, notes or other obligations under this Indenture, secured by any pledge of or other lien or charge on the Pledged Revenues or other property pledged under this Indenture, other than Refunding Bonds. The City reserves the right to issue Refunding Bonds, the proceeds of which would be utilized to refund all or any portion of the Outstanding Bonds or Outstanding Refunding Bonds and to pay all costs incident to the Refunding Bonds, as authorized by the laws of the State.

### Section 13.3. **Books of Record.**

(a) The City shall cause to be kept full and proper books of record and accounts, in which full, true and proper entries will be made of all dealings, business and affairs of the City, which relate to the Trust Estate, and the Bonds Similarly Secured.

(b) The Trustee shall have no responsibility with respect to the financial and other information received by it pursuant to this Section 13.3 except to receive and retain same, subject to the Trustee's document retention policies, and to distribute the same in accordance with the provisions of this Indenture.

## ARTICLE XIV

### PAYMENT AND CANCELLATION OF THE BONDS AND SATISFACTION OF THE INDENTURE

#### Section 14.1. **Trust Irrevocable.**

The trust created by the terms and provisions of this Indenture is irrevocable until the Bonds Similarly Secured that are secured hereby are fully paid or provision is made for their payment as provided in this Article.

#### Section 14.2. **Satisfaction of Indenture.**

If the City shall pay or cause to be paid, or there shall otherwise be paid to the Owners, principal of and interest on all of the Bonds Similarly Secured, at the times and in the manner stipulated in this Indenture, and all amounts due and owing with respect to the Bonds Similarly Secured have been paid or provided for, then the pledge of the Trust Estate and all covenants, agreements, and other obligations of the City to the Owners of such Bonds Similarly Secured, shall thereupon cease, terminate, and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the City copies of all such documents as it may have evidencing that principal of and interest on all of the Bonds Similarly Secured has been paid so that the City may determine if this Indenture is satisfied; if so, the Trustee shall pay over or deliver all moneys held by it in the Funds and Accounts held hereunder as directed in writing by the City.

#### Section 14.3. **Bonds Similarly Secured Deemed Paid.**

(a) Any Outstanding Bonds Similarly Secured shall, prior to the Stated Maturity or redemption date thereof, be deemed to have been paid and no longer Outstanding within the meaning of this Trust Indenture (a "*Defeased Debt*"), and particularly this Article XIV, when payment of the principal of, premium, if any, on such Defeased Debt, plus interest thereon to the due date thereof (whether such due date be by reason of maturity, redemption, or otherwise), either (1) shall have been made in accordance with the terms thereof, or (2) shall have been provided by irrevocably depositing with the Trustee, in trust, and irrevocably set aside exclusively for such payment, (A) money sufficient to make such payment or (B) Defeasance Securities, certified by an independent public accounting firm, or independent municipal advisor, either of national reputation to mature as to principal and interest in such amount and at such times as will insure the availability, without reinvestment, of sufficient money to make such payment, and all reasonable fees, compensation, and expenses of the Trustee pertaining to the Bonds Similarly Secured with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee. Neither Defeasance Securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on the Bonds Similarly Secured. Any cash received from such principal of and interest on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall, be reinvested in

Defeasance Securities as directed by the City maturing at times and in amounts sufficient to pay when due the principal of and interest on the Bonds Similarly Secured on and prior to such redemption date or maturity date thereof, as the case may be. Any payment for Defeasance Securities purchased for the purpose of reinvesting cash as aforesaid shall be made only against delivery of such Defeasance Securities.

(b) Any determination not to redeem Defeased Debt that is made in conjunction with the payment arrangements specified in Sections 14.3(a)(1) or 14.3(a)(2) shall not be irrevocable, provided that: (1) in the proceedings providing for such defeasance, the City expressly reserves the right to call the Defeased Debt for redemption; (2) the City gives notice of the reservation of that right to the Owners of the Defeased Debt immediately following the defeasance; (3) the City directs that notice of the reservation be included in any defeasance or redemption notices that it authorizes; and (4) at or prior to the time of the redemption, the City satisfies the conditions of clause (a) of this Section 14.3 with respect to such Defeased Debt as though it was being defeased at the time of the exercise of the option to redeem the Defeased Debt, after taking the redemption into account in determining the sufficiency of the provisions made for the payment of the Defeased Debt.

## **ARTICLE XV**

### **MISCELLANEOUS**

#### **Section 15.1. Benefits of Indenture Limited to Parties.**

Nothing in this Indenture, expressed or implied, is intended to give to any Person other than the City, the Trustee and the Owners, any right, remedy, or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Trustee.

#### **Section 15.2. Successor is Deemed Included in All References to Predecessor.**

Whenever in this Indenture or any Supplemental Indenture either the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

#### **Section 15.3. Execution of Documents and Proof of Ownership by Owners.**

(a) Any request, declaration, or other instrument which this Indenture may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys duly appointed in writing.

(b) Except as otherwise expressly provided herein, the fact and date of the execution by any Owner or his attorney of such request, declaration, or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer

authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the Person signing such request, declaration, or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

(c) Except as otherwise herein expressly provided, the ownership of registered Bonds Similarly Secured and the amount, maturity, number, and date of holding the same shall be proved by the Register.

(d) Any request, declaration or other instrument or writing of the Owner of any Bond Similarly Secured shall bind all future Owners of such Bond Similarly Secured in respect of anything done or suffered to be done by the City or the Trustee in good faith and in accordance therewith.

**Section 15.4. No Waiver of Personal Liability.**

No member, officer, agent, or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds Similarly Secured; but nothing herein contained shall relieve any such member, officer, agent, or employee from the performance of any official duty provided by law.

**Section 15.5. Notices to and Demands on City and Trustee.**

(a) Except as otherwise expressly provided herein, all notices or other instruments required or permitted under this Indenture shall be in writing and shall be faxed, delivered by hand, or mailed by first class mail, postage prepaid, and addressed as follows:

If to the City	City of San Marcos, Texas 630 E. Hopkins San Marcos, Texas 78666 Attn: City Manager Telephone: (512) 393-8000
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If to the Trustee Or the Paying Agent/Registrar	UMB Bank, N.A. 6034 West Courtyard Drive, Suite 370 Austin, TX 78730 Attn: V.P. Relationship Manager Telephone: (512)579-1401
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(b) Any such notice, demand, or request may also be transmitted to the appropriate party by telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

(c) Any of such addresses may be changed at any time upon written notice of such change given to the other party by the party effecting the change. Notices and consents given by

mail in accordance with this Section shall be deemed to have been given five Business Days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

(d) The Trustee shall mail to each Owner of a Bond Similarly Secured notice of (1) any substitution of the Trustee; or (2) the redemption or defeasance of all Outstanding Bonds Similarly Secured.

#### **Section 15.6. Partial Invalidity.**

If any Section, paragraph, sentence, clause, or phrase of this Indenture shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Indenture. The City hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause, or phrase hereof and authorized the issue of the Bonds Similarly Secured pursuant thereto irrespective of the fact that anyone or more Sections, paragraphs, sentences, clauses, or phrases of this Indenture may be held illegal, invalid, or unenforceable.

#### **Section 15.7. Applicable Laws.**

This Indenture shall be governed by and enforced in accordance with the laws of the State applicable to contracts made and performed in the State.

#### **Section 15.8. Payment on Business Day.**

In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds Similarly Secured or the date fixed for redemption of any Bonds Similarly Secured or the date any action is to be taken pursuant to this Indenture is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day that is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period from and after such date.

#### **Section 15.9. Counterparts.**

This Indenture may be executed in counterparts, each of which shall be deemed an original.

#### **Section 15.10. No Boycott of Israel; No Terrorist Organization.**

(a) Pursuant to Section 2271.002, Texas Government Code, the Trustee hereby represents that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Indenture is a contract for goods or services, will not boycott Israel during the term of this Indenture. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable federal or state law. As used in the foregoing

verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Trustee understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

(b) Pursuant to Subchapter F, Chapter 2252, Texas Government Code, the Trustee represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable federal or state law and excludes the Trustee and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Trustee understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit."

**Section 15.11. Electronic Storage.**

The parties agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

*[Remainder of page left blank intentionally]*

IN WITNESS WHEREOF, the City and the Trustee have caused this Indenture of Trust to be executed as of the date hereof.

CITY OF SAN MARCOS, TEXAS

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

(CITY SEAL)

UMB Bank, N.A.,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY WITHIN  
THE WHISPER PUBLIC IMPROVEMENT DISTRICT**

**EXHIBIT B**

**FORM OF CERTIFICATION FOR PAYMENT (DESIGN) AND CERTIFICATION FOR  
PAYMENT (CONSTRUCTION)**

Form of Certification for Payment  
(Design – Whisper PID)

\_\_\_\_\_ (“**Construction Manager**”) hereby requests payment for the percentage of design costs completed (the “**Design Costs**”) described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Amended and Restated Whisper Public Improvement District Financing Agreement between Yarrington Partners, Ltd., a Texas limited partnership, Whisper Master Community Limited Partnership, a Texas limited partnership, Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company, 135 Residential Development, LLC, a Texas limited liability company and the City of San Marcos (the “**City**”), dated as of \_\_\_\_\_, 20\_\_ (as may be amended from time to time, the “**Financing Agreement**”). In connection with this Certification for Payment, the undersigned, in his or her capacity as the \_\_\_\_\_ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.
2. The design work described in Attachment A has been completed in the percentages stated therein.
3. The true and correct Design Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.
4. Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed design work described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.
5. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Design Costs for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO  
FORM OF CERTIFICATION FOR PAYMENT (DESIGN)

Date : \_\_\_\_\_

[Construction Manager Signature Block to be added]

APPROVAL BY THE CITY

The Design described in Attachment A has been reviewed, verified and approved by the City Construction Representative. Payment of the Design Costs are hereby approved.

Date: \_\_\_\_\_

**CITY OF SAN MARCOS, TEXAS**

By: \_\_\_\_\_

ATTACHMENT A TO CERTIFICATION OF PAYMENT (DESIGN)

<u>Description of Design Work</u>	<u>Percentage of Design Work Completed under this Certification for Payment</u>	<u>Design Costs</u>	<u>Total Percentage of Design Work Completed</u>
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ATTACHMENT B TO CERTIFICATION OF PAYMENT (DESIGN)

[attached – bills paid affidavit]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (DESIGN)

[attached – receipts]

FORM OF CERTIFICATION FOR PAYMENT  
(Construction – Whisper PID)

\_\_\_\_\_ (“**Construction Manager**”) hereby requests payment of the Actual Cost of the work described in Attachment A attached hereto (the “**Draw Actual Costs**”). Capitalized undefined terms shall have the meanings ascribed thereto in the Amended and Restated Whisper Public Improvement District Financing Agreement between Yarrington Partners, Ltd., a Texas limited partnership, Whisper Master Community Limited Partnership, a Texas limited partnership, Whisper Industrial 2019 QOZB, LLC, a Texas limited liability company, 135 Residential Development, LLC, a Texas limited liability company and the City of San Marcos, Texas (the “**City**”), dated as of \_\_\_\_\_, 20\_\_ (as may be amended from time to time, the “**Financing Agreement**”). In connection with this Certification for Payment, the undersigned, in his or her capacity as the \_\_\_\_\_ of Construction Manager, to his or her knowledge, hereby represents and warrants to the City as follows:

1. He (she) is a duly authorized representative of Construction Manager, qualified to execute this request for payment on behalf of the Construction Manager and knowledgeable as to the matters forth herein.
2. The true and correct Draw Actual Costs for which payment is requested is set forth in Attachment A and payment for such requested amounts and purposes has not been subject to any previously submitted request for payment.
3. Attached hereto as Attachment B is a true and correct copy of a bills paid affidavit evidencing that any contractor or subcontractor having performed work on a Segment described in Attachment A has been paid in full for all work completed through the previous Certification for Payment.
4. Attached hereto as Attachment C are invoices, receipts, worksheets and other evidence of costs which are in sufficient detail to allow the City to verify the Draw Actual Costs of each Segment for which payment is requested.

[Signature Page Follows]

SIGNATURE PAGE TO  
FORM OF CERTIFICATION FOR PAYMENT (CONSTRUCTION)

Date : \_\_\_\_\_

[Construction Manager Signature Block to  
Be inserted]

## JOINDER OF PROJECT ENGINEER

The undersigned Project Engineer joins this Certification for Payment solely for the purposes of certifying that the representations made by Construction Manager in Paragraph 2 above are true and correct in all material respects.

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Project Engineer

APPROVAL BY THE CITY

The Draw Actual Costs of each Segment described in Attachment A has been reviewed, verified and approved by the City Construction Representative of the City. Payment of the Draw Actual Costs of each such Segment is hereby approved.

Date: \_\_\_\_\_

**CITY OF SAN MARCOS, TEXAS**

By: \_\_\_\_\_

ATTACHMENT A TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

<u>Segment</u>	<u>Description of Work Completed under this Certification for Payment</u>	<u>Draw Actual Costs</u>
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ATTACHMENT B TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[bills paid affidavit – attached]

ATTACHMENT C TO CERTIFICATION OF PAYMENT (CONSTRUCTION)

[receipts – attached]

**CITY OF SAN MARCOS, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020  
(WHISPER PUBLIC IMPROVEMENT DISTRICT)**

**CONTINUING DISCLOSURE AGREEMENT OF THE ISSUER**

This Continuing Disclosure Agreement of the Issuer dated as of June 2, 2020 (this “Disclosure Agreement”) is executed and delivered by and between the City of San Marcos, Texas (the “Issuer”) and UMB Bank, N.A. (the “Dissemination Agent”), with respect to the Issuer’s “Special Assessment Revenue Bonds, Series 2020 (Whisper Public Improvement District)” (the “Bonds”). The Issuer and the Dissemination Agent covenant and agree as follows:

**SECTION 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Issuer and the Dissemination Agent for the benefit of the Owners (defined below) and beneficial owners of the Bonds. Unless and until a different filing location is designated by the MSRB (defined below) or the SEC (defined below), all filings made by the Dissemination Agent pursuant to this Disclosure Agreement shall be filed with the MSRB through EMMA (defined below).

**SECTION 2. Definitions.** In addition to the definitions set forth above and in the Indenture of Trust dated as of June 2, 2020, relating to the Bonds (the “Indenture”), which apply to any capitalized term used in this Disclosure Agreement, including the Exhibits hereto, unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“135 Residential” shall mean 135 Residential Development, LLC, a Texas limited liability company, and its designated successors and assigns.

“Administrator” shall mean the Issuer or the person or independent firm designated by the Issuer who shall have the responsibility provided in the Service and Assessment Plan, the Indenture, or any other agreement or document approved by the Issuer related to the duties and responsibilities of the administration of the District. The Issuer has initially selected P3Works, LLC as the Administrator.

“Annual Financial Information” shall mean annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 4(a) of this Disclosure Agreement.

“Annual Issuer Report” shall mean any Annual Issuer Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Business Day” shall mean any day other than a Saturday, Sunday or legal holiday in the State of Texas observed as such by the Issuer or the Trustee or any national holiday observed by the Trustee.

“Developer” shall mean Whisper Master Community Ltd., a Texas limited partnership, and its successors and assigns.

“Disclosure Agreement of 135 Residential” shall mean the Continuing Disclosure Agreement of 135 Residential dated as of June 2, 2020 executed and delivered by 135 Residential, the Administrator and the Dissemination Agent.

“Disclosure Agreement of Developer” shall mean the Continuing Disclosure Agreement of the Developer dated as of June 2, 2020 executed and delivered by the Developer, the Administrator and the Dissemination Agent.

“Disclosure Agreement of Yarrington” shall mean the Continuing Disclosure Agreement of Yarrington dated as of June 2, 2020 executed and delivered by Yarrington, the Administrator and the Dissemination Agent.

“Disclosure Representative” shall mean the Director of Finance of the Issuer or his or her designee, or such other officer or employee as the Issuer, may designate in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean UMB Bank, N.A., or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“District” shall mean Whisper Public Improvement District.

“EMMA” shall mean the Electronic Municipal Market Access System currently available on the internet at <http://emma.msrb.org>.

“Filing Date” shall mean, for each Fiscal Year, the date that is six (6) months after the end of the Issuer’s Fiscal Year, which Filing Date is currently March 31.

“Financial Obligation” shall mean a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Fiscal Year” shall mean the calendar year from October 1 through September 30.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board or any other entity designated or authorized by the SEC to receive continuing disclosure reports pursuant to the Rule.

“Owner” shall mean the registered owner of any Bonds.

“Participating Underwriter” shall mean FMSbonds, Inc., and its successors and assigns.

“Rule” shall mean Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” shall mean the United States Securities and Exchange Commission.

“Trustee” shall mean UMB Bank, N.A., or any successor trustee pursuant to the Indenture.

“Yarrington” shall mean Yarrington Partners, Ltd., a Texas limited partnership, and its designated successors and assigns.

### SECTION 3. Provision of Annual Issuer Reports.

(a) For each Fiscal Year, commencing with the Fiscal Year ending September 30, 2020, the Issuer shall cause and hereby directs the Dissemination Agent to provide or cause to be provided to the MSRB, in the electronic or other format required by the MSRB, not later than the Filing Date, an Annual Issuer Report provided to the Dissemination Agent which is consistent with the requirements specified in Section 4 of this Disclosure Agreement. The audited financial statements of the Issuer, if prepared and when available, may be submitted separately from the Annual Issuer Report, and may be submitted later than the Filing Date, if audited financial statements are not available by the Filing Date. If, however, the audited financial statements are not complete by the Filing Date, then the Issuer shall provide unaudited financial statements by the Filing Date. In each case, the Annual Issuer Report may be submitted as a single document or as separate documents comprising a package and may include by reference other information as provided in Section 4 of this Disclosure Agreement. If the Issuer’s Fiscal Year changes, it shall file notice of such change (including the date of the new Fiscal Year) with the MSRB prior to the next Filing Date. All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

Not later than ten (10) days prior to the Filing Date, the Issuer shall provide the Annual Issuer Report to the Dissemination Agent. The Dissemination Agent shall provide such Annual Issuer Report to the MSRB not later than ten (10) days from receipt of such Annual Issuer Report from the Issuer.

If by the fifth (5<sup>th</sup>) day before the Filing Date, the Dissemination Agent has not received a copy of the Annual Issuer Report, the Dissemination Agent shall contact the Disclosure Representative by telephone and in writing (which may be by e-mail) to remind the Issuer of its undertaking to provide the applicable Annual Issuer Report pursuant to this subsection (a). Upon such reminder, the Disclosure Representative shall either (i) provide the Dissemination Agent with an electronic copy of the Annual Issuer Report no later than two (2) Business Days prior to the Filing Date; or (ii) instruct the Dissemination Agent in writing that the Issuer will not be able to provide the Annual Issuer Report by the Filing Date, state the date by which the Annual Issuer Report for such year will be provided and instruct the Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit A; provided, however, that in the event the Disclosure Representative is required to act under either (i) or (ii) described above, the Dissemination Agent still must file the Annual Issuer Report or the notice of failure to file, as applicable, to the MSRB, no later than the Filing Date; provided further, however, that in the event the Disclosure Representative fails to act under either (i) or (ii) described above, the Dissemination Agent shall file a notice of failure to file no later than on the last Business Day prior to the Filing Date.

- (b) The Issuer shall or shall cause the Dissemination Agent to:
  - (i) determine the filing address or other filing location of the MSRB each year prior to filing the Annual Issuer Report; and
  - (ii) file the Annual Issuer Report containing or incorporating by reference the information set forth in Section 4 hereof.
- (c) If the Issuer has provided the Dissemination Agent with the completed Annual Issuer Report and the Dissemination Agent has filed such Annual Issuer Report with the MSRB, then the Dissemination Agent shall file a report with the Issuer certifying that the Annual Issuer Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and that it was filed with the MSRB.

SECTION 4. Content and Timing of Annual Issuer Reports. The Annual Issuer Report for the Bonds shall contain or incorporate by reference, and the Issuer agrees to provide or cause to be provided to the Dissemination Agent to file, the following:

- (a) By the Filing Date, the following Annual Financial Information (any or all of which may be unaudited):
  - (i) Tables setting forth the following information, as of the end of such Fiscal Year:
    - (A) For the Bonds, the maturity date or dates, the interest rate or rates, the original aggregate principal amount and the principal amount remaining Outstanding and the interest amount remaining Outstanding;
    - (B) The amounts in the funds and accounts securing the Bonds; and
    - (C) The assets and liabilities of the Trust Estate.
  - (ii) The principal and interest paid on the Bonds during such Fiscal Year and the minimum scheduled principal and interest required to be paid on the Bonds in the next Fiscal Year.
  - (iii) Any changes to the land use designation for the property in the District from the purposes identified in the Service and Assessment Plan.
  - (iv) Updates to the information in the Service and Assessment Plan as most recently amended or supplemented (a “SAP Update”), including any changes to the methodology for levying the Assessments in the District.
  - (v) The aggregate taxable assessed valuation for parcels or lots within the District based on the most recent certified tax roll available to the Issuer.
  - (vi) With respect to single-family residential lots, until certificates of occupancy have been issued for lots representing, in the aggregate, ninety-five percent (95%) of the total single-

family residential lots within the District, the Annual Issuer Report (in the SAP Update or otherwise) shall include the following:

(A) The number of new homes completed in the District during such Fiscal Year; and

(B) The aggregate number of new homes completed within the District since filing the initial Annual Issuer Report for Fiscal Year ended September 30, 2020.

(vii) With respect to commercial, industrial/business park, office, retail and multifamily residential parcels, until such time as development thereof is complete, the following information:

(A) Issuance of building permit(s);

(B) Issuance of certificate(s) of occupancy; and

(C) For parcels where a certificate of occupancy was issued, the total covered square footage for such commercial, industrial/business park, office, retail and/or multifamily residential units on an annual and cumulative basis, if available.

(viii) Listing of any landowners in the District, as determined by the most recent certified tax roll available to the Issuer, representing more than five percent (5%) of the levy of Assessments, the amount of the levy of Assessments against such landowners, and the percentage of such Assessments relative to the entire levy of Assessments within the District, as shown on the Assessment Roll attached to the SAP Update for such Fiscal Year.

(ix) Collection and delinquency history of the Assessments within the District for the past five (5) Fiscal Years, in the following format:

**Collection and Delinquent History of Assessments**

Collected in Fiscal Year	Assessment <u>Billed</u>	Parcels <u>Levied</u>	Delinquent Amount <u>as of 3/1</u>	Delinquent Percentage <u>as of 3/1</u>	Delinquent Amount <u>as of 9/1</u>	Delinquent Percentage <u>as of 9/1</u>	Total Assessments <u>Collected<sup>(1)</sup></u>
2020	\$			—	—		\$

<sup>(1)</sup> Collected as of \_\_\_\_\_, 20\_\_\_. Includes \$\_\_\_\_\_ attributable to Prepayments.

(x) For each calendar year, if the total amount of Annual Installments that are delinquent as of September 1 in such calendar year is equal to or greater than ten percent (10%) of the total amount of Annual Installments due in such calendar year, a list of parcel numbers for which the Annual Installments are delinquent.

(xi) The amount of delinquent Assessments by Fiscal Year:

(A) Which are subject to institution of foreclosure proceedings (but as to which such proceedings have not been instituted);

- (B) For which foreclosure proceedings have been instituted but have not been concluded;
- (C) Which have been reduced to judgment but not collected;
- (D) Which have been reduced to judgment and collected; and
- (E) The result of any foreclosure sales of assessed property within the District if the assessed property sold at a foreclosure sale represents more than one percent (1%) of the total amount of Assessments.

(xii) Total amount of Prepayments collected, as of March 1 of the calendar year immediately succeeding such Fiscal Year, in each case with respect to the most recent billing period (generally, October 1 of the preceding calendar year through January 31 of the current calendar year).

(xiii) A description of any amendment to this Disclosure Agreement and a copy of any restatements to the Issuer's audited financial statements during such Fiscal Year.

(b) If not provided with the financial information provided under subsection 4(a) above, if prepared and when available, the audited financial statements of the Issuer for the most recently ended Fiscal Year, prepared in accordance with generally accepted accounting principles applicable from time to time to the Issuer. If audited financial statements are not included with the financial information provided under subsection 4(a) above, unaudited financial statements shall be included with such financial information by the Filing Date.

See Exhibit B hereto for a form for submitting the information set forth in the preceding paragraphs. The Issuer has designated P3Works, LLC as the initial Administrator. The Administrator, and if no Administrator is designated, Issuer's staff, shall prepare the Annual Financial Information. In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of the Annual Issuer Reports under this Section 4.

Any or all of the items listed above may be included by specific reference to other documents, including disclosure documents of debt issues of the Issuer, which have been submitted to and are publicly accessible from the MSRB. If the document included by reference is a final offering document, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

**SECTION 5.      Reporting of Significant Events.**

(a) Pursuant to the provisions of this Section 5, each of the following is a Listed Event with respect to the Bonds:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults, if material.
3. Unscheduled draws on debt service reserves reflecting financial difficulties.

4.       Unscheduled draws on credit enhancements reflecting financial difficulties.
5.       Substitution of credit or liquidity providers, or their failure to perform.
6.       Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds.
7.       Modifications to rights of Owners, if material.
8.       Bond calls, if material, and tender offers.
9.       Defeasances.
10.      Release, substitution, or sale of property securing repayment of the bonds, if material.
11.      Rating changes.
12.      Bankruptcy, insolvency, receivership or similar event of the Issuer.
13.      The consummation of a merger, consolidation, or acquisition of the Issuer, or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
14.      Appointment of a successor trustee under the Indenture or the change of name of a trustee, if material.
15.      Incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect security holders, if material.
16.      Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

The Issuer does not intend for any sale by the Developer or Yarrington of real property within the District to be considered a significant event for the purposes of paragraph (10) above.

Any event described in paragraph (12) above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Issuer in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or

governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

The Issuer intends the words used in paragraphs (15) and (16) above and the definition of Financial Obligation to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

Upon the occurrence of a Listed Event, the Issuer shall promptly notify the Dissemination Agent in writing and the Issuer shall direct the Dissemination Agent to file a notice of such occurrence with the MSRB. The Dissemination Agent shall file such notice no later than the Business Day immediately following the day on which it receives written notice of such occurrence from the Issuer. Any such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event.

Any notice under the preceding paragraphs shall be accompanied with the text of the disclosure that the Issuer desires to make, the written authorization of the Issuer for the Dissemination Agent to disseminate such information as provided herein, and the date the Issuer desires for the Dissemination Agent to disseminate the information (which date shall not be more than ten (10) Business Days after the occurrence of the Listed Event or failure to file).

In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of all disclosures made under this Section 5. In addition, the Issuer shall have the sole responsibility to ensure that any notice required to be filed under this Section 5 is filed within ten (10) Business Days of the occurrence of the Listed Event.

(b) The Dissemination Agent shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any Listed Event with respect to the Bonds, notify the Disclosure Representative of such Listed Event. The Dissemination Agent shall not be required to file a notice of the occurrence of such Listed Event with the MSRB unless and until it receives written instructions from the Disclosure Representative to do so. If the Dissemination Agent has been instructed by the Disclosure Representative on behalf of the Issuer to report the occurrence of a Listed Event under this subsection (b), the Dissemination Agent shall immediately file a notice of such occurrence with the MSRB. It is agreed and understood that the duty to make or cause to be made the disclosures herein is that of the Issuer and not that of [the Trustee or] the Dissemination Agent. It is agreed and understood that the Dissemination Agent has agreed to give the foregoing notice to the Issuer as an accommodation to assist it in monitoring the occurrence of such event, but is under no obligation to investigate whether any such event has occurred. As used above, “actual knowledge” means the actual fact or statement of knowing, without a duty to make any investigation with respect thereto. In no event shall the Dissemination Agent be liable in damages or in tort to the Issuer, the Participating Underwriter, the Trustee, or any Owner or beneficial owner of any interests in the Bonds as a result of its failure to give the foregoing notice or to give such notice in a timely fashion.

(c) If in response to a notice from the Dissemination Agent under subsection (b), the Issuer determines that the Listed Event under number 2, 7, 8 (as to bond calls only), 10, 13, 14 or 15 of subparagraph (a) above is not material under applicable federal securities laws, the Issuer shall promptly notify the Dissemination Agent and the Trustee (if the Dissemination Agent is not the Trustee) in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (b).

SECTION 6. Termination of Reporting Obligations. The obligations of the Issuer and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds, when the Issuer is no longer an obligated person with respect to the Bonds, or upon delivery by the Disclosure Representative to the Dissemination Agent of an opinion of nationally recognized bond counsel to the effect that continuing disclosure is no longer required. So long as any of the Bonds remain Outstanding, the Dissemination Agent may assume that the Issuer is an obligated person with respect to the Bonds until it receives written notice from the Disclosure Representative stating that the Issuer is no longer an obligated person with respect to the Bonds, and the Dissemination Agent may conclusively rely upon such written notice with no duty to make investigation or inquiry into any statements contained or matters referred to in such written notice. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event with respect to such series of Bonds under Section 5(a).

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent or successor Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent appointed hereunder shall be UMB Bank, N.A.

SECTION 8. Amendment; Waiver. Notwithstanding any other provisions of this Disclosure Agreement, the Issuer and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall not unreasonably withhold its consent to any amendment so requested by the Issuer), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the delivery of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or beneficial owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in the next related Annual Issuer Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be

followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(a), and (ii) the Annual Issuer Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. No amendment which adversely affects the Dissemination Agent may be made without its prior written consent (which consent will not be unreasonably withheld or delayed).

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Issuer Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Issuer Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Issuer Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Agreement, the Dissemination Agent may (and, at the request of any Participating Underwriter or the Owners of at least twenty-five percent (25%) aggregate principal amount of Outstanding Bonds, shall, upon being indemnified to its satisfaction), or any Owner or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to cause the Issuer, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture with respect to the Bonds, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer to comply with this Disclosure Agreement shall be an action for mandamus or specific performance. A default under this Disclosure Agreement by the Issuer shall not be deemed a default under any of the Disclosure Agreement of Developer by the Developer, the Disclosure Agreement of Yarrington by Yarrington or the Disclosure Agreement of 135 Residential by 135 Residential, and a default under any of the Disclosure Agreement of Developer by the Developer, the Disclosure Agreement of Yarrington by Yarrington or the Disclosure Agreement of 135 Residential by 135 Residential, shall not be deemed a default under this Disclosure Agreement by the Issuer.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent.

(a) The Dissemination Agent shall not have any duty with respect to the content of any disclosures made pursuant to the terms hereof. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Dissemination Agent. To the extent permitted by law, the Issuer agrees to hold harmless the Dissemination Agent, its officers, directors, employees and agents, but only with funds to be provided by the Developer or from Annual Installments collected from the property owners in the District, against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment in full of the

Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that the Dissemination Agent is an “obligated person” under the Rule. The Dissemination Agent is not acting in a fiduciary capacity in connection with the performance of its respective obligations hereunder. The fact that the Dissemination Agent may have a banking or other business relationship with the Issuer or any person with whom the Issuer contracts in connection with the transaction described in the Indenture, apart from the relationship created by the Indenture or this Disclosure Agreement, shall not be construed to mean that the Dissemination Agent has actual knowledge of any event described in Section 5 above, except as may be provided by written notice to the Dissemination Agent pursuant to this Disclosure Agreement.

The Dissemination Agent may, from time to time, consult with legal counsel of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and the Dissemination Agent shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel.

(b) UNDER NO CIRCUMSTANCES SHALL THE DISSEMINATION AGENT OR THE ISSUER BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER OR THE DISSEMINATION AGENT, RESPECTIVELY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS DISCLOSURE AGREEMENT, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE. THE DISSEMINATION AGENT IS UNDER NO OBLIGATION NOR IS IT REQUIRED TO BRING SUCH AN ACTION.

SECTION 12. Assessment Timeline. The basic expected timeline for the collection of Assessments and the anticipated procedures for pursuing the collection of delinquent Assessments is set forth in Exhibit C which is intended to illustrate the general procedures expected to be followed in enforcing the payment of delinquent Assessments.

SECTION 13. No Personal Liability. No covenant, stipulation, obligation or agreement of the Issuer or Dissemination Agent contained in this Disclosure Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future council members, officer, agent or employee of the Issuer or Dissemination Agent in other than that person's official capacity.

SECTION 14. Severability. In case any section or provision of this Disclosure Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reasons held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision thereof or any other covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder (except to the extent that such remainder or section or provision or other covenant, stipulation, obligation, agreement, act or action, or part thereof is wholly dependent for its operation on the provision determined to be invalid), which shall be construed and enforced as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity of any application thereof affect any legal and valid application thereof, and each such section, provision,

covenant, stipulation, obligation, agreement, act or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

SECTION 15. Sovereign Immunity. The Dissemination Agent agrees that nothing in this Disclosure Agreement shall constitute or be construed as a waiver of the Issuer's sovereign or governmental immunities regarding liability or suit.

SECTION 16. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriter, and the Owners and the beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity. Nothing in this Disclosure Agreement is intended or shall act to disclaim, waive or otherwise limit the duties of the Issuer under federal and state securities laws.

SECTION 17. Dissemination Agent Compensation. The fees and expenses incurred by the Dissemination Agent for its services rendered in accordance with this Disclosure Agreement constitute Annual Collection Costs and will be included in the Annual Installments as provided in the annual updates to the Service and Assessment Plan. [The Dissemination Agent has entered into a separate agreement with the Issuer, which agreement provides for the payment of the fees and expenses of the Dissemination Agent for its services rendered in accordance with this Disclosure Agreement.] [The Issuer shall pay or reimburse the Dissemination Agent, but only with funds to be provided from the Annual Collection Costs component of the Annual Installments collected from the property owners in the District, for the fees and expenses for its services rendered in accordance with this Disclosure Agreement.]

SECTION 18. Anti-Boycott Verification. The Dissemination Agent hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Disclosure Agreement is a contract for goods or services, will not boycott Israel during the term of this Disclosure Agreement. The foregoing verification is made solely to comply with Section 2271.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Dissemination Agent understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with the Dissemination Agent and exists to make a profit.

SECTION 19. Iran, Sudan and Foreign Terrorist Organizations. The Dissemination Agent represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal or State law and excludes the Dissemination Agent and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Dissemination Agent understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Dissemination Agent and exists to make a profit.

SECTION 20. Disclosure of Interested Parties. [Pursuant to Section 2252.908(c)(4), Texas Government Code, as amended, the Dissemination Agent hereby certifies it is a publicly traded business entity and is not required to file a Certificate of Interested Parties Form 1295 related to this Disclosure Agreement.] [Pursuant to Section 2252.908(c)(4), Texas Government Code, as amended, the Dissemination Agent hereby certifies that it has filed a Certificate of Interested Parties Form 1295 related to this Disclosure Agreement.]

SECTION 21. Governing Law. This Disclosure Agreement shall be governed by the laws of the State of Texas.

SECTION 22. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*[Signature pages follow]*

CITY OF SAN MARCOS, TEXAS  
(as Issuer)

By: \_\_\_\_\_  
City Manager

UMB BANK, N.A.  
(as Dissemination Agent)

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**NOTICE TO MSRB OF FAILURE TO FILE  
ANNUAL ISSUER REPORT**

Name of Issuer: City of San Marcos, Texas  
Name of Bond Issue: Special Assessment Revenue Bonds, Series 2020  
(Whisper Public Improvement District) (the “Bonds”)  
CUSIP Nos. [insert CUSIP NOs.]  
Date of Delivery: \_\_\_\_\_, 20\_\_

NOTICE IS HEREBY GIVEN that the City of San Marcos, Texas, has not provided [an Annual Issuer Report][annual audited financial statements] for fiscal year end \_\_\_\_\_ with respect to the Bonds as required by the Continuing Disclosure Agreement of the Issuer dated as of June 2, 2020, between the Issuer and UMB Bank, N.A., as “Dissemination Agent.” The Issuer anticipates that [the Annual Issuer Report][annual audited financial statements] will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

UMB Bank, N.A.,  
on behalf of the City of San Marcos, Texas  
(as Dissemination Agent)

By: \_\_\_\_\_

Title: \_\_\_\_\_

cc: City of San Marcos, Texas

**EXHIBIT B**

**CITY OF SAN MARCOS, TEXAS,  
SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020  
(WHISPER PUBLIC IMPROVEMENT DISTRICT)**

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**ANNUAL ISSUER REPORT\***

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Delivery Date: \_\_\_\_\_, 20\_\_

CUSIP NOSs: [insert CUSIP NOs.]

**BONDS OUTSTANDING**

CUSIP Number	Maturity Date	Interest Rate	Original Principal Amount	Outstanding Principal Amount	Outstanding Interest Amount

**INVESTMENTS**

Fund/ Account Name	Investment Description	Par Value	Book Value	Market Value

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\*Excluding Audited Financial Statements of the Issuer

**ASSETS AND LIABILITIES OF PLEDGED TRUST ESTATE**

Bonds (Principal Balance) \_\_\_\_\_  
Funds and Accounts [list] \_\_\_\_\_  
**TOTAL ASSETS** \_\_\_\_\_

**LIABILITIES**

Outstanding Bond Principal \_\_\_\_\_  
Outstanding Program Expenses (if any) \_\_\_\_\_  
**TOTAL LIABILITIES** \_\_\_\_\_

**EQUITY**

Assets Less Liabilities \_\_\_\_\_  
 Value to Debt Ratio \_\_\_\_\_

**Form of Accounting**    Cash    Accrual    Modified Accrual

**ITEMS REQUIRED BY SECTIONS 4(a)(ii) – (viii)**  
**[Insert a line item]**

**SECTION 4(a)(ix) COLLECTION AND DELINQUENCY HISTORY OF THE ASSESSMENTS WITHIN THE DISTRICT FOR THE PAST FIVE FISCAL YEARS, IN THE FOLLOWING FORMAT:**

**Collection and Delinquent History of Assessments**

Collected in Fiscal Year	Assessment Billed	Parcels Levied	Delinquent Amount as of 3/1	Delinquent Percentage as of 3/1	Delinquent Amount as of 9/1	Delinquent Percentage as of 9/1	Total Assessments Collected <sup>(1)</sup>
Ending 9/30							
2020	\$			—	—		\$

<sup>(1)</sup> Collected as of \_\_\_\_\_, 20\_\_. Includes \$\_\_\_\_\_ attributable to Prepayments.

**ITEMS REQUIRED BY SECTIONS 4(a)(x) – (xiii) OF THE CONTINUING DISCLOSURE AGREEMENT OF THE ISSUER RELATING TO THE CITY OF SAN MARCOS, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2020, (WHISPER PUBLIC IMPROVEMENT DISTRICT)**

**[Insert a line item for each applicable listing]**

**EXHIBIT C**

**BASIC EXPECTED TIMELINE FOR ASSESSMENT COLLECTIONS AND PURSUIT OF DELINQUENCIES<sup>1</sup>**

<u>Date</u>	<u>Delinquency Clock (Days)</u>	<u>Activity</u>
January 31		Annual Installments of Assessments are due.
February 1	1	Annual Installments of Assessments delinquent if not received.
February 15	15	<p>Issuer forwards payment to Trustee for all collections received as of February 15, along with detailed breakdown. Subsequent payments and relevant details will follow monthly thereafter.</p> <p>Issuer and/or Administrator should be aware of actual and specific delinquencies.</p> <p>Issuer and/or Administrator should be aware if Reserve Fund needs to be utilized for debt service payments on March 1. <b>If there is to be a shortfall, the Trustee and Dissemination Agent should be immediately notified in writing.</b></p> <p>Issuer and/or Administrator should also be aware if, based on collections, there will be a shortfall for September payment.</p> <p>Issuer and/or Administrator should determine if previously collected surplus funds, if any, plus actual collections will be fully adequate for debt service in March and September.</p> <p>At this point, if total delinquencies are under 5% and if there is adequate funding for March and September payments, no further action is anticipated for collection of Annual Installments of Assessments except that the Issuer or Administrator, working with the City Attorney or an appropriate designee, will begin process to cure deficiency. <b>For properties delinquent by more than one year or if the delinquency exceeds \$10,000 the matter will be referred for commencement of foreclosure.</b></p> <p><b>If there are over 5% delinquencies or if there is inadequate funding in the Pledged Revenue</b></p>

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<sup>1</sup> Illustrates anticipated dates and procedures for pursuing the collection of delinquent Annual Installments of Assessments, which dates and procedures are subject to adjustment by the Issuer.

March 15

43/44

**Fund for transfer to the Principal and Interest Account of such amounts as shall be required for the full March and September payments, the collection-foreclosure procedure will proceed against all delinquent properties.**

Trustee pays bond interest payments to bondholders.

Reserve Fund payment to Bond Fund may be required if Assessments are below approximately 50% collection rate.

Issuer, or the Trustee, on behalf of the Issuer, to notify Dissemination Agent of the occurrence of draw on the Reserve Fund and, following receipt of such notice, Dissemination Agent to notify MSRB of such draw on the Fund for debt service.

**Use of Reserve Fund for debt service payment should trigger commencement of foreclosure on delinquent properties.**

Issuer determines whether or not any Annual Installments of Assessments are delinquent and, if such delinquencies exist, the Issuer commences as soon as practicable appropriate and legally permissible actions to obtain such delinquent Annual Installments of Assessments.

March 20

48/49

**Issuer and/or Administrator to notify Dissemination Agent for disclosure to MSRB of all delinquencies.**

**If any property owner with ownership of property responsible for more than \$10,000 of the Annual Installments of Assessments is delinquent or if a total of delinquencies is over 5%, or if it is expected that Reserve Fund moneys will need to be utilized for either the March or September bond payments, the Disclosure Representative shall work with City Attorney's office, or the appropriate designee, to satisfy payment of all delinquent Annual Installments of Assessments.**

April 15

74/75

**Preliminary Foreclosure activity commences, and Issuer to notify Dissemination Agent of the commencement of preliminary foreclosure activity.**

		If Dissemination Agent has not received Foreclosure Schedule and Plan of Collections, Dissemination Agent to request same from the Issuer.
May 1	90/91	If the Issuer has not provided the Dissemination Agent with Foreclosure Schedule and Plan of Collections, and if instructed by the bondholders under Section 11.2 of the Indenture, Dissemination Agent requests that the Issuer commence foreclosure or provide plan for collection.
May 15	104/105	The designated lawyers or law firm will be preparing the formal foreclosure documents and will provide periodic updates to the Dissemination Agent for dissemination to those bondholders who have requested to be notified of collections progress. The goal for the foreclosure actions is a filing by no later than June 1 (day 121/122).
<b>June 1</b>	<b>121/122</b>	<b>Foreclosure action to be filed with the court.</b>
<b>June 15</b>	<b>135/137</b>	<b>Issuer notifies Trustee and Dissemination Agent of Foreclosure filing status in writing.</b> Dissemination Agent notifies bondholders.
July 1	151/152	If bondholders and Dissemination Agent have not been notified of a foreclosure action, Dissemination Agent will notify the Issuer that it is appropriate to file action.

A committee of not less than twenty-five percent (25%) of the Owners may request a meeting with the City Manager, Assistant City Manager or the Finance Director to discuss the Issuer's actions in pursuing the repayment of any delinquencies. This would also occur after day thirty (30) if it is apparent that a Reserve Fund draw is required. Further, if delinquencies exceed five percent (5%), Owners may also request a meeting with the Issuer at any time to discuss the Issuer's plan and progress on collection and foreclosure activity. If the Issuer is not diligently proceeding with the foreclosure process, the Owners may seek an action for mandamus or specific performance to direct the Issuer to pursue the collections of delinquent Annual Installments of Assessments.



## Legislation Text

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**File #:** Res. 2020-114R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-114R, adopting the Community Development Block Grant (CDBG) 2020 -2024 Citizen Participation Plan that sets the timing for hearings and comment periods for grants from the US Department of Housing and Urban Development (HUD); authorizing the City Manager, or his designee, to act as the Official Representative of the City in matters related to the (CDBG) Program; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** Planning and 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:** none

**City Council Strategic Initiative:** [Please select from the dropdown menu below]

Choose an item.

Choose an item.

Choose an item.

**Comprehensive Plan Element (s):** [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.

Core Services

Not Applicable

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

Choose an item.

**Background Information:**

The Citizen Participation Plan (CPP) contains requirements that must be followed for the creation or amendment of the five-year Consolidated Plan and grant-specific Action Plans. It sets forth the number of public hearings that must be held, the length of the comment period, and the timing of notifications to the public. It also ensures that the City provides accessibility to participate for people with disabilities or who have limited English language capabilities.

The CPP has been updated to include requirements related to the new Community Development Block Grant - Coronavirus Response (CDBG-CV) grant. This grant's process will be similar to the creation of the Annual CDBG Action Plan; however, due to the urgent nature of the situation, the comment period for planning actions related to the CDBG-CV grant is five days instead of the typical 30 days. This shorter comment time, and the ability to use virtual hearings due to social distancing recommendations, has been added to the CPP.

City Council held a public hearing May 19, 2020, regarding the proposed changes, and the draft CPP was posted for public comment from May 24-30, 2020. No comments were received.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends approval of Resolution 2020-XX, adopting the 2020-2024 Citizen Participation Plan; authorizing the City Manager, or his designee, to act as the Official Representative of the City in matters related to the Community Development Block Grant (CDBG) Program; and declaring an effective date.

**RESOLUTION NO. 2020- R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) 2020-2024 CITIZEN PARTICIPATION PLAN THAT SETS THE TIMING FOR HEARINGS AND COMMENT PERIODS IN RELATION TO GRANTS FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; AND DECLARING AN EFFECTIVE DATE.**

**RECITALS:**

- 1.** The City is required to approve a Citizen Participation Plan that sets forth requirements for citizen participation that must be followed for the creation or amendment of the five-year Community Development Block Grant Consolidated Plan and grant-specific Action Plans.
- 2.** A citizen comment period was provided regarding the 2020-2024 Citizen Participation Plan.
- 3.** The City Council has conducted a public hearing on the 2020-2024 Citizen Participation Plan and wishes to approve it.

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

**PART 1.** The attached 2020-2024 Citizen Participation Plan for Federal Grants from the Department of Housing and Urban Development is approved.

**PART 2.** The City Manager, or his designee, is designated as the official representative of the City authorized to act in all matters related to the CDBG Program, and all matters related to the Citizen Participation Plan.

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

**ADOPTED** on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

**2020-2024 CITIZEN PARTICIPATION PLAN**  
**FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**CITY OF SAN MARCOS, TEXAS**

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## 2020-2024 CITIZEN PARTICIPATION PLAN

### FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### CITY OF SAN MARCOS, TEXAS

#### I. GENERAL PROVISIONS

##### A. Applicability

Citizens shall be involved in the prioritizing and planning of Community Development Block Grant (CDBG) activities. The City of San Marcos (City) created this Citizen Participation Plan to meet the requirement that the City adopt and follow a Citizen Participation Plan (CPP) found in federal regulations 24 CFR 91.105 for CDBG-Entitlement, 81 FR 39687 for CDBG-DR Disaster Recovery and 84 FR 45838 for CDBG-MIT Mitigation, pending regulations pertaining to CDBG-CV Coronavirus, and any subsequent notices.

This CPP pertains to the creation and amendment of planning and implementation documents (“the documents”) related to any grant received from the U.S. Department of Housing and Urban Development (HUD) by the City of San Marcos, including the following: Five Year Consolidated Plan, CDBG-Entitlement Action Plan, CDBG-MIT Mitigation Action Plan, CDBG-DR Disaster Recovery Action Plan, CDBG-CV Coronavirus Action Plans or amendments to existing plans, Citizen Participation Plan, and the Consolidated Annual Performance Evaluation Report (CAPER).

##### B. Participation

The purpose of this CPP is to establish a means by which residents of the city of San Marcos, public agencies, and other interested parties can actively participate in the creation, implementation, and assessment of planning and implementation documents related to HUD grants.

The City encourages citizens, public agencies, and other interested parties to participate in the creation or amendment of any of the documents. This CPP is designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods. The City will take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

##### C. Displacement

The City of San Marcos will conduct all of its Community Development activities to minimize the displacement of persons. In the unlikely event that any person is displaced by Community Development activities, the City of San Marcos will provide reasonable relocation assistance as allowed by law.

##### D. Information Available

###### 1. Activities and Eligibility

In an effort to permit public examination and to enhance public accountability, the City of San Marcos will make the following information available to citizens, public agencies and other interested parties upon request:

## 2020-2024 CITIZEN PARTICIPATION PLAN

### FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### CITY OF SAN MARCOS, TEXAS

- a. The amount of funds expected to be available for proposed Community Development activities,
- b. The range of eligible activities that may be undertaken with such funds, including the estimated amount that will benefit persons of low and moderate income, and
- c. The geographic areas which meet Community Development eligibility criteria.

#### **2. Documents**

The latest versions of the documents, will be available to the public at the San Marcos Public Library and City Hall. Upon request, these materials will be made available in a form accessible to persons with disabilities. The City will provide a reasonable number of free copies to citizens and local groups that request a copy.

#### **3. Access to Records**

The City will provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the City's Consolidated Plan and the City's use of CDBG funds during the preceding five years.

#### **4. Technical Assistance to Applicants**

The City will provide technical assistance to groups representative of persons of low- and moderate-income that request such assistance in creating proposals for funding assistance under any of the programs covered by the Consolidated Plan.

#### **E. Complaints**

The City will provide a timely, substantive written response to every written citizen complaint related to the City's HUD Grants within 15 working days. Complaints may be submitted in writing to the attention of the Community Development Block Grant Division, Planning and Development Services Department, 630 East Hopkins Street, San Marcos TX 78666. Complaints may also be submitted by e-mail to [cdbg@sanmarcostx.gov](mailto:cdbg@sanmarcostx.gov). For more information about filing a complaint, contact the CDBG program office at 512-393-8230.

Complaints regarding fraud, waste, or abuse of government funds will be forwarded the Department of Housing and Urban Development Office of Inspector General (Phone: 1-800-347-3735 or by Email: [hotline@hudoig.gov](mailto:hotline@hudoig.gov)).

#### **F. Comment Periods**

As part of creation or amendment of the documents, the City will provide a citizen comment period of at least 30 days after the draft document is available for review.

Notice of the comment period will be provided in English and Spanish by publication in a local newspaper and on the City's website at least 14 days before the start of the

## 2020-2024 CITIZEN PARTICIPATION PLAN

### FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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comment period and shall include the names and addresses of the locations where copies can be found for review.

During the comment period, copies of proposed documents will be available for viewing at the San Marcos Public Library, City Hall, and the San Marcos Activity Center. The City will provide a reasonable number of free copies of the proposed document to citizens and groups that request it. Upon request, these materials will be made available in a form accessible to persons with disabilities.

The City will consider any comments or views of citizens received in writing, or orally at the public hearings, in preparing the document. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefor, shall be attached to the final document.

#### **G. Public Hearings**

1. Hearings shall be held at times and locations convenient to potential and actual beneficiaries.
2. Hearings shall be held with accommodation for persons with disabilities. Hearings will be held in facilities that are physically accessible to individuals with disabilities, or if that is not possible, the information will be provided through alternative methods that allow for the most integration possible. Individuals who require auxiliary aids and services for a 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 sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov).
3. In the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate, citizen comments written in Spanish will be translated, and a Spanish translator will be present.
4. The City may meet public hearing requirements with virtual public hearings if:
  - a. national/local health authorities recommend social distancing and limiting public gatherings for public health reasons; and
  - b. virtual hearings provide reasonable notification and access for citizens in accordance with the grantee's certifications, timely responses from local officials to all citizen questions and issues, and public access to all questions and responses.

#### **H. Adoption**

After the public hearing (when required) and discussion, City Council will adopt a Resolution approving the document. While the citizens of the City of San Marcos will provide input and direction for the creation of the documents, City Council will have the ultimate responsibility to determine how and where HUD Grant funds will be spent.

#### **I. Non-Substantial Amendments**

## 2020-2024 CITIZEN PARTICIPATION PLAN

### FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### CITY OF SAN MARCOS, TEXAS

##### 1. Definition

A Non-Substantial Amendment is hereby defined to be any amendment that is not included in the definitions of Substantial Amendments in this CPP.

##### 2. Public Comment

The City is not required to receive public comment for an Action Plan amendment that is not considered a Substantial Amendment.

##### 3. HUD Notification

The City will notify HUD of a Non-Substantial Amendment at least five business days before the amendment becomes effective.

#### II. CITIZEN PARTICIPATION PLAN

##### A. Comment Period

##### 1. Required

As part of creation or amendment of the Citizen Participation Plan, a comment period as described in Section I.F. above is required; however, the number of days is reduced to a minimum of 15.

##### 2. Public Notice

The notice announcing the comment period shall include a description of the purpose of the CPP as well as the other information described in Section I.F. above.

##### B. Timing

The Citizen Participation Plan will be evaluated every five years by City Council and will be revised as needed, then resubmitted to HUD as part of the Consolidated Plan.

#### III. CONSOLIDATED PLAN, ANNUAL ENTITLEMENT ACTION PLAN, AND CDBG-CV CORONAVIRUS ACTION PLAN CREATION AND SUBSTANTIAL AMENDMENT

##### A. Participation

The City encourages the participation of local and regional institutions, the Continuum of Care and other organizations (including businesses, developers, nonprofit organizations, philanthropic organizations, and community-based and faith-based organizations) in the process of creating and implementing the Consolidated Plan and Annual Entitlement Action Plan.

The City encourages, in conjunction with consultation with public housing agencies, the participation of residents of public and assisted housing developments, in the process of creating and implementing the Consolidated Plan and Annual Entitlement Action Plans

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**FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
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along with other low-income residents of targeted revitalization areas in which the developments are located.

**B. Comment Period**

**1. Required**

As part of Consolidated Plan or Annual Entitlement Action Plan creation or substantial amendment, a Comment Period as described in Section I.F. above is required unless the amendment relates to CDBG-CV Coronavirus funding, in which case the comment period will be no less than five days.

**2. Information Made Available**

Before the City adopts a Consolidated Plan, Annual Action Plan, or substantial amendment, as part of the comment period, the City will make available to the public the following information:

- a. The amount of assistance the City expects to receive (including grant funds and program income), and
- b. The range of activities that may be undertaken, and
- c. The estimated amount that will benefit persons of low- and moderate income.

**3. Summary Publication**

As part of the comment period, the City will publish a summary of the proposed Consolidated Plan or Annual Action Plan or substantial amendment in the local newspaper and on the City's website. The summary will include the following:

- a. Description of the contents and purpose, and
- b. A list of locations where copies of the entire proposed Consolidated Plan or Annual Action Plan may be examined.

**C. Public Hearing**

The City shall hold at least one public hearing before City Council during the creation or substantial amendment of the Consolidated Plan or Annual Action Plan, before the proposed Consolidated Plan or Annual Action Plan is published for comment, to obtain the views of citizens on housing and community development needs, including non-housing community development needs, and the selection of proposed activities. The hearing will be held in accordance with the public hearing requirements as described in Section I.G. above.

**D. Additional Step Required during Consolidated Plan Creation**

To encourage ample citizen participation in HUD Grant programs, during the creation of the Five-Year Consolidated Plan, workshops and meetings will be held with local social service agencies, local government agencies, Neighborhood Associations, health care and

## 2020-2024 CITIZEN PARTICIPATION PLAN

### FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### CITY OF SAN MARCOS, TEXAS

assisted housing providers and City staff to receive input and information regarding the City of San Marcos' needs for the Plan's five-year period. The purpose of these workshops and meetings is to gather information and data on the community and economic development needs of the community.

#### **E. Additional Steps Required during the CDBG Entitlement Annual Action Plan Creation**

Per 24 CFR Part 91, the City of San Marcos is required to create an Annual Action Plan that details the projects to be undertaken with CDBG funds for the upcoming year. The following steps must be taken during the creation of the annual Action Plan:

1. Staff will conduct at least one stakeholder meeting before the application deadline. The meeting will be held at a time and location convenient to potential and actual beneficiaries and with accommodations for persons with disabilities.
2. Funding applications will be made available to the public. Staff will review the applications received by the application deadline for compliance and eligibility. If deficiencies in the application are found, the applicant will be notified in writing and provided ten days in which to correct the deficiencies.
3. All eligible applications will be submitted to the City Council for their review and consideration in determining which projects will be awarded funding.
4. Following the public hearing, Council will award the allocation for the program year.

#### **F. Definition of Substantial Amendment**

The following constitute a substantial amendment to the Five-Year Consolidated Plan or the CDBG Entitlement Annual Action Plan:

1. The addition of a new project to the current Annual Action Plan, or
2. Any funding change to an existing project in excess of 10% of the annual allocation amount of the current program year, or
3. Changes in the use of grant funds from one eligible activity to another, or
4. Any change in the priorities of the Five-Year Consolidated Plan.

#### **G. Timing**

The Consolidated Plan is due to HUD in August every five years (2020, 2025, etc). The Annual Action Plan is due to HUD in August every year.

### **IV. CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER)**

#### **A. Comment Period**

##### **1. Required**

As part of annual CAPER process, a comment period as described in Section I.F. above is required; however, the number of days is reduced to a minimum of 15.

**2020-2024 CITIZEN PARTICIPATION PLAN**

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**2. Public Notice**

The notice announcing the comment period shall include a list of the contents and description of the purpose of the CAPER as well as the other information described in Section I.F. above.

**B. Public Hearing**

The City shall hold at least one public hearing before City Council after publication of the above public notice and conclusion of the comment period, to review program performance and to obtain citizen comments and input for the direction of the CDBG Entitlement programs. The hearing will be held in accordance with the public hearing requirements as described in Section I.G. above.

**C. Timing**

The CAPER is due to HUD annually in December, at most ninety days after the program year ends September 30.

**V. CDBG-DR DISASTER RECOVERY AND CDBG-MIT MITIGATION ACTION PLAN CREATION AND SUBSTANTIAL AMENDMENT**

**A. Comment Period**

**1. Required**

- a. CDBG-DR - As part of the creation or amendment of the CDBG-DR Disaster Recovery Action Plan, a comment period as described in Section I.F. above is required; however, the number of days is reduced to a minimum of 14.
- b. CDBG-MIT - As part of the creation or amendment of the CDBG-MIT Mitigation Action Plan, a comment period as described in Section I.F. above is required; however, the number of days is increased to a minimum of 45.

**2. Document Publication**

Before adopting a CDBG-DR or CDBG-MIT action plan or substantial amendment, the City will publish the proposed action plan or amendment in the following manner:

- a. The action plan or amendment must be prominently posted on the City's official website.
- b. The topic of disaster recovery or mitigation (as applicable) must be navigable by citizens from the City's homepage.

**B. Public Hearing**

**1. Required**

- a. CDBG-DR - The City shall hold at least one public hearing before City Council during the creation or substantial amendment of a CDBG-DR Action Plan,

## 2020-2024 CITIZEN PARTICIPATION PLAN

### FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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before the proposed Action Plan is published for comment, to obtain the views of citizens on disaster recovery needs and the selection of proposed activities. The hearing will be held in accordance with the public hearing requirements as described in Section I.G. above.

- b. CDBG-MIT - The City shall hold at least two public hearings in the HUD-identified Most Impacted and Distressed Areas during the creation or substantial amendment of the CDBG-MIT Mitigation Action Plan. At least one of these public hearings must occur prior to the City's publication of the action plan on its website. Each hearing must be convened at different locations within the Most Impacted and Distressed Area in locations that ensure geographic balance and maximum accessibility. The purpose of the hearings is to obtain citizen's views and to respond to proposals and questions. The hearings will be held in accordance with the public hearing requirements as described in Section I.G. above.

#### C. Information Available

##### 1. In General

During the active term and record retention period of the CDBG-MIT and CDBG-DR grants, the City will provide citizens and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee's use of grant funds. Information will be made available in a form accessible to persons with disabilities and those with limited English proficiency, upon request.

##### 2. Amendments (Substantial and Non-Substantial)

- a. As they occur, all amendments will be numbered sequentially and posted on the public website. Copies of amendments will be available upon request to: [cdbg@sanmarcostx.gov](mailto:cdbg@sanmarcostx.gov) or 512-393-8230.
- b. The most current version of the entire action plan for CDBG-DR and CDBG-MIT will be accessible for viewing as a single document for each. Each amendment will be highlighted as a change in the document.
- c. At the time of each amendment the following information will be provided separately:
  - i. The exact content that has been added, deleted, or changed;
  - ii. A revised budget allocation table that reflects all funds and illustrates where funds are moving from and to; and
  - iii. A description of how the amendment is consistent with the needs assessment document that was used to draft the grant's Action Plan.

## 2020-2024 CITIZEN PARTICIPATION PLAN

### FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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##### **D. Public Webpages**

The City shall maintain public websites (or a combined public website) which provide information on how CDBG-DR and CDBG-MIT funds are used, managed, and administered. The following items shall be available on the Disaster Recovery webpage (<http://www.smtxfloodrecovery.com/>) and the Mitigation webpage (<https://sanmarcostx.gov/mitigation>) and upon request from the City in accordance with open records procedures:

1. The action plan and all amendments
2. Performance reports
3. Citizen participation requirements
4. Information about activities, projects, and programs described action plans
5. All executed contracts that will be paid with grant funds
6. Procurement policies and procedures
7. The status of services or goods currently being procured

##### **E. Definition of Substantial Amendment**

1. CDBG-DR - The following constitute a substantial amendment to the CDBG-DR Disaster Recovery Action Plan:
  - a. A change in program benefit or eligibility criteria; or
  - b. The addition or deletion of an activity; or
  - c. The allocation or reallocation of more than \$1 million between activities.
2. CDBG-MIT - The following constitute a substantial amendment to the CDBG-MIT Mitigation Action Plan:
  - a. The addition of a CDBG-MIT Covered Project, or
  - b. A change in program benefit or eligibility criteria, or
  - c. The addition or deletion of an activity, or
  - d. A new allocation or reallocation of more than 25 percent of an activity in the Program Budget.

##### **F. CDBG-MIT Citizen Advisory Group**

The City will form one citizen advisory committee that will meet at least twice annually in order to provide increased transparency in the implementation of the CDBG-MIT funds, to solicit and respond to public comment and input regarding the City's mitigation activities, and to serve as an on-going public forum to continuously inform the City's CDBG-MIT projects and programs.

**2020-2024 CITIZEN PARTICIPATION PLAN**  
**FOR FEDERAL GRANTS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**CITY OF SAN MARCOS, TEXAS**

**G. Application Status and Transparency**

1. For applications received for CDBG-MIT or CDBG-DR assistance, the City will provide multiple methods of communication to provide applicants with timely information to determine the status of their application for assistance, including by phone, by mail, and in person.
2. When competitively awarding CDBG-MIT or CDBG-DR funds, the City will publish on the applicable website the following information:
  - a. Eligibility requirements for the funding, and
  - b. All criteria to be used by the City in the selection of applications for funding, including the relative importance of each criterion, and
  - c. The time frame for consideration of applications.

The City will maintain documentation to demonstrate that each funded and unfunded application was reviewed and acted upon by the City in accordance with the published eligibility requirements and funding criteria.

# CITY COUNCIL MEETING

Tuesday, June 2, 2020

## 2020 Citizen Participation Plan for HUD Federal Grants

Consider Approval of Resolution to Adopt

CDBG  
Disaster RecoveryCDBG  
EntitlementCDBG  
MitigationCDBG  
Coronavirus

Providing for citizen participation  
in creation and amendment of funding plans

- Public notice 14 days prior
- Materials available for review
- Information provided on website
- 30 day comment period, **EXCEPT for CDBG-CV, which is five days**
- A public meeting and a public hearing
- Accommodations for people with disabilities
- Translation to Spanish
- **Public hearings may be virtual when social distancing is recommended**
- Evaluated every five years

CDBG  
Disaster Recovery

CDBG  
Entitlement

CDBG  
Mitigation

CDBG  
Coronavirus

## Staff Recommendation

Staff recommends approval of Resolution 2020-114R, adopting the 2020-2024 Citizen Participation Plan; authorizing the City Manager, or his designee, to act as the Official Representative of the City in matters related to the Community Development Block Grant (CDBG) Program; and declaring an effective date.



## Legislation Text

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**File #:** Res. 2020-115R, **Version:** 1

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**AGENDA CAPTION:**

Consider approval of Resolution 2020-115R, amending the Community Development Block Grant (CDBG) Consolidated plan for Fiscal Years 2015-2019 to add the Community Development Block Grant-Coronavirus (CDBG-CV) Allocation of \$425,261.00 and to add Economic Development as a funding category; and declaring an effective date.

**Meeting date:** June 2, 2020

**Department:** Planning and 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:** On August 4, 2015, the City Council approved by Resolution 2015-95R the 2015-2019 Consolidated Plan as required by the US Department of Housing and Urban Development(HUD). At the time, the City had only Community Development Block Grant (CDBG) entitlement funding from HUD. On August 6, 2017, the City Council approved by Resolution 2017-97R an amendment to include the new CDBG-DR Disaster Recovery grant activities and funding.

**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.

Core Services

Not Applicable

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

Choose an item.

**Background Information:**

The City Council held a public hearing May 19, 2020, regarding the proposed changes, and the draft Consolidated Plan was posted for public comment from May 24-30, 2020. No comments were received.

One of the proposed amendments is to add the Community Development Block Grant-Coronavirus Response (CDBG-CV) allocation of \$425,261 to the 2015-2019 Consolidated Plan. This amendment provides the ability to consider program and project requests for CDBG-CV funds as an amendment to the 2019-2020 CDBG Entitlement Action Plan, enabling immediate use of the funds.

The other proposed amendment is to add Economic Development as a funding category so that projects and programs may be considered in this category in response to the COVID-19 pandemic. The categories of activities identified in the original 2015-2019 Consolidated Plan were:

- Affordable Housing
- Public Services
- Public Facilities/Infrastructure/Transportation
- Clearance Activities
- Program Administration

The proposed amendment would mean that programs and projects can be considered for CDBG-CV funding in any of the above categories as well as Economic Development, as long as the use is to prevent, prepare for, or respond to the impacts of the COVID-19 pandemic.

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

Click or tap here to enter text.

**Alternatives:**

Click or tap here to enter text.

**Recommendation:**

Staff recommends that City Council approve a Resolution adopting the 2015-2019 Consolidated Plan as amended, authorizing the City Manager to act as the Official Representative of the City in matters related to CDBG Programs and Action Plans, and declaring an effective date.

**RESOLUTION NO. 2020-        R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE COMMUNITY DEVELOPMENT BLOCK GRANT (“CDBG”) CONSOLIDATED PLAN FOR FISCAL YEARS 2015-2019 TO ADD THE COMMUNITY DEVELOPMENT BLOCK GRANT-CORONAVIRUS (CDBG-CV) ALLOCATION OF \$425,261.00 AND TO ADD ECONOMIC DEVELOPMENT AS A FUNDING CATEGORY; AND DECLARING AN EFFECTIVE DATE.**

**RECITALS:**

1. As part of the U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant Program (“CDBG”) the City approved a Consolidated Plan (the “Plan”) for the City for fiscal years 2015-2019.
2. The City wishes to amend the Plan to add the Community Development Block Grant-Coronavirus (CDBG-CV) allocation of \$425,261.00 and to add Economic Development as a funding category.
3. In compliance with HUD regulations, a citizen comment period was provided.
4. A public hearing was also held to gather citizen input for the proposed change.
5. The City Council, having held a public hearing on the Plan amendments wishes to approve the amendments to the Plan for fiscal years 2015-2019 to add the Community Development Block Grant-Coronavirus (CDBG-CV) allocation of \$425,261.00 and to add Economic Development as a funding category.

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

**PART 1.** The amendment to the Plan to add the Community Development Block Grant-Coronavirus (CDBG-CV) allocation of \$425,261.00 and to add Economic Development as a funding category is approved.

**PART 2.** This resolution shall be in full force and effect from and after its passage.

**ADOPTED** on June 2, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk



# CITY OF SAN MARCOS 2015 – 2019 CDBG CONSOLIDATED PLAN

Adopted 8/4/2015  
Amended 8/6/2017  
Amended 6/2/2020

## Contact Information:

Community Initiatives Division  
Planning & Development Services  
630 E Hopkins Street  
San Marcos TX 78666

512-393-8147

[www.sanmarcostx.gov/cdbg](http://www.sanmarcostx.gov/cdbg)

## **2020 Addition to the Executive Summary**

In response to the COVID-19 pandemic, HUD has allocated an initial \$425,261 in CDBG-CV Coronavirus funding which may be followed by additional allocations. This funding is to be used exclusively to prevent, prepare for, and respond to Coronavirus. In order to receive this allocation, the City is amending this previously adopted 2015-2019 Consolidated Plan to include the CDBG-CV funding.

Activities in response to the COVID-19 pandemic and business closures will likely be under the Priority Need categories of Public Services and Economic Development; therefore, the 2020 amendment to this 2015-2019 Consolidated Plan is to incorporate the new CDBG-CV funding and to add the Priority Need category Economic Development (since Public Services is already included).

The CDBG-CV grant is being added to the 2015-2019 Consolidated Plan to enable the use of funds immediately, as soon as the 2019 Action Plan has been amended to incorporate it as well.

The City is also in the process of applying to HUD to receive an allocation of funding through the CDBG-MIT Mitigation grant program; this program is included in the proposed 2020-2024 Consolidated Plan.

## **2017 Addition to the Executive Summary 2017**

The City of San Marcos Texas is filing the Amendment to the 2015-2019 Consolidated Plan and 2015 Action Plan (“Amendment”) due to major changes in its funding related to \$25,080,000 in CDBG-DR Disaster funding the city received through a HUD direct grant allocation due to 2015 flooding that impacted the community in a dramatic fashion.

The first event, now called the “Memorial Day Floods”, occurred overnight on May 23<sup>rd</sup> and early May 24<sup>th</sup>. May 2015 has been documented by the National Weather Service as the wettest month in Texas History, with well above-normal rainfall during the first two to three weeks of the month. A persistent area of low pressure over the western United States brought multiple rain events throughout the month of May that saturated soil throughout south-central Texas. By the time Memorial Day weekend arrived, much of the region was at least 2-4 inches (100- 300%) above normal. These wet antecedent conditions meant that any new rain, and especially heavy rain, would become rapid run-off directly into rivers, streams, and flash flood prone areas.

This “worst-case” scenario came to pass Memorial Day weekend. A thunderstorm cluster organized west of Hays County on Saturday afternoon and produced upwards of 12 inches of rain in less than 6 hours. The majority of this rain fell in the upper reaches of the Blanco River watershed at rates that exceeded 4 inches per hour as thunderstorms merged and regenerated for hours over southern Blanco and eastern Kendall Counties.

Most of the rain fell from Saturday afternoon into the overnight hours of early Sunday morning, leading to a rapid rise in the Blanco and San Marcos Rivers. The Blanco River at Wimberley rose from near 5 feet at 9 p.m. on May 23<sup>rd</sup> to near 41 feet by 1am on May 24<sup>th</sup>. The Blanco River rose 5 feet every 15 minutes just before midnight, equating to a 20 foot rise along the river within a one-hour time frame. Numerous high water rescues occurred throughout the late evening and morning hours along the banks of the

Blanco River and eventually the San Marcos River. The resulting flash flooding caused a tragic loss of life and extreme property damage.

Rescue and recovery efforts stalled on May 25<sup>th</sup> as another round of severe weather struck the neighboring counties of Williamson, Travis, Bastrop and Caldwell. Large areas of these counties experienced flash flooding and tornados.

Another catastrophic flood event took the area on October 30, 2015, referred to as the “All Saints Flood”, where water caused portions of Interstate 35 to be closed for a second time that year.

The impacts of this event were widespread, leading to the closing of Austin-Bergstrom International Airport, approximately 30 miles away. The National Weather Service reported “nearly 6 inches of rain...within an hour...flooding the ground floor of the Austin Air Traffic Control Tower and Terminal Radar Approach Control facility.” Elsewhere in Texas, some areas received more than 10 inches of rain with heavy rains washing away RVs, boats and trailers along the Guadalupe River in New Braunfels, Texas.

The powerful waters of the All Saints Flood struck Cypress Creek in Wimberley, the Blanco River, and the San Marcos River, causing additional property damage and delaying recovery efforts from the previous flood. However, the community’s heightened sense of awareness and improved reaction to alerts translated to no loss of life during the All Saints Flood.

Both events were considered historical flood events for Central Texas, but for different reasons. The Memorial Day Flood was noted for its extreme water velocities, analogous to the velocities of Niagara Falls. The All Saints Flood was noted for the extreme volume of precipitation in such a short period of time in various locations around Hays County quickly inundating the rivers, ditches and ephemeral streams.

#### Consolidated Plan Amendment

The City of San Marcos Planning and Development Services – Community Initiatives Division prepared the Consolidated Plan Amendment with assistance of an outside contractor and provides the oversight and administration of the CDBG Grant Program.

This amendment was compiled with three different citizen review opportunities. First, the amendment is based on the CDBG-DR Grant in the amount of \$25,080,000 and public hearings were held in 2016 for the Action Plan approving the Action Plan for the distribution of those funds. That Action Plan was approved on November 10, 2016. Secondly, a Substantial Amendment Action Plan public hearing process is running concurrently with this amendment to approve infrastructure projects identified as the priority. A public hearing was held on the infrastructure priorities on April 24, 2017. Finally, this amendment had a public hearing on May 10, 2017. After that it was posted for a 30 day public comment period. It is scheduled to go to the Council at their June 2, 2017 meeting where the public can again comment on the Amendment.

A Housing needs assessment was conducted highlighting the damage to the community in the CDBG-DR Action Plan. In addition, an Update to the Analysis of Impediments to Fair Housing Choice was completed contemporaneously with this Amendment that contributed to the Needs Assessment. San Marcos needs additional affordable housing. The impact on not having sufficient units causes rents to be unaffordable for more than 50% of the residents who exceed 30% of their annual salary in housing costs.

This Amendment adds an additional eight activities being funded by the CDBG-DR grant and in some cases additional city funds. These projects include:

Project Name	Project Description	CDBG-DR Funding
SF Owner Occupied Rehabilitation or Reconstruction	Maintain affordable housing after the floods Mitigate damage	\$5,000,000
SF 1-4 Unit Rental Rehabilitation, Reconstruction, or Buyout	Maintain affordable housing after the floods Mitigate damage	\$2,524,000
Midtown	Curb cuts and additional drainage benefiting up to 84 houses	\$850,000
Blanco Gardens	Adding a new central storm drain system to Conway & Barbara Drives connected to the existing storm drain system	\$5,000,000
Clarewood/Barbara	Mitigation and Drainage By adding a new storm drain system to Clarewood Dr.	\$2,500,000
Uhland Road	Converting the roadways to depressed curb-and-gutter sections with adequate grading, and adding a new storm sewer system with a new 48-inch outfall to the Blanco River	\$4,150,000
Planning	Provide resources to assist in damage mitigation and housing issues.	\$3,762,000
Administration		\$1,254,000

The City of San Marcos will need assistance to deliver the CDBG-DR funds and will use a portion of the funds to plan, administer and deliver projects to impacted residents and technical programs in infrastructure by utilizing third party consultants. The City of San Marcos must continue to conduct the regular business of the city. The staff will maintain close oversight on any additional support retained to assist with the delivery of the projects. The City will monitor ongoing activities and serve as support for residents with questions or concerns. The City’s financial services team will be involved in the monitoring process as well.

The City will ensure that environmental regulations are followed for any developed housing, including a modification to the Lead Based Paint Policy to ensure that the safety program is sufficiently included in the CDBG-DR Policy and Procedures written for the housing rehabilitation or reconstruction program.

## Executive Summary-2015

### ES-05. Executive Summary – 24 CFR 91.200(c), 91.220(b)

The City of San Marcos receives Community Development Block Grant (CDBG) program funds as an “entitlement” community from the U. S. Department of Housing and Urban Development.

The primary objectives of the CDBG program are achieved by providing: (a) decent housing; (b) a suitable living environment; and (c) expanded economic opportunities. Each funded project/program must meet one of the National Objectives:

- Benefit to low and moderate income persons;
- Aid in the prevention or elimination of slums or blight; and
- Meet a need having a particular urgency (referred to as urgent need)

HUD establishes the income limits for San Marcos each year based on the Area Median Income (AMI) for a family of four in the Austin-Round Rock-San Marcos Metropolitan Statistical Area. The limits are adjusted based on family size so that the more people who are in the family the more income is allowed. A person or family is considered to be “low/mod” if their annual gross income does not exceed 80% of the AMI, adjusted for family size. The 2015 Income Limits are included in the appendix area of this document.

As an entitlement community, the City of San Marcos receives an annual allocation of CDBG funds provided the City continues to meet all eligibility and program requirements. One of the requirements is the production of a 5-year planning document known as a “consolidated plan”.

The consolidated plan (The Plan) establishes the priorities and goals that will guide the use of CDBG funds for the next five years. It includes a Needs Assessment; a Housing Market Analysis; and a Strategic Plan. This consolidated plan covers Program Years (PY) 2015 through 2019. Each program year begins October 1<sup>st</sup> and ends the following September 30<sup>th</sup>.

The Community Initiatives Division of Planning and Development Services oversees the CDBG program for the City of San Marcos and are identified in this document as “the CDBG staff”.

#### **Public Outreach & Citizen Participation Process**

One of the critical elements in the creation of The Plan is public input. The City followed an extensive outreach campaign, in compliance with its Citizen’s Participation Plan, that included hosting small group meetings and two public workshops. All sessions had a Spanish-speaking translator available to assist persons with limited English proficiency. An invitation flyer, in both English and Spanish, was mailed to over 100 persons representing a broad-spectrum of the community. In addition, the City added bi-lingual slides to the two City cable TV channels, issued press releases, published a notice in the local newspaper, and sent the invitation by e-mail to a number of non-profit organizations, the public housing authority, the representatives of the Council of Neighborhood Association, and members of the San Marcos Area Board of Realtors.

The City also conducted two community surveys as an outreach tool to help determine the priority needs for the use of CDBG funds. One survey was in paper form that was produced in both English and Spanish. This survey was provided to all participants of the workshops and small group meetings and was provided

to local organizations that serve the low/mod population in San Marcos. A total of 161 forms were returned.

The second survey was in electronic format and asked participants to rank the priority of various eligible activities and included questions regarding Fair Housing issues. This survey allowed participants to offer written comments on CDBG funding priorities and housing issues. Ninety responses were received. A summary of all comments/survey results are included in the Appendix.

**Objects and Outcomes**

The City also conducted a stakeholder workshop and held a public hearing before the City Council to accept citizen comments. The survey results and other comments that were received played a vital role in determining the High Priority Needs that were used to determine goals and objectives and will guide the use of CDBG funds for the next five years. The High Priorities are:

- Affordable Housing
- Public Services
- Public Facilities/Infrastructure/Transportation
- Clearance Activities
- Program Administration

Sort Order	Goal Name	Start Year	End Year	Category	Needs Addressed	Funding	Goal Outcome Indicator
1	Owner-Occupied Housing Rehab	2015	2019	Affordable Housing	Affordable Housing	\$500,000	Homeowner Housing Rehabilitated – 35 households
2	Parks, Sidewalks, & Public Facilities	2015	2019	Non-Housing Community Development	Public Facilities, Infrastructure, & Transportation	\$815,600	Public Facility or Infrastructure Activities other than L/M Housing Benefit = 4500 persons
3	Public Services	2015	2019	Non-Housing Community Development	Public Services	\$375,000	Public Service activities other than L/M Housing Benefit – 2500 persons
4	Clearance of Spot Slum & Blight	2017	2019	Clearance Activities	Clearance Activities	\$105,000	Buildings Demolished – 15 buildings
5	Program Administration	2015	2019	Program Administration	Program Administration	\$500,000	N/A
6.	First Time Homebuyer Program	2016	2019	Affordable Housing	Affordable Housing	\$114,400	Direct Financial Assistance to Homebuyers = 16 households
7	Land Acquisition for Affordable Housing	2017	2019	Affordable Housing	Affordable Housing	90,000	Homeowner Housing Added – 3 household housing units

**2015 Action Plan**

Each year the City updates the Consolidated Plan through the creation of the annual “Action Plan” that describes the programs and activities that will be undertaken in the next program year using CDBG funds to address the priority needs and specific objectives identified in the Consolidated Plan.

The City expects to receive approximately \$500,000 per year in CDBG funding over the next five years. The 2015 funding for San Marcos has been established by HUD as \$517,077. The City accepted applications from City Departments and non-profit organizations for a 30-day period. All applications for public services funding were reviewed by the Human Services Advisory Board who made a funding recommendation that was provided to the City Council. Council reviewed all applications and comments that had been received and approved the following allocation for the 2015 Action Plan:

- Southside Community Center’s Housing Rehab Program \$100,000
- Improvements to Dunbar Park \$242,117
- Hays Caldwell Women Center’s Family Violence Shelter Program \$ 25,000
- CASA’s child advocacy program \$ 29,810
- United Way’s Read, Tutor, and Mentor Program \$ 10,000
- City Recreation Feel Scholarship Program \$ 12,750
- Program Administration \$ 97,400

The 2015 Action Plan is incorporated into the 2015-2019 Consolidated Plan.

**Evaluation of Past Performance**

The High Priority Needs for 2015-2019 carry forward the goals identified in the 2010-2014 Consolidated Plan. Program Year (PY) 2014 is underway at the time of the writing of this 5-year plan, so the overall achievements of the 2010-2015 Con Plan will not be available until the 2014 CAPER is prepared.

During the past five years the City’s housing focus covered sustaining the existing housing stock through the Southside Community Center’s Owner-Occupied Housing Rehab Program; creating affordable housing by purchasing lots for Habitat for Humanity; and providing direct homeownership assistance through its First Time Homebuyer Program. The actual to-date outcomes are:

- 35 houses owned by low/mod families were rehabilitated; of the 28 household assisted in PYs 2010-2013, 15 were elderly households and 9 included one or more persons with a disability; of the 28 households, 9 had an annual income at or below 30% of the Area Median Income.
- 5 low-income families purchased Habitat for Humanity homes on land acquired under the City’s PY 2007 funding and two additional lots were purchased with PY 2012 funding – the first house was completed in PY 2014.
- 23 First-time homebuyer program loans were issues in PYs 2010-2013.

Public facility and infrastructure programs included completion of the historic restoration of the Cephas House, creation of the Eddie Durham Park; major improvements were made to the Victory Garden Park, Conway Park, and the expansion of the San Marcos Senior Center will be completed in PY 2014. A community garden and an adult learning center at the Public Housing Chapultepec Homes facility were also completed. All of these projects serve an area that is primarily residential with an overall low/mod ration of 51% or greater.

All funded projects addressed one of the High Priorities identified as a community need in the City’s previous five-year plan. The City has consistently expended less than 20% of the annual allocation on program administration, which complies with the program regulations. The City’s annual program is operated in compliance with its Citizen’s Participation Plan.

### **Affirmatively Furthering Fair Housing**

During the previous 5- years, the City adopted a new *Analysis of Impediments to Fair Housing Choice (AI)* and subsequently adopted an *AI Action Plan* to address identified impediments. Progress in implementing the strategies in the *AI Action Plan* was reported in the 2013 CAPER. In addition, the City hosted community fair housing workshops the past two years with the presentation being made by the Austin Tenants Rights organization. The City annually publishes Fair Housing rights notices (in English & Spanish) and the Mayor issues a Fair Housing Month Proclamation.

### **Timeliness**

The CDBG regulations require that grant programs be carried out in a timely manner. A grantee is considered to be in compliance with this requirement if, 60 days prior to the end of the program year, there is no more than 1.5 times its annual grant remaining in the line of credit. By the end of June in program year 2014 the City had a timeliness ratio of .92; the 2013 rate on the test date was 1.04; in 2012 the ratio was 1.31.

### **Public Services**

In PY 2012 the City approved a Substantial Amendment to the 2010-2014 Consolidated Plan to add “Public Services” as a high priority need. The City has funded this project category in program years 2012, 2013, and 2014. The City has not exceeded the 15% funding cap for public service projects. HUD monitored two of the City’s 2013 public services and offered technical assistance in this area.

There was one Finding that the City awarded HUD Funds through the execution of a subrecipient agreement without the subrecipient being currently registered in the Federal System for Award Management (SAM). The Subrecipient has corrected this deficiency and now has an active registration.

HUD also noted a concern that there was no inter-departmental agreement with the City’s Recreation Division that would cover the Recreation Fee Scholarship program. HUD noted that the City should monitor this program and offered suggested changes in the program’s record keeping processes that will help ensure that all program requirements are being fulfilled. The City will implements the suggestions before the end of this program year.

### **Adoption of the Plan**

The Plan was made available for public review and comment for a 30-day period beginning July 10, 2015 and ending August 10, 2015. An ad was published on Thursday, July 9, 2015 providing notice of the 30-day comment period and detailing how to find copies of the draft plan in paper or electronic format.

The City Council took action to approve The Plan and authorize its submittal to HUD on August 4, 2015 with the condition that any comments received by the end of the comment period be incorporated into the document. The following comments were received: None

## The Process-2015

### 2020 Addition to PR-05 Lead & Responsible Agencies 24 CFR 91.200(b)

#### 1. Describe agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source

The City of San Marcos Planning and Development Services – Community Initiatives Division prepared the Consolidated Plan Amendment the oversight and administration of the CDBG Grant Program, including CDBG, CDBG-DR, CDBG-MIT, and CDBG-CV.

#### Consolidated Plan Public Contact Information

For more information contact:

Carol Griffith, Community Initiatives Administrator  
630 East Hopkins, San Marcos TX 78666  
e-mail: [cgriffith@sanmarcostx.gov](mailto:cgriffith@sanmarcostx.gov) or [cdbg@sanmarcostx.gov](mailto:cdbg@sanmarcostx.gov)  
Phone: 512-393-8147  
[www.sanmarcostx.gov/cdbg](http://www.sanmarcostx.gov/cdbg)

### 2017 Addition to PR-05 Lead & Responsible Agencies 24 CFR 91.200(b)

#### 1. Describe agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source

The City of San Marcos Planning and Development Services – Community Initiatives Division prepared the Consolidated Plan Amendment with assistance of an outside contractor and provides the oversight and administration of the CDBG Grant Program.

#### Narrative

The San Marcos City Council is the governing body for the City, with the City Manager or his designee authorized to act on behalf of the Council in matters pertaining to the CDBG-DR grant. The City's Planning and Development Services Department - Community Initiatives Division staff members are responsible for oversight and monitoring of the CDBR-DR funding. The City plans to contract with outside professionals to assist the city staff in reviewing several hundred applications for housing funds. The City will likely work with outside engineering and construction for the Infrastructure Program Amendment to the City of San Marcos Action Plan for Disaster Recovery Disaster Relief Appropriations Act of 2016 (Public Law 114-113, Approved Dec. 18th, 2015) (“DR Action Plan”). The city will continue to receive draws from the IDIS system and set up a parallel system for draws from the DRGR system. Draws and financial reporting are handled through the City's Finance Department.

#### Consolidated Plan Public Contact Information

For more information contact:  
Stacy Brown, Housing and Community Development Manager  
630 East Hopkins, San Marcos TX 78666  
e-mail: [SBrown@sanmarcostx.gov](mailto:SBrown@sanmarcostx.gov)

Phone: 512-805-2604  
www.sanmarcostx.gov/cdbg

## **PR-05 Lead & Responsible Agencies 24 CFR 91.200(b)**

### **1. Describe agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source**

The City of San Marcos Planning and Development Services – Community Initiatives Division prepared the Consolidated Plan and provides the oversight and administration of the CDBG Grant Program.

#### **Narrative**

The San Marcos City Council is the governing body for the City, with the City Manager or his designee authorized to act on behalf of the Council in matters pertaining to the CDBG grant.

The City's Planning and Development Services Department - Community Initiatives Division staff members are responsible for the day-to-day administration of the CDBG grant. Draws from the IDIS system and financial reporting are handled through the City's Finance Department.

#### **Consolidated Plan Public Contact Information**

For more information contact:  
Janis Hendrix, Community Initiatives Administrator  
630 East Hopkins, San Marcos TX 78666  
e-mail: [jhendrix@sanmarcostx.gov](mailto:jhendrix@sanmarcostx.gov)  
Phone: 512-393-8147  
[www.sanmarcostx.gov/cdbg](http://www.sanmarcostx.gov/cdbg)

## **PR-10 Consultation - 91.100, 91.200(b), 91.215(i)**

### **1. Introduction**

The 2015-19 Consolidated Plan was developed in accordance with the Citizens Participation Plan, which was reviewed by the San Marcos City Council on February 27, 2015. No changes were made to the plan other than updated contact information. A copy of the Citizen Participation Plan is included in the appendix area of this document. The City conducted an outreach campaign as part of the preparation of the plan that included large and small group meetings, two community surveys, and notification of the survey and events using social media, the City's website and cable t.v. channels, press releases, articles and the publication of notices in the San Marcos Daily Record, e-mails, and mailed notices. The City reached out to persons with limited English capacity by having bilingual translators available at public meetings, and having Spanish translations of the paper survey and invitation flyer.

**Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(i)).**

The City's CDBG staff works closely with the San Marcos Housing Authority (SMPHA) and local organizations that provide services to our residents by sharing information on grant opportunities, training opportunities, and community information. The City waives development and permit fees for SMPHA projects and the construction of affordable housing by Habitat for Humanity. The City provides over \$400,000 annually in city funds to local non-profit organizations. The City hosts an annual Fair Housing workshop to which local housing and non-profit organizations are invited. The City holds an open application process which allows housing and health service providers an equal opportunity to apply for funding. The City has participated in the construction / renovation of public facilities which serve the subject communities and have updated park facilities near public housing.

**Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness**

The City of San Marcos and Hays County are not covered under a Continuum of Care. However, the City does work closely with the local non-profit organizations that provide shelter to specific targeted homeless populations and provide specific assistance in various forms to the homeless.

**Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards and evaluate outcomes, and develop funding, policies and procedures for the administration of HMIS**

The City of San Marcos does not receive ESG funds.

**2. Describe Agencies, groups, organizations and others who participated in the process and describe the jurisdictions consultations with housing, social service agencies and other entities**

**Table 1 – Agencies, groups, organizations who participated**

<b>Agency/Group/Organization</b>	<b>Type</b>	<b>Section Addressed</b>	<b>How was the group consulted</b>
Southside Community Center	Services – Children, homeless, housing	Housing Need Assessment; Homelessness needs; Non-homeless Special Needs	Conversations with Executive Director and review of shelter use data.
Greater San Marcos Youth Council	Services – Children	Housing Needs Assessment, Homelessness needs- unaccompanied youth & strategy	Conversation with agency Executive Director and review of shelter statistics.
San Marcos Public Housing Authority	Housing, PHA, Services-Housing, Children. Elderly persons	Housing Needs Assessment, Public Housing Needs	Small group meetings with Fam. Self-Sufficiency participants; Springtown Villa Resident Council, paper surveys, talking to staff & Executive Director.
Hays Caldwell Women’s Center	Services-Children, Persons with Disabilities, Victims of Domestic Violence	Housing Needs Assessment, Homelessness strategy	Discussion with executive director, review of annual demographic statistics
Community Action of Central Texas	Services-Children, elderly, persons with HIV/AIDS, homeless, education	Homeless Needs – Families with children, Homelessness Strategy, Non-Homeless Special Needs, anti-poverty strategy	Small group outreach to Senior Center participants and staff, paper surveys, discussion with Executive Director.
Hays County	County Government	Homelessness needs – Veterans, Lead-based paint strategy	Talked to County Health Dept. and Veterans’ Services, invited commissioners to meetings / survey
Habitat for Humanity	Housing	Housing Need Assessment	Conversation with President; invitation to submit surveys, attend workshops
Greater San Marcos Partnership	Business Leaders	Economic Development	Consultation with staff, review of website, invitation to workshop / surveys.
Council of Neighborhood Associations (CONA)	Neighborhood Organization	Housing Need Assessment, non-homeless special needs	Small group presentation; paper surveys, invitation to attend workshops / complete electronic survey
Sunrise Village I & II	Housing, services for elderly, disabled	Housing Need Assessment, Non-homeless special needs	Small group presentation, paper surveys.
San Marcos Area Board of Realtors	Business Leaders	Market Analysis	Discussed housing trends with Executive Director & reviewed housing sale statistics. All members invited to workshops / surveys.
San Marcos Neighborhood Commission	Planning Organization	Housing Needs Analysis, Non-homeless special needs	Small group presentation before the board – paper surveys.
San Marcos Chamber of Commerce	Business & Civic Leaders	Housing Needs Analysis, Non-Homeless Special Needs, Economic Development, Anti-Poverty	E-mail invitation to all members to attend workshops and/or complete a survey.

CASA of Central Texas	Services – Children, Child Welfare Agency	Homelessness Needs – unaccompanied youth, non-homeless special needs	Discussion with staff members. Invitation to workshops and surveys.
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**Identify any Agency Types not consulted and provide rationale for not consulting.**

San Marcos and Hays County are not covered by a Continuum of Care organization. All other agency types were invited to participate in the outreach citizen participation portion of the Con Plan Development.

**Other local/regional/state/federal planning efforts considered when preparing the Plan**

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
City of San Marcos Parks, Recreation and Open Space Master Plan	Community Services – City of San Marcos	<ul style="list-style-type: none"> <li>Community Park Development</li> <li>Acquisition of Park Land / Green Spaces</li> <li>Trails</li> </ul>
Transportation Master Plan	Public Services – City of San Marcos	<ul style="list-style-type: none"> <li>Bike &amp; Pedestrian trails</li> <li>Neighborhood Sidewalks</li> <li>Connect residential areas to neighborhood services &amp; parks green spaces with bike / pedestrian trails</li> </ul>
Survey Results – Transportation Mater Plan Update	Public Services – City of San Marcos	<ul style="list-style-type: none"> <li>Trail &amp; Path Improvements</li> <li>Bike Lanes</li> </ul>
Vision San Marcos: A River Runs Through Us (Comprehensive Plan)	Planning & Development Services – City of San Marcos	<ul style="list-style-type: none"> <li>Diversified housing options</li> <li>Stable neighborhoods that are protected from blight</li> <li>Regional branch libraries (public facilities)</li> <li>Social services funding – including programs that help homeless and mental health</li> </ul>
2014-2015 Capital Improvements Program	Engineering & CIP – City of San Marcos	<ul style="list-style-type: none"> <li>Development Neighborhood Parks east of I-35</li> </ul>
Downtown Master Plan	Planning & Development Services – City of San Marcos	<ul style="list-style-type: none"> <li>East Guadalupe &amp; Victory Gardens Neighborhood Market &amp; Community Gathering Places</li> </ul>
Arts Master Plan	Community Services – City of San Marcos	<ul style="list-style-type: none"> <li>Community cultural &amp; performing arts center</li> <li>Neighborhood recreation centers</li> </ul>
Affordable / Workforce Housing Policy	City of San Marcos	<ul style="list-style-type: none"> <li>Affordable housing</li> <li>Homebuyer assistance</li> <li>Removal of regulatory barriers</li> <li>Housing Renovation</li> <li>Increase supply of sites available for new affordable housing</li> </ul>

**Table 2 – Other local / regional / federal planning efforts**

**Describe cooperation and coordination with other public entities, including the State and any adjacent units of general local government, in the implementation of the Consolidated Plan (91.215(I))**

The City hosted two community needs workshops and conducted two surveys. Invitations to attend and/or complete a survey were mailed to more than 100 persons/organizations. In addition to the consultations listed above, invitations were sent as follows:

<b>Areas of Interest</b>	<b>Person/Agency/Organization</b>
Housing Services & Assisted Housing	Emeritus Assisted Living; Horizon Bay Retirement Living; Live Oak Long-Term Living Program; Regent Care Center of San Marcos, AlzCare
Health Services	Scheib MH Center, Hays County Health Department, Texas Rehabilitation Commission, San Marcos Homespun, Hill Country MHMR Center, Central Texas Medical Center, San Marcos Treatment Center
Social and Fair Housing Services	San Marcos Homespun, Centro Cultural Hispano de San Marcos, Price Senior Center, Society of St. Vincent de Paul, Greater San Marcos Area Seniors Association, Combined Community Action, Hays County Salvation Army, Nosotros La Gente, United Way, Hays County Area Food Bank, Boys and Girls Club of S. Central Texas, San Marcos River Foundation
Homeless Strategy	Texas State University – Veteran’s Affairs, Workforce Solutions, San Marcos Manufacturers Association, San Marcos Small Business Development Center, San Marcos Convention & Visitors Bureau, San Marcos Chamber of Commerce, CAPCOG / Area Agency on Aging, Texas Rehabilitation Commission, San Marcos CISD, Texas State University, San Marcos Baptist Academy, Hill Country Christian School, and Gary Job Corp Center.
Lead Based Paint	Southside Community Center, Texas Department of Health, Hays County Health Department
Adjacent Units of Local Government State & County	Hays County Commissioners Conley and Ingalsbe, Hays County Veterans Service Officer, State Senators Zaffirini and Campbell, State Representatives Kleinschmidt, Keumpel, Isaac, Workforce Solutions Rural Capital Area, Capital Area Rural Transport System,

Small group presentations, including the distribution of paper surveys, were made to the San Marcos Council of Neighborhood Associations, San Marcos Neighborhood Commission, the Citizens Civic Academy, and the Public Housing Family Self-sufficiency program and Springtown Villas (seniors) Residence Council.

The City consulted with the Texas Department of Health & Human Services, the Hays County Health Department, and the Hays County Veteran’s Service office to obtain information about homeless veterans and lead poison testing.

## **2020 Addition to PR-15 Citizen Participation**

### **1. Summary of citizen participation process/Efforts made to broaden citizen participation. Summarize citizen participation process and how it impacted goal-setting.**

For Amendment Two, the Citizen Participation Plan was modified according to HUD guidance to allow for a comment period of at least five days for changes to this Action Plan. The 2015-2019 Consolidated Plan with proposed changes shown in redline was posted online for review and citizens were notified by a public notice more than 14 days prior to the comment period.

## **2017 Addition to PR-15 Citizen Participation**

### **1. Summary of citizen participation process/Efforts made to broaden citizen participation. Summarize citizen participation process and how it impacted goal-setting.**

The Amendment citizen's participation followed a three step process. The Amendment reflects changes limited to the CDBG-DR grant funding. As required under the funding notice and grant agreement, San Marcos held public meetings for community input to draft the DR Action Plan. The DR Action Plan was approved by HUD on November 6, 2016. The goal was to focus on housing as infrastructure needs were further developed. Currently, San Marcos is working on a substantial amendment to the DR Action Plan that will prioritize funding for projects within the impacted areas. This amendment is moving forward and is anticipated to be filed in June of 2017 for approval by HUD. The infrastructure program received input as the DR Action Plan was drafted. After conducting technical reviews, at a council workshop open to the public, the council authorized the staff to proceed with the identified project and amend the DR Action Plan.

Specifically, the DR Action Plan and substantial amendment public meetings held to date are listed below:

- April 12, 2016; 6pm; Hill Country Church, 1401 Davis Lane, San Marcos, TX 78666
- April 16, 2016; 6pm; Fire Station 5, 100 Carlson Circle, San Marcos, TX 78666
- July 6, 2016; 6pm; San Marcos Activity Center, 501 E Hopkins St, San Marcos, TX 78666
- April 24, 2017 6pm, San Marcos City Hall 630 E Hopkins Street, San Marcos, TX 78666

Public meetings included a slide presentation, a community unmet needs survey, and a question and answer session. All materials for these meetings were translated into Spanish, in accordance with City policy related to accessibility of information to non-English speaking families. All information related to these meetings can be found on the City's CDBG Disaster Recovery Website: <http://smtxfloodrecovery.com/>.

All three public meeting locations were fully accessible to persons with disabilities. The meeting announcements included information on accessibility requests for individuals requiring an interpreter, auxiliary aids, or other services and were posted on the City's established website. The City took both verbal and written comments from citizens during the meeting and provided an email address for a contact at the City should they have additional questions.

Of note, the public meetings and surveys resulted in a majority of citizens that indicated a preference for spending funding on much needed infrastructure projects in order to avoid repetitive loss in the future.

The City supported those requests and preferences by allocating a majority of the CDBG-DR funding for infrastructure projects that would reduce the number of homes that are located within the floodway or 100 year floodplain as well as reduce the likelihood of repetitive loss moving forward.

In addition to the public meetings with the DR Action Plan, On May 10, 2017, this Amendment was presented at a public meeting and open for comment. Further, it will be made available for public comment beginning on May 15, 2017 and left open for 30 days. It will be placed on a council agenda for approval for submission after the public comment period has closed.

#### *Creation of Community Stakeholder Task Force*

The City's disaster recovery team established a CDBG-DR Needs Task Force. The Task Force is made up of impacted citizens, community leaders, and representatives from human service organizations that served to assist the City in identifying and articulating to HUD the needs of our community. Task Force meetings were held on the following dates and times:

- June 22, 2016; 11:30am; San Marcos Activity Center, 501 E Hopkins St, San Marcos, TX 78666
- July 7, 2016; 11:30am; Fire Station 5, 100 Carlson Circle, San Marcos, TX 78666

Task Force meetings were comprised of a slide presentation which included a refresher of how funding could be spent, survey results from the public meetings, and an open discussion that included a question and answer session about technical requirements of the funding.

Finally, in March of 2017, the staff conducted surveys—including door-to-door surveys, of impacted persons to ensure that the DR Action Plan was consistent with remaining needs in the Community.

This Amendment reflects the community input at the public meetings, surveys and Stakeholder Task Force Meetings.

## **PR-15 Citizen Participation**

### **1. Summary of citizen participation process/Efforts made to broaden citizen participation**

#### **Summarize citizen participation process and how it impacted goal-setting**

The City of San Marcos conducted an extensive public outreach campaign to gain citizen input on establishing priority needs for the 2015-2019 Consolidated Plan. Outreach methods included:

- Two workshops targeted to the City as a whole (Spanish translator available)
- Six small group meetings targeting seniors, public housing residents, neighborhood associations, persons with disabilities and persons with limited English.
- A paper survey in both English and Spanish
- An electronic survey that also included fair housing questions

The public was notified of these comment opportunities using a variety of methods:

- An invitation flyer, in English and Spanish, was mailed to over 100 persons representing health agencies, Hays County officials, regional planning and housing organizations, State agencies, local civic and business leaders, State Congressional members, the banking/mortgage industry, education, and housing providers.
- E-mailed copies of the invitations were sent to all Council of Neighborhood Association members, local non-profit organizations and members of the San Marcos Area Board of Realtors.
- The City's CDBG webpage was updated and included links to the electronic survey and copies of the paper survey that could be printed.
- Slides in Spanish and English were shown on the City's two cable television channels
- "Tweets" were sent out which reached more than 700 individuals.
- Press releases were issued which were copied to all city employees, all area news media, and a number of individuals and organizations.
- The Chamber of Commerce included an article about the surveys in their weekly electronic newsletter.
- The San Marcos Daily Record (newspaper) wrote articles about the outreach campaign.
- The City published newspaper ads in English and Spanish advertising the workshops and the surveys.

The survey results were compiled and posted on the City's webpage and provided to Council and are included in the appendix area of this document.

The Consolidated Plan / 2015 Action Plan process continued in 2015 to include:

- A staff presentation to the City Council on January 6, 2015
- A staff presentation to the City Council on February 27, 2015; Council gave direction to (a) make no changes in the Citizens Participation Plan; (b) refer applications for public services funding to

the Human Services Advisory Board for review and recommendation; and (c) to carry forward all of the priority needs from the 2010-2014 Consolidated Plan to the 2015-2019 Consolidated Plan

- 2015 Action Plan application period was open from March 9 thru April 13, 2015
- The Human Services Advisory Board reviewed applications for Public Service funding and made a funding recommendation to the City Council
- An applicant workshop was held on April 1, 2015
- A stakeholder workshop was held April 9, 2015
- A notice was published on April 2, 2015 advertising the public hearing
- Council conducted a public hearing for comments on the 2015 Action Plan and the 2015-2019 Consolidated Plan
- Council reviewed the applications that were submitted and adopted a Resolution awarding the 2015 Action Plan allocation on May 19, 2015
- Notice of the Plan's availability for review was published in the San Marcos Daily Record on July 9, 2015.
- The Consolidated Plan, including the 2015 Action Plan, was made available for citizen comment for a 30 day period beginning July 10 through August 10, 2015.
- Council adopted a Resolution on August 3, 2015 approving the 2015-19 Consolidated Plan and authorizing its submittal to HUD.

The input received from all sources was considered by the City Council as they set priority needs and during their review of 2015 funding applications. The responses were also taken into account during the setting of goals in the 5-year plan.

# Needs Assessment

## NA-05 Overview

### Needs Assessment Overview

#### Summary:

Information for this summary was derived using statistics from the U. S. Census Bureau's American Community Survey (ACS) as well as from the data provided by HUD on the following charts.

San Marcos has a very young demographic with 42.4% of the population falling in the range of 18 to 24, and 24.3% within the 25 to 44 age bracket (ACS 2010-2012) – not surprising since SM is home to Texas State University with a student enrollment of over 35,000. Only 6.7% of the population in San Marcos is over 65. (2010 census).

In San Marcos 71.4% of all housing units are rented, with only 28.6% owner occupied (ACS 2009-2013). This upside-down ratio probably reflects the high percentage of young adults who are less likely to be ready/able to purchase a home.

From Charts:

Based on 16,265 total households from all income brackets including both renter and owner occupied units:

- 1% live in substandard housing without complete plumbing and/or complete kitchens.
- 1% are considered to be “severely overcrowded” with more than 1.51 persons per room.
- 2% are considered to be “overcrowded” with 1.01 to 1.5 persons per room.
- 30% have a cost burden of over 50% (28% renters)
- 19% have a cost burden over 30%, but less than 50% (16% are renters)

Of all housing problems, only a high cost burden on housing expenses is a serious problem for most San Marcos residents, especially for those who rent.

## 2017 Addition to NA-10 Housing Needs Assessment - 24 CFR 91.205 (a,b,c)

### Summary of Housing Needs

#### *Housing Needs Prior to the Flooding*

##### a) Baseline Information and Data

The City, home to Texas State University (enrollment approximately 39,979) and a frequent tourist destination, has a very young demographic. Data from the American Community Survey (ACS) Data 2010 – 2014 shows that over 42.4% of the population falls in the 18-24 age cohort, with another 24.3% of the population in the 25-44 bracket, while only 6.7% are older than age 65. This young population, and the transient nature of students, lends the housing environment in the City to heavily lean towards rental housing rather than home ownership.

As of 2014, there were 18,782 occupied housing units within the City, with 72.8% of all housing units being rentals and only 27.2% of the housing units being owner occupied (ACS Data 2010 – 2014). Based on the total occupied households from all income brackets including both renter and owner occupied units: Less than 1% live in substandard housing without complete plumbing and/or complete kitchens.

- 1.3% are considered to be “severely overcrowded” with more than 1.51 persons per room.
- 2.3% are considered to be “overcrowded” with 1.01 to 1.5 persons per room.
- 36.6% of homeowners (1,121 households) expend over 30% of their monthly income on housing costs.
- 75.1% of renters (9,660 households) expend over 30% of their monthly income on rent.

HUD considers any family that expends more than 30% of their monthly income on housing to have a housing cost burden. This is just one of the serious housing problems that HUD looks for in a community. Others include the presence of a disability in the household, substandard or unsafe housing and overcrowding. Of all of these, the primary statistically significant serious problem in the City is the existence of a high cost burden on families, especially for those who rent. Additionally, 33% of housing units are more than 35 years old - this imparts maintenance costs that can be prohibitive for low income households.

There are 5,630 non-family households in The City that have a cost burden that exceeds 30% of their monthly income and 3,925 non-family households with a cost burden exceeding 50% of their monthly income. The majority of these are renters. By contrast, there are only 30 non-family households who live in overcrowded (more than 1/per room) conditions. The 2010-14 ACS indicates that 32.8% of the population is individuals living alone and 13.5% of the population has less than a high school diploma. Medium Gross Rent is \$919/month (ACS 2010-14) with median non-family income \$1,788/month (\$21,456/year). The City of San Marcos has the lowest per capita income along the IH35 corridor between Austin and San Antonio.

##### b) Race and housing choices

The residents of the City, as indicated in the most recent census data, are primarily White or Hispanic in origin; the two races combined make up over 83% of the citizenry. By contrast, the minority population (not including the Hispanic or Latino origin) of the City is just 16.2% as of the 2014 ACS data, however, as

in many jurisdictions, this cohort of population is severely cost burdened and impacted by low wages and high housing costs. Over 30% of the minority families (African American, Asian, or “Some Other” race as identified in the Census) were at or below the Poverty Level in 2014, and 20.4% of the Hispanic families were as well. As the majority of these families will be renters (given assumptions on income and housing units that can be afforded), any housing assistance program that supports recovery efforts in the most impacted areas identified below will be serving this cohort of the LMI population that HUD requires. These families will also be those most impacted by the housing cost burden listed above, and could therefore be seen as having 2 (or more) housing problems as identified by HUD. The City will make sure that these populations are provided every opportunity to make use of any appropriate CDBG-DR funds from this allocation.

c) Disabled households or victims of domestic violence

The Hays-Caldwell Women’s Center, a San Marcos non-profit organization that provides services, including an emergency shelter, for victims of family violence estimates in 2014 approximately 250 adult clients asked for housing assistance. Of those adults, 135 were families with children; 3 were disabled; and 4 were male adults. Following the floods in 2015, shelter assistance requests have gone up strikingly, over 200% in some instances. For most shelter residents, the primary barrier to securing housing was the lack of affordable housing in our area.

d) Increased risk of homelessness

Approximately 8% of all households with an annual income at or below 50% AMI have children six years old or younger. If we assume that the percent of households with children having a housing cost burden is similar to the population as a whole, then it can be estimated that 284 rental and 20 owner-occupied extremely low income households have a housing cost burden of 50% or greater. A cost burden this high puts the families at imminent risk of becoming homeless. There is a lack of homeless prevention dollars in the City. The City does not receive rapid re-housing assistance or Emergency Solutions Grant funds. The City does not have resources to provide this form of assistance.

The high cost of rental housing in the City creates instability and an increased risk of homelessness as a by-product. Very low income households living in aging housing have limited resources for maintaining and repairing their homes; if no repairs are made, serious deficiencies can leave the home uninhabitable and create a risk of homelessness or overcrowding. The low or extremely low income households with at least one person 75 years or older are also in danger of becoming homeless or having to double-up with families or friends as options for affordable living decrease and assisted living is not affordable.

*Housing Needs after the Storm*

Owner Occupied Housing Needs

FEMA data shows that 1,103 of the 5,102 owner occupied units (city-wide) applied for assistance immediately after the floods. Of these homes, 1,013 units (from all sources: 925 FEMA IA, 88 SBA,) have already received either Individual Assistance or payouts from other sources including insurance or SBA loans. This leaves 90 of the FEMA applicants with no current source of rehabilitation funding, and the City may need to provide assistance to these families under this CDBG-DR allocation. Based upon the SBA data, the current cost to repair homes to a pre-flood state is approximately \$80,176. Once their level of damage has been accurately determined, the remaining need for these affected homeowners may be as high as \$7,215,840.

## Rental Property Needs

According to initial City estimates, out of 13,680 rental units citywide, the flood damaged over 675 rental housing units within our most impacted area. Citywide, these rental units, as mentioned previously, typically house the LMI population of the City, as well as a large portion of the student population of Texas State University. The rental housing market can define its unmet needs as rental programs to repair/replace damaged rental units, create additional rental programs to house displaced households (homeowners and renters), and rental housing to assist special needs populations who have difficulty finding affordable housing in the restricted and expensive rental housing market.

Of the 675 units that were damaged, insurance payouts have already been provided to 94 units. While residents within the remaining units may have received FEMA IA, the assistance they have received would not have covered the property damage as they are not the owners of record. Therefore, the City estimates that there are still 581 rental units within this area, and possibly more across the City, that may need Disaster Recovery assistance. Units within the 100-year flood plain that received significant damage (meeting the FEMA classifications of Major or Severe), may be reconstructed, but will at minimum have to be elevated to two feet above the Base Flood Elevation. Those adjacent to the flood plain will not require elevation and can be rehabilitated or reconstructed depending on the level of damage.

The City of San Marcos has a high level of low income citizens. The Median Rent according to the 2011-2015 ACS data for San Marcos is \$939. The following table shows the impact that this high than state average rent has on the affordability of the community:

Income level	Total Units			Owner Occupied Units			Renter Occupied Units		
	< 20% of income	20%-29% of income	≥30% of income	< 20% of income	20%-29% of income	≥30% of income	< 20% of income	20%-29% of income	≥30% of income
Less than \$20,000	0.4%	0.9%	28.9%	0.5%	2.8%	11.6%	0.4%	0.1%	35.4%
\$20,000 to \$34,999	0.9%	3.0%	18.8%	2.4%	4.2%	7.8%	0.3%	2.6%	23.0%
\$35,000 to \$49,999	1.7%	5.3%	7.3%	4.1%	4.4%	7.5%	0.9%	5.7%	7.3%
\$50,000 to \$74,999	6.8%	4.4%	2.5%	12.7%	5.2%	4.5%	4.6%	4.0%	1.7%
\$75,000 or more	11.5%	2.8%	0.1%	26.7%	6.0%	0.5%	6.0%	1.2%	0.0%

The monthly housing cost in real dollars according to the 2011-2015 ACS data is:

Monthly Housing Costs	Total Occupied Units %	Owner Occupied Units %	Renter occupied Units %
Less than \$300	2.6%	5.8%	1.4%
\$300 to \$499	6.3%	16.0%	2.6%
\$500 to \$799	24.0%	22.3%	24.7%
\$800 to \$999	24.1%	8.5%	30.1%
\$1,000 to \$1,499	27.4%	27.1%	27.5%
\$1,500 to \$1,999	10.6%	15.3%	8.8%
\$2,000 to \$2,499	2.6%	2.4%	2.7%
\$2,500 to \$2,999	0.7%	1.6%	0.4%

## NA-10 Housing Needs Assessment - 24 CFR 91.205 (a,b,c) - 2015

### Summary of Housing Needs

The Housing Needs Assessment is based on data provided by HUD through the Comprehensive Housing Affordability Strategy (CHAS) data, with supplemental data used when available. Although the CHAS is dated, it provides a glimpse of the housing needs within the City.

Demographics	Base Year: 2000	Most Recent Year: 2011	% Change
Population	34,733	44,486	28%
Households	12,666	16,269	28%
Median Income	\$25,809.00	\$27,597.00	7%

Table 3 - Housing Needs Assessment Demographics

Data Source: 2000 Census (Base Year), 2007-2011 ACS (Most Recent Year)

### Number of Households Table

	0-30% HAMFI	>30-50% HAMFI	>50-80% HAMFI	>80-100% HAMFI	>100% HAMFI
Total Households *	5,215	3,200	3,185	1,720	2,945
Small Family Households *	790	805	1,005	635	1,440
Large Family Households *	165	40	250	160	165
Household contains at least one person 62-74 years of age	95	395	295	225	475
Household contains at least one person age 75 or older	415	205	165	55	210
Households with one or more children 6 years old or younger *	430	265	520	210	259
* the highest income category for these family types is >80% HAMFI					

Table 4 - Total Households Table

Data Source: 2007-2011 CHAS

## Housing Needs Summary Tables

### 1. Housing Problems (Households with one of the listed needs)

	Renter					Owner				
	0-30% AMI	>30-50% AMI	>50-80% AMI	>80-100% AMI	Total	0-30% AMI	>30-50% AMI	>50-80% AMI	>80-100% AMI	Total
<b>NUMBER OF HOUSEHOLDS</b>										
Substandard Housing - Lacking complete plumbing or kitchen facilities	55	0	15	0	70	0	20	0	0	20
Severely Overcrowded - With >1.51 people per room (and complete kitchen and plumbing)	80	0	40	10	130	15	0	0	0	15
Overcrowded - With 1.01-1.5 people per room (and none of the above problems)	95	35	25	40	195	0	10	60	50	120
Housing cost burden greater than 50% of income (and none of the above problems)	3,545	930	30	0	4,505	255	60	80	60	455
Housing cost burden greater than 30% of income (and none of the above problems)	170	1,460	865	60	2,555	120	110	220	155	605
Zero/negative Income (and none of the above problems)	520	0	0	0	520	4	0	0	0	4

Table 5 – Housing Problems Table

Data 2007-2011 CHAS  
Source:

2. Housing Problems 2 (Households with one or more Severe Housing Problems: Lacks kitchen or complete plumbing, severe overcrowding, severe cost burden)

	Renter					Owner				
	0-30% AMI	>30-50% AMI	>50-80% AMI	>80-100% AMI	Total	0-30% AMI	>30-50% AMI	>50-80% AMI	>80-100% AMI	Total
<b>NUMBER OF HOUSEHOLDS</b>										
Having 1 or more of four housing problems	3,770	965	110	50	4,895	270	90	140	110	610
Having none of four housing problems	435	1,680	2,345	1,005	5,465	215	465	590	555	1,825
Household has negative income, but none of the other housing problems	520	0	0	0	520	4	0	0	0	4

Table 6 – Housing Problems 2

Data 2007-2011 CHAS

Source:

3. Cost Burden > 30%

	Renter				Owner			
	0-30% AMI	>30-50% AMI	>50-80% AMI	Total	0-30% AMI	>30-50% AMI	>50-80% AMI	Total
<b>NUMBER OF HOUSEHOLDS</b>								
Small Related	595	550	235	1,380	65	125	140	330
Large Related	110	0	0	110	15	20	45	80
Elderly	155	185	65	405	160	0	50	210
Other	3,075	1,670	610	5,355	150	60	65	275
Total need by income	3,935	2,405	910	7,250	390	205	300	895

Table 7 – Cost Burden > 30%

Data 2007-2011 CHAS

Source:

4. Cost Burden > 50%

	Renter				Owner			
	0-30% AMI	>30-50% AMI	>50-80% AMI	Total	0-30% AMI	>30-50% AMI	>50-80% AMI	Total
<b>NUMBER OF HOUSEHOLDS</b>								
Small Related	520	185	0	705	40	40	30	110
Large Related	95	0	0	95	0	10	0	10
Elderly	80	80	15	175	65	0	0	65
Other	3,030	665	20	3,715	150	10	50	210
Total need by income	3,725	930	35	4,690	255	60	80	395

Table 8 – Cost Burden > 50%

Data 2007-2011 CHAS

Source:

## 5. Crowding (More than one person per room)

	Renter					Owner				
	0-30% AMI	>30-50% AMI	>50-80% AMI	>80-100% AMI	Total	0-30% AMI	>30-50% AMI	>50-80% AMI	>80-100% AMI	Total
<b>NUMBER OF HOUSEHOLDS</b>										
Single family households	175	15	50	15	255	15	0	15	10	40
Multiple, unrelated family households	0	0	15	25	40	0	10	45	40	95
Other, non-family households	0	20	0	10	30	0	0	0	0	0
Total need by income	175	35	65	50	325	15	10	60	50	135

Table 9 – Crowding Information – 1/2

Data 2007-2011 CHAS

Source:

	Renter				Owner			
	0-30% AMI	>30-50% AMI	>50-80% AMI	Total	0-30% AMI	>30-50% AMI	>50-80% AMI	Total
Households with Children Present	0	0	0	0	0	0	0	0

Table 10 – Crowding Information – 2/2

Data Source

Comments:

### Describe the number and type of single person households in need of housing assistance.

As the charts above show, there are 5,630 non-related households in San Marcos that have a cost burden that exceeds 30% and 3,925 non-related households with a cost burden exceeding 50%. The majority of these are renters. By contrast, there are only 30 non-family households who live in overcrowded (more than 1/per room) conditions. The 2010-12 ACS indicates that 32.8% of the population are individuals living alone and 14.3% of the population has less than a high school diploma. Medium Gross Rent is \$869/mo. (ACS 2008-12) with median non-family income \$1,670/mo.

### Estimate the number and type of families in need of housing assistance who are disabled or victims of domestic violence, dating violence, sexual assault and stalking.

The Hays-Caldwell Women’s Center, a San Marcos non-profit organization that provides services, including an emergency shelter, for victims of family violence estimates in 2014 approximately 250 adult clients asked for housing assistance. Of those adults, 135 were families with children; 3 were disabled; and 4 were male adults. The primary barrier to securing housing was the lack of affordable housing in our area.

The number of persons with a disability that need housing assistance is difficult to ascertain. However, a review of the 2008-2012 CHAS--Table 6 data shows the estimated number of households where at least one person has a self-care or independent living limitation. The following chart shows the households in both rental and owner-occupied housing. Those with at least one housing problem are shown and sorted by annual household income:

Households where at least one member has a self-care or independent living limitation	Renter Occupied	Renter % of Income Category	Owner Occupied	Owner % of Income Categories	Total
All Households	550	50%	555	50%	1,105
Households w/income at or below 30% AMI	140	78%	40	22%	180
Households w/income above 30% but less than 50% AMI	180	97%	5	3%	185
Households w/income above 50% but less than 80% AMI	20	20%	80	80%	100
Households w/income above 80% AMI	55	20%	220	80%	275

(Source: [www.huduser.org/portal/datasets/cp/chas/data\\_download\\_chas.html](http://www.huduser.org/portal/datasets/cp/chas/data_download_chas.html))

It can be assumed that many of the households with self-care/independent living limitations need some form of housing assistance, especially renter households with an annual income less than 50% AMI. Housing cost burden and accessibility improvements. Among the non-institutionalized population as enumerated in the 2010-12 ACS, 11% reported a disability, including 5% under 18; 9% aged 18 to 64; and 45% over 65.

#### What are the most common housing problems?

- High rent with low incomes (housing cost burden)
- 45% of housing units are more than 35 years old - maintenance costs can be prohibitive for low income households.

#### Are any populations/household types more affected than others by these problems?

By using the total number of housing units (16,265) compared to specific populations as shown on the above charts, we find:

- 81% of "Other" household renters have a cost burden that exceeds 30%
- 57% of "Other" household renters have a cost burden that exceeds 50%

#### Describe the characteristics and needs of Low-income individuals and families with children (especially extremely low-income) who are currently housed but are at imminent risk of either residing in shelters or becoming unsheltered 91.205(c)/91.305(c)). Also discuss the needs of formerly homeless families and individuals who are receiving rapid re-housing assistance and are nearing the termination of that assistance

Approximately 8% of all households with an annual income at or below 50% AMI have children six years old or younger. If we assume that the percent of households with children having a housing cost burden is similar to the population as a whole, then it can be estimated that 284 rental and 20 owner-occupied extremely low income households have a housing cost burden of 50% or greater. A cost burden this high puts the families at imminent risk of becoming homeless.

There is a lack of homeless prevention dollars in San Marcos. The City does not receive rapid re-housing assistance or Emergency Solutions Grant funds. The City does not have resources to provide this form of assistance.

**If a jurisdiction provides estimates of the at-risk population(s), it should also include a description of the operational definition of the at-risk group and the methodology used to generate the estimates:**

At risk populations are those with a housing cost burden of 50% or more in San Marcos.

**Specify particular housing characteristics that have been linked with instability and an increased risk of homelessness**

The high cost of rental housing in San Marcos creates instability and an increased risk of homelessness as a by-product. Very low income homeowners living in aging housing have limited resources for maintaining and repairing their homes; if no repairs are made serious deficiencies can leave the home uninhabitable creating a risk of homelessness or overcrowding. The low or extremely low income households with at least one person 75 years or older are also in danger of becoming homeless or having to double-up with families or friends as options for affordable living decrease and assisted living is not affordable.

### **Discussion**

The housing needs in San Marcos center around the lack of affordable housing – especially rental units.

Though few units are lacking plumbing or kitchen facilities, there is a need for minor to moderate housing rehabilitation to prevent further deterioration as well as a need to demolish and reconstruct unsafe/unsound housing.

## NA-15 Disproportionately Greater Need: Housing Problems – 91.205 (b)(2)

Assess the need of any racial or ethnic group that has disproportionately greater need in comparison to the needs of that category of need as a whole.

### Introduction

The disproportionately greater need based on racial or ethnic group can be measured by the differences of the percent of low-to-moderate-income among the groups as well as the differences of housing units with problems by income among the groups. The table below shows these comparisons and the discussion at the end explains the disparities.

*\*The four housing problems are: 1. Lacks complete kitchen facilities, 2. Lacks complete plumbing facilities, 3. More than one person per room, 4. Cost Burden greater than 30%*

### 0%-30% of Area Median Income

Housing Problems	Has one or more of four housing problems	Has none of the four housing problems	Household has no/negative income, but none of the other housing problems
Jurisdiction as a whole	4,330	360	525
White	2,610	145	420
Black / African American	190	15	0
Asian	140	0	0
American Indian, Alaska Native	0	0	0
Pacific Islander	0	0	0
Hispanic	1,340	205	105

Table 11 - Disproportionally Greater Need 0 - 30% AMI

Data 2007-2011 CHAS

Source:

### 30%-50% of Area Median Income

Housing Problems	Has one or more of four housing problems	Has none of the four housing problems	Household has no/negative income, but none of the other housing problems
Jurisdiction as a whole	2,625	575	0
White	1,740	125	0
Black / African American	10	35	0
Asian	30	0	0
American Indian, Alaska Native	25	0	0
Pacific Islander	0	0	0
Hispanic	790	415	0

Table 12 - Disproportionally Greater Need 30 - 50% AMI

Data 2007-2011 CHAS

Source:

**50%-80% of Area Median Income**

Housing Problems	Has one or more of four housing problems	Has none of the four housing problems	Household has no/negative income, but none of the other housing problems
Jurisdiction as a whole	1,340	1,850	0
White	835	970	0
Black / African American	100	145	0
Asian	0	10	0
American Indian, Alaska Native	0	0	0
Pacific Islander	0	0	0
Hispanic	405	720	0

Table 13 - Disproportionally Greater Need 50 - 80% AMI

Data 2007-2011 CHAS  
Source:

**80%-100% of Area Median Income**

Housing Problems	Has one or more of four housing problems	Has none of the four housing problems	Household has no/negative income, but none of the other housing problems
Jurisdiction as a whole	380	1,345	0
White	120	560	0
Black / African American	15	105	0
Asian	4	40	0
American Indian, Alaska Native	0	20	0
Pacific Islander	0	0	0
Hispanic	240	615	0

Table 14 - Disproportionally Greater Need 80 - 100% AMI

Data 2007-2011 CHAS  
Source:

## Discussion

HUD defines a disproportionately greater housing need to be when a racial or ethnic group experiences housing problems at a rate 10 percentage point or more greater than for the income level as a whole. The 2007-2011 CHAS data table summarizes the percentages of each racial/ethnic group experiencing housing problems by HUD adjusted Median Family Income (AMI) levels. Housing problems include:

- Housing units lacking complete kitchen facilities and/or complete plumbing facilities
- Overcrowding (more than one person per room)
- Housing cost burden greater than 30%

Income classifications are:

- 0% to 30% AMI = extremely low income
- 31% to 50% AMI = low income
- 51% to 80% AMI = moderate income
- 81% to 100% AMI = middle income

Income category	White	African American	Hispanic	Asian	American Indian / Alaska Native
% of Total Households (13,330 total households in all incomes)	56% (7,525)	5% (615)	36% (4,835)	2% (224)	(45)
% Extremely Low-Income (0-30% AMI) (8,675 total households)	42% (3,175)	33% (205)	34% (1,650)	52% (140)	0
% Low Income (30-50% AMI) (3,200 total households)	25% (1,865)	7% (45)	25% (1,205)	13% (30)	56% (25)
% Moderate Income (50-80% AMI) (3,190 total households)	24% (1,805)	40% (245)	23% (1,125)	4% (10)	0
% Middle Income (80-100% AMI) (1,725 total households)	3As t9% (680)	20% (120)	18% (855)	20% (44)	44% 20
% of Extremely Low Income w/problems (4,330 total households)	82% (2,610)	93% (190)	81% (1,340)	100% (140)	0
% of Low-Income w/problems (2,625 total households)	93% (1,740)	22% (10)	66% (790)	100% (30)	100% (25)
% of Moderate-Income w/problems (1,340 total households)	46% (835)	41% (100)	36% (405)	0% (none)	0%

**Summary Table: Households Experiencing at Least One Housing Problem based on Race/Ethnicity**

Race / Ethnic Groups	0-30% Extremely Low	31-50% Low Income	51-80% Moderate
White	82%	93%	46%
Black / African Amer.	93%	22%	41%
Hispanic	81%	66%	36%
Asian	100%	100%	None
American Native, Alaskan Native	None	100%	0%
All San Marcos Households	83%	82%	42%

As the chart above shows, more than 80% of all households in San Marcos with an income range in the “Extremely Low” and “Low” income brackets experience at least one housing problem. None of the race/ethnic households in the “Moderate” income limits experienced a disproportionately higher number of housing problems than the overall average.

The Asian and American Indian/Alaskan Native groups are both numerically very small with 224 and 45 (respectively) households out of 13,300 total households. All households in the Extremely Low and Low Income brackets for these two race groups experienced at least one housing problem.

In summary, there is a disproportionately greater need for households experiencing at least one housing problem as follows:

**Low Income Households**

- White
- Asian
- American Indian / Alaskan Natives

**Extremely Low Income Households**

- Black
- Asian

## NA-20 Disproportionately Greater Need: Severe Housing Problems – 91.205 (b)(2)

Assess the need of any racial or ethnic group that has disproportionately greater need in comparison to the needs of that category of need as a whole.

### Introduction

Similar to NA-15 above that reviewed households with a housing cost burden that exceeds 30% of their household income, this section looks at those households who have a housing cost burden that exceeds 50% of their household income. Households may also have problems with overcrowding and housing units that lack complete kitchen or plumbing facilities.

Note: *\*The four severe housing problems are: 1. Lacks complete kitchen facilities, 2. Lacks complete plumbing facilities, 3. More than 1.5 persons per room, 4. Cost Burden over 50%*

### 0%-30% of Area Median Income

Severe Housing Problems*	Has one or more of four housing problems	Has none of the four housing problems	Household has no/negative income, but none of the other housing problems
Jurisdiction as a whole	4,040	650	525
White	2,445	305	420
Black / African American	145	60	0
Asian	140	0	0
American Indian, Alaska Native	0	0	0
Pacific Islander	0	0	0
Hispanic	1,260	285	105

Table 15 – Severe Housing Problems 0 - 30% AMI

Data 2007-2011 CHAS  
Source:

### 30%-50% of Area Median Income

Severe Housing Problems*	Has one or more of four housing problems	Has none of the four housing problems	Household has no/negative income, but none of the other housing problems
Jurisdiction as a whole	1,055	2,145	0
White	770	1,090	0
Black / African American	0	45	0
Asian	0	30	0
American Indian, Alaska Native	0	25	0
Pacific Islander	0	0	0
Hispanic	280	925	0

Table 16 – Severe Housing Problems 30 - 50% AMI

Data 2007-2011 CHAS  
Source:

### 50%-80% of Area Median Income

Severe Housing Problems*	Has one or more of four housing problems	Has none of the four housing problems	Household has no/negative income, but none of the other housing problems
Jurisdiction as a whole	250	2,935	0
White	120	1,685	0
Black / African American	0	245	0
Asian	0	10	0
American Indian, Alaska Native	0	0	0
Pacific Islander	0	0	0
Hispanic	130	995	0

Table 17 – Severe Housing Problems 50 - 80% AMI

Data 2007-2011 CHAS  
Source:

### 80%-100% of Area Median Income

Severe Housing Problems*	Has one or more of four housing problems	Has none of the four housing problems	Household has no/negative income, but none of the other housing problems
Jurisdiction as a whole	160	1,560	0
White	50	630	0
Black / African American	15	105	0
Asian	0	45	0
American Indian, Alaska Native	0	20	0
Pacific Islander	0	0	0
Hispanic	95	760	0

Table 18 – Severe Housing Problems 80 - 100% AMI

Data 2007-2011 CHAS  
Source:

### Discussion

#### Summary Table: Race/Ethnicity of Households Experiencing a Severe Housing Problem

Race / Ethnic Group	0 to 30% AMI	31 to 50% AMI	51 to 80% AMI
White	77%	41%	7%
Black / African American	71%	0%	0%
Asian	100%	0%	0%
Hispanic	76%	23%	12%
<b>San Marcos as a Whole</b>	<b>77%</b>	<b>33%</b>	<b>8%</b>

HUD defines a disproportionately greater housing need when a racial or ethnic group experiences housing problems at a rate 10% or greater than for the income level as a whole. The distinction between housing problems and severe housing problems is the degree of cost burden and overcrowding. Severe housing problems include:

- Housing units lack complete kitchen / plumbing facilities
- Overcrowding (more than 1.5 persons per room)

- Housing cost burden greater than 50%

Based on this definition, only Asian households in the Extremely Low income bracket experienced a disproportionately greater housing need in the City of San Marcos.

## NA-25 Disproportionately Greater Need: Housing Cost Burdens – 91.205 (b)(2)

Assess the need of any racial or ethnic group that has disproportionately greater need in comparison to the needs of that category of need as a whole.

### Introduction:

HUD defines a disproportionately greater housing need to be when a racial or ethnic group experiences housing problems at a rate 10 percentage points or greater than for the income level as a whole. The table below summarizes the percentage of each racial/ethnic group experiencing housing cost burden or a severe housing cost burden.

Based on this definition, only the numerically small group of American Indian/Alaskan Native households is experiencing a disproportionately greater housing cost burden than the City as a whole. Of those experiencing a severe housing cost burden, only Asian households are slightly higher than the City as a whole; all other race/ethnic groups are lower than the overall City percentage.

**Summary Table: Housing Cost Burden by Race/Ethnicity**

Race/Ethnicity Group	Housing Cost Burden 30 to 50% of income	Severe Housing Cost Burden Greater than 50% of Income
White	21%	36%
Black/African American	21%	20%
Asian	27%	44%
Amer. Indian / Alaska Native	<b>56%</b>	0%
Hispanic	21%	26%
San Marcos as a Whole	25%	39%

### Housing Cost Burden

Housing Cost Burden	<=30%	30-50%	>50%	No / negative income (not computed)	
Jurisdiction as a whole	4,380	3,280	5,140	525	13,325
White	3,715	1,960	3,365	420	9,460
Black / African American	425	155	145	0	725
Asian	95	85	140	0	320
American Indian, Alaska Native	20	25	0	0	45
Pacific Islander	0	0	0	0	
Hispanic	2,890	1,155	1,480	104	5,629

Table 19 – Greater Need: Housing Cost Burdens AMI

Data 2007-2011 CHAS  
Source:

## NA-30 Disproportionately Greater Need: Discussion – 91.205(b)(2)

**Are there any Income categories in which a racial or ethnic group has disproportionately greater need than the needs of that income category as a whole?**

The following summarizes the analysis performed in Sections NA 15 and NA-20 above:

Disproportionately Greater Need: Households Experiencing at Least One Housing Problems

- Black & Asian Households in the Extremely Low Income Range
- White ,Asian, and American Indian/Alaska Native Households in the Low Income Range

Disproportionately Greater Need: Households Experiencing a Severe Housing Cost Burden

- Asian Households in the Extremely Low Income Range

Disproportionately Greater Need: Housing Cost / Severe Housing Cost Burden

- American Indian / Alaska Native – Housing Cost Burden (30-50%)

**If they have needs not identified above, what are those needs?**

The needs are identified above.

**Are any of those racial or ethnic groups located in specific areas or neighborhoods in your community?**

To best determine the location of racial/ethnic groups with disproportionately greater need, maps were created matching areas of low and moderate income concentration with areas of racial/ethnic concentration. HUD defines areas of racial/ethnic concentration as census tracts in which a racial or ethnic group’s share of the population is at least 10% greater than that group’s share of the City population as a whole.

Using 2010 Census data, the percentage of African Americans is 5.5% of the total population; the percentage of persons of Hispanic/Latino ethnicity is 37.8% of the total population. No other racial group had a population share that reached 2%, so the Consolidated Plan will base its minority populations on persons of African American or Hispanic race/ethnicity.

The following ratios are used to determine areas of minority concentration:

African Americans      Concentrations of 6% or higher

Hispanic/Latinos      Concentrations of 42% or higher

Areas where LMI and racial/ethnic concentration intersect indicate impacted areas in which there is a disproportionately greater need. The thresholds for areas of ethnic and racial concentration are shown in the chart below:

Census Tract	Hispanic %	African Am. %	Area LMI %
103.02	65.5%	4.03%	80.00%
103.03	33.53%	7.61%	68.45%
103.04	48.34%	5.65%	82.64%
104	67.5%	2.2%	62.52%
105	67.31%	3.45%	70.94%
106	29.39%	6.72%	35.68%

## NA-35 Public Housing – 91.205(b)

Public housing and Section 8 Voucher programs are operated by the San Marcos Public Housing Authority. The charts below detail information about the number of units, the demographic information of the residents, and the condition of the units.

### Totals in Use

	Program Type								
	Certificate	Mod-Rehab	Public Housing	Vouchers					
				Total	Project-based	Tenant-based	Special Purpose Voucher		
							Veterans Affairs Supportive Housing	Family Unification Program	Disabled *
# of units vouchers in use	0	0	278	222	0	222	0	0	0

Table 20 - Public Housing by Program Type

\*includes Non-Elderly Disabled, Mainstream One-Year, Mainstream Five-year, and Nursing Home Transition

Data Source: PIC (PIH Information Center)

### Characteristics of Residents

	Program Type								
	Certificate	Mod-Rehab	Public Housing	Vouchers					
				Total	Project-based	Tenant-based	Special Purpose Voucher		
							Veterans Affairs Supportive Housing	Family Unification Program	
Average Annual Income	0	0	15,542	12,943	0	12,943	0	0	
Average length of stay	0	0	4	3	0	3	0	0	
Average Household size	0	0	3	1	0	1	0	0	
# Homeless at admission	0	0	0	0	0	0	0	0	
# of Elderly Program Participants (>62)	0	0	58	84	0	84	0	0	
# of Disabled Families	0	0	48	66	0	66	0	0	
# of Families requesting accessibility features	0	0	278	222	0	222	0	0	

	Program Type							
	Certificate	Mod-Rehab	Public Housing	Vouchers				
				Total	Project-based	Tenant-based	Special Purpose Voucher	
							Veterans Affairs Supportive Housing	Family Unification Program
# of HIV/AIDS program participants	0	0	0	0	0	0	0	0
# of DV victims	0	0	0	0	0	0	0	0

Table 21 – Characteristics of Public Housing Residents by Program Type

Data Source: PIC (PIH Information Center)

**Race of Residents**

Race	Program Type								
	Certificate	Mod-Rehab	Public Housing	Vouchers					
				Total	Project-based	Tenant-based	Special Purpose Voucher		
							Veterans Affairs Supportive Housing	Family Unification Program	Disabled *
White	0	0	251	181	0	181	0	0	0
Black/African American	0	0	26	41	0	41	0	0	0
Asian	0	0	0	0	0	0	0	0	0
American Indian/Alaska Native	0	0	0	0	0	0	0	0	0
Pacific Islander	0	0	1	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0

\*includes Non-Elderly Disabled, Mainstream One-Year, Mainstream Five-year, and Nursing Home Transition

Table 22 – Race of Public Housing Residents by Program Type

Data Source: PIC (PIH Information Center)

Source:

**Ethnicity of Residents**

Ethnicity	Program Type								
	Certificate	Mod-Rehab	Public Housing	Vouchers					
				Total	Project-based	Tenant-based	Special Purpose Voucher		
							Veterans Affairs Supportive Housing	Family Unification Program	Disabled *
Hispanic	0	0	184	89	0	89	0	0	0
Not Hispanic	0	0	94	133	0	133	0	0	0

\*includes Non-Elderly Disabled, Mainstream One-Year, Mainstream Five-year, and Nursing Home Transition

Table 23 – Ethnicity of Public Housing Residents by Program Type

Data Source: PIC (PIH Information Center)

**Section 504 Needs Assessment:**

**Describe the needs of public housing tenants and applicants on the waiting list for accessible units:**

The 504 needs of Public Housing tenants for accessible units are most often for the elderly and disabled who are singles living in one bedroom units. Items such as ramps and grab bars are the most frequently requested needs.

**What are the number and type of families on the waiting lists for public housing and section 8 tenant-based rental assistance?**

The following charts represent the waiting list of the San Marcos Housing Authority as of July 16, 2015. Note: "Hispanic" is an Ethnicity, not a race; therefore, all Hispanic persons will also be found listed in one of the race categories, most often "white" in the San Marcos area.

<b>Low-Rent (public housing) Waiting List</b>							
Size	0 BR	1 BR	2-BR	3-BR	4-BR	5-BR	Total
Elderly	0	29	3	0	2	0	34
Disabled	0	20	3	0	1	0	24
Family	0	81	66	18	11	9	185
<b>Race/Ethnicity</b>							
Hispanic	0	55	34	7	4	7	107
White	0	76	42	7	6	5	136
Black	0	51	27	11	7	4	100
Indian/Alaskan	0	0	0	0	0	0	0
Asian	0	1	2	0	0	0	3
Pacific Islander	0	0	1	0	0	0	1

<b>Section 8 Waiting List</b>							
Size	0 BR	1 BR	2-BR	3-BR	4-BR	5-BR	Total
Elderly	1	25	2	1	0	0	29
Disabled	1	14	3	1	0	0	19
Family	2	17	14	18	0	0	51
<b>Race/Ethnicity</b>							
Hispanic	0	15	6	10	0	0	31
White	3	35	12	14	0	0	64
Black	1	13	6	5	0	0	25
Indian/Alaskan	0	0	0	1	0	0	1
Asian	0	0	0	0	0	0	0
Pacific Islander	0	0	0	0	0	0	0

<b>Springtown Villa (Seniors/Persons with a Disability) Waiting List</b>							
Size	0 BR	1 BR	2-BR	3-BR	4-BR	5-BR	Total
Elderly	0	18	1	0	0	0	19
Disabled	0	31	0	0	0	0	31
Family	0	1	0	0	0	0	1
<b>Race/Ethnicity</b>							
Hispanic	0	18	0	0	0	0	18
White	0	34	1	0	0	0	35
Black	0	15	0	0	0	0	15
Indian/Alaskan	0	0	0	0	0	0	0
Asian	0	1	0	0	0	0	1
Pacific Islander	0	0	0	0	0	0	0

**Based on the information above, and any other information available to the City, what are the most immediate needs of residents of Public Housing and Housing Choice voucher holders.**

Housing Choice Voucher participants tend to have specific medical needs such as air and water filtration systems and they also encounter accessibility issues. Other needs of Public Housing and Section 8 residents include affordable childcare after hours or on weekends, inexpensive sources for furniture and other household furnishings, moving assistance, support group/counseling services, and extended public transportation hours.

**How do these needs compare to the housing needs of the population at large**

The 2009-2013 American Community Survey shows that 10.7% of the general population of San Marcos has a disability; when age is taken into account, 42.3% of the population 65 and older have a disability. It can be assumed that these persons may need accessibility accommodations in their housing.

The need for more affordable housing choices in San Marcos is a common need of persons with a disability, the population at large, and of residents of Public Housing and Housing Choice Voucher programs.

## NA-40 Homeless Needs Assessment – 91.205(c)

### Introduction:

Three agencies provide shelters for specific homeless populations in San Marcos: (a) the Southside Community Center operates an emergency family shelter; (b) the Hays-Caldwell Women’s Center accepts victims of domestic violence – women, men, adults and children; and (c) the Greater San Marcos Youth Council accepts youth ages 5 to 17 that are at-risk, homeless, neglected or abused. No shelter is available for single men and women who do not fit these profiles. Specific exceptions may be made by Southside Community Center on a case-by-case basis. However, shelters are available in Austin and San Antonio and local social service agencies often provide assistance in reaching these shelters as a part of their support services.

### Homeless Needs Assessment:

Population	Estimated # persons experiencing homelessness on a given night		Est. # experiencing homelessness each year	Est. # becoming homeless each year	Est. # existing homeless each year	Est. # of days persons experience homelessness
	Unsheltered	Sheltered				
Persons in HH with adults & children	N/A	22	N/A	N/A	N/A	N/A
Persons in HH with only children	N/A	8	N/A	N/A	N/A	N/A
Persons in HH with only Adults	N/A	6	N/A	N/A	N/A	N/A
Chronically Homeless Individuals	40	1	60	N/A	N/A	N/A
Chronically Homeless Families	N/A		N/A	N/A	N/A	N/A
Veterans	15		N/A	N/A	N/A	N/A
Unaccompanied Youth	N/A		N/A	N/A	N/A	N/A
Persons with HIV	Unknown	N/A	N/A	N/A	N/A	N/A

Source: Estimates prepared after consultation with homeless service providers.

### For persons in rural areas who are homeless or at risk of homelessness, describe the nature and extent of unsheltered and sheltered homelessness with the jurisdiction.

Unknown.

**If data is not available for the categories "number of persons becoming and exiting homelessness each year," and "number of days that persons experience homelessness," describe these categories for each homeless population type (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth):**

Limited data is available for total persons experiencing homelessness in San Marcos. The local population changes from week to week, but from our consultation with Southside Community Center up to 60 homeless individuals and families partake of the free evening meal that is provided each day at the Center. The Hays County Veterans Service office indicates that they have not been able to get a firm number of the homeless veterans in Hays County, but at times they may serve 20 homeless veterans in one week. It is felt that a portion of the homeless population moves between San Marcos and the nearby cities of Austin and San Antonio that have more shelter space and resources for the homeless.

**Nature and Extent of Homelessness: (Optional)**

Race:	Sheltered:	Unsheltered (optional)
White	34%	45%
Black or African American	3%	5%
Other/Unknown	7%	3%
Ethnicity: Hispanic	54%	47%
Not Hispanic	46%	53%

Source: Estimated based on shelter records as listed below. Unsheltered were based on those who took showers at Southside as described below.

**Estimate the number and type of families in need of housing assistance for families with children and the families of veterans.**

Those in need of housing assistance include those extremely low income households with at least one severe housing problem who are at risk of becoming homeless, those who are sheltered but will leave the shelter without a stable income to support independent living, and those who are unsheltered.

**Describe the Nature and Extent of Homelessness by Racial and Ethnic Group.**

The best source of data to answer this question comes from the records of the three shelters. Although this data does not address the unsheltered, it can be assumed that the racial/ethnic demographics are comparable to those receiving shelter.

In 2014 the Greater San Marcos Youth Council, which operates a youth shelter, served 103 children: 67% Hispanic, 31% White, and 2% Black.

Southside Community Center provides emergency shelter for up to 25 persons in families. Their records for calendar year 2014 show that they sheltered a total of 82 individuals, with the following demographics: White 45%; Hispanic 39%; Black 0 and other or unknown: 16%.

For Program Year 2013 (10/1/2013-9/30/2014) the Hays Caldwell Women’s Center’s sheltered 388 victims of family violence. Of that, 27% were white; 57% were of Hispanic, 6% were Black; and 10% were other.

Southside Community Center also provides unsheltered homeless persons a free evening meal, showers, and laundry facilities. They maintain monthly records by age bracket and race/ethnicity of those who use these services, but do not report unduplicated persons. Still, the percentages for those who used the shower in 2014 show that 45% were White; 47% Hispanic; 5% Black; and 3% other or unknown.

**Describe the Nature and Extent of Unsheltered and Sheltered Homelessness.**

Again, the best available data comes from the sheltered homeless demographics. The Children served by the Youth Council range in age from 5 to 17 and were split with 57 males and 46 females.

The sheltered clients of Hays County Women’s Shelter included 23 persons with a disability, only one person 65 or older, and 164 female head of households.

Southside Community Center’s shelter clients included 9 children under the age of 18; 49 persons 18 to 64; 7 persons 65+, and 17 whose age was unknown. Of the 88 sheltered including all age brackets only 13 were female.

For those using Southside's showers, 45% were White, 47% Hispanic, 5% Black, and 3% were other or unknown.

**Discussion:**

Currently there are a total of 76 shelter beds that are targeted to specific populations: 35 beds for victims of family violence (children, adults, female and male); 16 for youth between the ages and 5 and 17; and 25 for homeless families. The family shelter can make exceptions when circumstances warrant allowing a single individual to have shelter space.

## **NA-45 Non-Homeless Special Needs Assessment - 91.205 (b, d)**

### **Introduction:**

#### **Describe the characteristics of special needs populations in your community:**

There is no information on the severity of the various conditions of the special needs populations. However, of the elderly 1,312 have a disability and of those, 489 are in need of living assistance according to the 2009-13 ACS. The non-elderly disabled include 391 children and 3,370 non-elderly adults. There is no information on the living situation of persons living with HIV/AIDS. Many persons with special needs also have very low incomes – affordable housing will be very important to these persons.

Section NA-10 includes a chart showing that 1,105 households includes a persons that has a self-care or independent living limitation. These households, especially the 465 households with incomes lower than 80% AMI that have at least one housing problem, may need supportive housing (housing with supportive services).

#### **What are the housing and supportive service needs of these populations and how are these needs determined?**

Special needs populations generally require some level of supportive services. Medical care is one of the primary needs for these populations. Transportation assistance, especially to out-of-town medical facilities, may be a need for elderly, persons with a disability, and persons living with AIDS/HIV. Employment at a living wage is another need for the working-age adults. Job training as well as employment and civil rights advocacy may be a need.

Counseling and therapy services, along with availability of group home or other transitional housing options, are needed by persons with substance abuse issues. This population may also have criminal histories that make obtaining housing difficult.

Supportive housing, either through assisted living, group homes, or permanent supportive housing is a need for a number of disabled adults. Accessibility improvements can become a need in all forms of housing.

#### Elderly & Frail Elderly.

The number of individuals with a disability are expected to increase due to an increase in life expectancy and aging baby boomers. For elderly homeowners, one need is assistance with maintenance of the structure. The City supports this need through its housing rehabilitation program. Supportive services that are targeted to the San Marcos elderly are provided by local organizations and agencies, many of which receive program support from the City.

#### Persons with Alcohol or other Drug Addictions.

The Hays Caldwell Council on Alcohol and Drug Abuse provides substance abuse education, prevention, and treatment services. This program receives funding support through the City.

#### **Discuss the size and characteristics of the population with HIV/AIDS and their families within the Eligible Metropolitan Statistical Area:**

According to the Texas Department of Health Services, there are 18 persons living with HIV/AIDS in Hays County. No actual race/ethnicity data for Hays County is available, but Statewide 29.4% are white, 29.4% are Hispanic, and 37.5% are African American, with “other and unknown” making up 3.7%.

## **NA-50 Non-Housing Community Development Needs – 91.215 (f)**

### **Describe the jurisdiction’s need for Public Facilities:**

Public facilities and infrastructure are considered a high priority need in San Marcos and have been for the past ten years. Examples of successful public facility projects completed using CDBG funds include the expansion of the San Marcos Senior Center, the construction of the Public Housing Chapultepec Adult Learning Center, and the restoration of the historic Cephas House. In addition to these public facilities, the City has improved a number of neighborhood parks.

San Marcos will continue to focus on making public facility and infrastructure improvements in low/mod neighborhoods a priority for CDBG funding. During the next five years it is anticipated that the City will continue to update neighborhood parks with improvements that increase accessibility and safety and increase the public amenities available to the area residents. Sidewalks and/or hike and bike trails, especially those that increase connectivity from one neighborhood to another will be considered for funding. Other suggestions that were received during the Consolidated Plan’s Outreach activities include the installation of covered bus shelters, community centers for youth and seniors, and community gardens. The City is also committed to assist subrecipient agencies to provide sound, safe, and accessible facilities that serve the homeless and under-resourced residents of San Marcos.

### **How were these needs determined?**

The Public Facility and Infrastructure needs, as with all of the need outlined in the Consolidated Plan, were determined through a combination of input from:

- Community stakeholder comments and survey results
- Consulting with City Departments and reviewing various City Master Plans (Parks, Youth, etc.)
- Consulting with subrecipient and other non-profit service providers.

### **Describe the jurisdiction’s need for Public Improvements:**

See above.

### **How were these needs determined?**

See above

### **Describe the jurisdiction’s need for Public Services:**

The City added Public Services as a priority need during program year 2012. The need to support programs that assist victims of family violence, youth and children, the homeless or those at risk of becoming homeless, and senior citizens all ranked very high on the Consolidated Plan Outreach surveys.

### **How were these needs determined?**

Citizen input during the Outreach phase of the planning process.

# Housing Market Analysis

## MA-05 Overview

### Housing Market Analysis Overview:

San Marcos has experienced rapid growth in housing since 2010, especially in the multi-family sector. In May 2015 the Census Bureau announced that San Marcos was the fastest growing mid-sized City over 50,000 in the United States for the 3<sup>rd</sup> consecutive year, with a population increase of 7.9% between 2013 and 2014.

City records show that 841 new single-family homes were permitted between January 2012 and April 2015. More than 1800 apartment units, with 5,386 new bedrooms, were built in 2013 and 2014; 399 units with 1,227 bedrooms are under construction and expected to be completed in 2015.

The 2010 census shows that out of 17,031 households, 38.1% are family households and 61.9% are non-family households, with 33.1% of the householders living alone. With the median age being 23.1 years and 58.9% of the population being 24 years of age or younger, it is not surprising that the rate of rental units vs. owner-occupied units is very high – 71.4% compared to 28.6%. (2009-2013 ACS).

## MA-10 Number of Housing Units – 91.210(a) & (b)(2)

### Introduction

San Marcos has a high number of rental units with a significant number containing three or more bedrooms. However, many of these units are rented by young adults and college students leaving a gap of available housing for low/mod families. There has been a trend in recent years to build apartments where each unit has multiple bedrooms rented individually with shared common areas. Although the rents for a single room may be affordable, families who need more than one bedroom often find the unit's price prohibitive. The following chart shows housing units by the number of bedrooms as shown in the ACS 2009-2013:

No Bedrm	1 Bedrm	2 Bedrm	3 Bedrm	4 Bedrm	5+ Bedrm	Total
610	3847	7309	5703	1742	74	19285

### All residential properties by number of units

Property Type	Number	%
1-unit detached structure	5,414	30%
1-unit, attached structure	373	2%
2-4 units	2,920	16%
5-19 units	5,388	30%
20 or more units	2,851	16%
Mobile Home, boat, RV, van, etc	854	5%
<b>Total</b>	<b>17,800</b>	<b>100%</b>

Table 24 – Residential Properties by Unit Number

Data 2007-2011 ACS

Source:

### Unit Size by Tenure

	Owners		Renters	
	Number	%	Number	%
No bedroom	0	0%	381	3%
1 bedroom	62	1%	3,186	27%
2 bedrooms	874	19%	5,350	46%
3 or more bedrooms	3,593	79%	2,823	24%
<b>Total</b>	<b>4,529</b>	<b>99%</b>	<b>11,740</b>	<b>100%</b>

Table 25 – Unit Size by Tenure

Data 2007-2011 ACS

Source:

**Describe the number and targeting (income level/type of family served) of units assisted with federal, state, and local programs.**

Currently, based on HUD and TDHCA data, there are 1,973 state or federally assisted units in San Marcos. Of these, 289 are public housing, including 60 reserved for senior citizens or persons with a disability. There are 218 Section 8 Vouchers in San Marcos. Twelve apartment complexes have been funded using Low Income Housing Tax Credit funding with a total units of 1,684. Of those units, 651 are reserved for seniors or persons with a disability. The majority of the units are marketed to persons whose income does not exceed 60% of the Area Median Income.

**Provide an assessment of units expected to be lost from the affordable housing inventory for any reason, such as expiration of Section 8 contracts.**

The City of San Marcos and the surrounding area experienced a record-setting flood Memorial Day weekend in 2015 which has had a tremendous impact on the portion of the City located near the Blanco River. The City is still assessing and analyzing the damage caused by the flood; the number of affordable housing units actually lost cannot be determined at this time. However, many of the areas receiving serious damage are low-income neighborhoods and many families have been at least temporarily displaced.

No units are expected to be lost permanently from Public Housing, although 100 units in the C. M. Allen Homes complex were damaged during the May 2015 flood and have temporarily been vacated in order to make the necessary repairs. It is unknown as this time when the units will again be available as affordable housing.

**Does the availability of housing units meet the needs of the population?**

No, there continues to be a need for housing that is affordable to very low income persons. The Public Housing Authority consistently has a lengthy waiting list for both public housing and Section 8 Vouchers.

**Describe the need for specific types of housing:**

A need has been identified for transitional housing for persons leaving local shelters; at this time no units of transitional housing are available in San Marcos although the Hays-Caldwell Women's Center is planning for future development of this housing type.

Units that are affordable for low and extremely low income families are needed in both rental and for-sale markets.

## MA-15 Housing Market Analysis: Cost of Housing - 91.210(a)

### Cost of Housing

	Base Year: 2000	Most Recent Year: 2011	% Change
Median Home Value	76,000	121,300	60%
Median Contract Rent	548	695	27%

**Table 26 - Cost of Housing**

Data Source: 2000 Census (Base Year), 2007-2011 ACS (Most Recent Year)

### Most recent Year 2013: Median Rent: \$894; 63% Increase

Rent Paid	Number	%
Less than \$500	734	6%
\$500-999	7,099	58%
\$1,000-1,499	3,182	26%
\$1,500 or more	1,214	10%
<b>Total</b>	<b>12,229</b>	

**Table 27 - Rent Paid**

Data 2009-2013 ACS

Source:

### Housing Affordability

% Units affordable to Households earning	Renter	Owner
30% HAMFI	520	No Data
50% HAMFI	3,585	800
80% HAMFI	9,780	1,615
100% HAMFI	No Data	2,265
<b>Total</b>	<b>13,885</b>	<b>4,680</b>

**Table 28 - Housing Affordability**

Data 2007-2011 CHAS

Source:

### Monthly Rent

Monthly Rent (\$)	Efficiency (no bedroom)	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
Fair Market Rent	\$681	\$834	\$1,050	\$1,421	\$1,723
High HOME Rent	681	834	1050	1316	1449
Low HOME Rent	\$672	720	865	998	1113

**Table 29 – Monthly Rent**

Data HUD FMR and HOME Rents - 2015

Source:

The National Low Income Housing Coalition provides annual information on the Fair Market Rent (FRM) and affordability of rental housing in counties. In 2015 in Hays County, the FMR for a 1-bedroom unit is \$834. Affordable rent for a minimum wage earner in Hays County is \$377 per month. In order for a minimum wage worker who earns \$7.25 per hour to afford a one-bedroom unit at FMR, the worker will need to work 73 hours each week.

ACS 2009-13 data shows that only 5.9% of the occupied rental units in San Marcos pay less than \$500/month rent.

**Is there sufficient housing for households at all income levels?**

The lack of affordable housing, in both the rental and housing sales market, were cited as a need by stakeholders and housing advocates.

The Housing Needs Assessment shows that there are 5,630 non-related households in San Marcos that have a cost burden that exceeds 30% and 3,925 non-related households with a cost burden exceeding 50%. The majority of these are renters.

**How is affordability of housing likely to change considering changes to home values and/or rents?**

The Census records show a steady increase in monthly median rent costs: in 2000 = \$548; in 2011 = \$695 (a 27% increase); in 2013 = \$894 (a 29% increase in two years). The total percent of increase in area median rent between 2000 and 2013 is 63%.

San Marcos has been recognized by the U. S. Census bureau as the fastest growing City with a population over 50,000 for three consecutive years. Data on housing sales obtained from the Texas A & M Real Estate Center shows a steady increase in the median sales price and a decrease in the total number of annual listings and months inventory as follows:

Given the projected increase in population over the next five years and beyond, the continued increase in home values is likely to reduce the number of available affordable housing units for sale. On the rental side, the steady construction of new apartment complexes, many that rent “by the bedroom” keep market rents high. However, there is some hope that the older complexes will lower their rent prices to remain competitive.

Year	Median Sales Price	# listings	Number of Months Inventory
2000	\$110,200	216	7.1
2010	\$134,900	213	10.5
2013	\$156,700	120	5.8
2014	\$160,500	105	4.3

The percent of units sold based on a price distribution range shows a decrease in sales of houses in the more affordable price range as follows:

Price Range	2010	2012	2013	2014
\$100k - \$120k	16.3%	11.7%	5.4%	6.0%
\$120k - \$140k	15.5%	12.6%	17.8%	13.9%
\$140k - \$160k	16.7%	11.7%	15.2%	19.5%
\$160k - \$180k	6.0%	15.8%	9.8%	12.9%

**How do HOME rents / Fair Market Rent compare to Area Median Rent? How might this impact your strategy to produce or preserve affordable housing?**

San Marcos' median rent of \$894 (2013 median contract rent) is higher than the HOME Rents/FMR for both efficiency and one-bedroom units. This reflects the need for more affordable housing units.

## MA-20 Housing Market Analysis: Condition of Housing – 91.210(a)

### Introduction

### Definitions

*Property Maintenance Code* means the most recent edition of the International Property Maintenance Code that has been adopted by the City of San Marcos.

*Standard condition dwelling unit* means a dwelling unit that complies with the City's Property Maintenance Code.

*Substandard dwelling unit* means an Unsafe or Dangerous structure that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure as those terms are defined in the City's Property Maintenance Code.

*Substandard dwelling unit, suitable for rehabilitation* means a structure that does not meet standard conditions as defined in the Property Maintenance Code, but is both financially and structurally feasible for rehabilitation to bring the unit into standard condition.

### Condition of Units

The table below shows the number of housing units, by tenure, based on the number of conditions or characteristics the unit has. Selected conditions are similar to housing problems in the Needs Assessment and include (1) the lack of complete plumbing facilities; (2) the lack of complete kitchen facilities; (3) more than one person per room; and (4) cost burden greater than 30%. The table also includes the calculations for the percentage of total units that the category represents.

Condition of Units	Owner-Occupied		Renter-Occupied	
	Number	%	Number	%
With one selected Condition	1,368	30%	7,201	61%
With two selected Conditions	48	1%	229	2%
With three selected Conditions	0	0%	36	0%
With four selected Conditions	0	0%	0	0%
No selected Conditions	3,113	69%	4,274	36%
<b>Total</b>	<b>4,529</b>	<b>100%</b>	<b>11,740</b>	<b>99%</b>

Table 30 - Condition of Units

Data 2007-2011 ACS

Source:

### Year Unit Built

Year Unit Built	Owner-Occupied		Renter-Occupied	
	Number	%	Number	%
2000 or later	985	22%	3,477	30%
1980-1999	1,380	30%	3,846	33%
1950-1979	1,676	37%	4,018	34%
Before 1950	488	11%	399	3%
<b>Total</b>	<b>4,529</b>	<b>100%</b>	<b>11,740</b>	<b>100%</b>

Table 31 – Year Unit Built

Data 2007-2011 CHAS

Source:

**Risk of Lead-Based Paint Hazard**

Risk of Lead-Based Paint Hazard	Owner-Occupied		Renter-Occupied	
	Number	%	Number	%
Total Number of Units Built Before 1980	2,164	48%	4,417	38%
Housing Units build before 1980 with children present	330	7%	640	5%

**Table 32 – Risk of Lead-Based Paint**

**Data** 2007-2011 ACS (Total Units) 2007-2011 CHAS (Units with Children present)

**Source:**

**Vacant Units** – Information not available.

	Suitable for Rehabilitation	Not Suitable for Rehabilitation	Total
Vacant Units	N/A	N/A	
Abandoned Vacant Units	N/A	N/A	
REO Properties	N/A	N/A	
Abandoned REO Properties	N/A	N/A	

**Table 33 - Vacant Units**

**Need for Owner and Rental Rehabilitation**

Forty-eight percent of the owner-occupied housing stock and thirty-seven percent of the renter-occupied housing was built prior to 1980, placing the age of that housing at more than 30 years old. As the housing stock ages, housing units can begin to deteriorate, especially when the residents don’t or can’t provide needed maintenance. The City funds owner-occupied housing rehabilitation programs that reduce building code violations, increase accessibility, and preserve housing values. The City also allows homeowners to perform renovation work on their homesteads (without using a contractor) so long as the work complies with codes which reduces the cost of rehabilitation.

**Estimated Number of Housing Units Occupied by Low or Moderate Income Families with LBP Hazards**

Houses constructed before 1978 can be presumed to have at least some lead-based paint. The 2009-2013 ACS data shows that 330 owner-occupied and 640 rental units that were constructed prior to 1980 are occupied by families with children under the age of six – the age most vulnerable to lead-paint exposure. As housing units and neighborhood age, it is not unusual for the income classes to fall from middle or moderate income households to lower income households. Thus, it is likely that many of the older residences are occupied by low income households.

The Texas Department of State Health Services monitors the lead poison testing results and compiles results by counties. Their records show the following testing results for the year 2011:

- 1,628 children under the age of six were tested in Hays County (12.8% of all 6 year olds)
- Less than 5 children tested positive for elevated lead levels (0.2%).

This is consistent with the 2009 results which show that only 1.4% tested positive out of 1,179 tests that were performed.

## MA-25 Public and Assisted Housing – 91.210(b)

### Introduction:

The San Marcos Housing Authority administers the Housing Choice (section 8) Voucher Program and Public Housing. The City works closely with the Housing Authority regarding public housing issues. There is a definite need for additional public housing/Section 8 vouchers in San Marcos as evidenced by long waiting lists that exist for all housing categories.

### Totals Number of Units

	Program Type								
	Certificate	Mod-Rehab	Public Housing	Vouchers					
				Total	Project-based	Tenant-based	Special Purpose Voucher		
							Veterans Affairs Supportive Housing	Family Unification Program	Disabled *
# of units vouchers available			289	218			0	0	0
# of accessible units			unknown	Unknown					

\*includes Non-Elderly Disabled, Mainstream One-Year, Mainstream Five-year, and Nursing Home Transition

Table 34 – Total Number of Units by Program Type

Data PIC (PIH Information Center)

Source:

### Describe the supply of public housing developments:

The San Marcos Housing Authority has been providing affordable housing since 1950 and currently provide housing for about 574 low-income families and individuals, including the elderly and disabled. Their resident services program consists of several initiatives designed to support Self-sufficiency and family development, elderly and disabled services, youth services, and resident organizations and community development. Public housing developments include Allen Wood Homes, C. M. Allen Homes, and Chapultepec Homes. Springtown Villas is a place-based Section 8 facility for seniors and persons with a disability.

### Describe the number and physical condition of public housing units in the jurisdiction, including those that are participating in an approved Public Housing Agency Plan:

Overall the public housing units are considered to be in good condition and the Housing Authority follows a program of routine maintenance. The C. M. Allen Homes were impacted by flood waters during the Memorial Day weekend flood of 2015. See the next question for more details.

### Public Housing Condition

Public Housing Development	Average Inspection Score
All Developments	High Performing

Table 35 - Public Housing Condition

**Describe the restoration and revitalization needs of public housing units in the jurisdiction:**

In May 2015 the City of San Marcos experienced a devastating flood that impacted all 100 units of public housing at the C. M. Allen complex. Ninety six families were impacted with loss of personal possessions, vehicles, and temporary loss of housing. The damage was primarily from rising water and the initial assessment shows that these units remain structurally sound, although renovation costs are expected to be high as appliances, air conditioning units, sheet rock, flooring, and cabinets will need to be replaced and the units treated to prevent mold growth.

**Describe the public housing agency's strategy for improving the living environment of low- and moderate-income families residing in public housing:**

San Marcos Public Housing will continue to improve the living environment by making technology available to their residents; partnering with Texas State University for students to provide nutrition and healthy cooking classes; providing after-school activities; and continuing to provide a family self-sufficiency program.

## MA-30 Homeless Facilities and Services – 91.210(c)

**Introduction:** Three agencies provide shelters for specific homeless populations: (a) the Southside Community Center operates an emergency family shelter; (b) the Hays-Caldwell Women’s Center accepts victims of domestic violence – women, men, adults and children; and (c) the Greater San Marcos Youth Council accepts youth ages 5 to 17 that are at-risk, homeless, neglected or abused. No shelter is available for single men and women who do not fit these categories although Southside will make exceptions on a case-by-case basis. Shelters are available in Austin and San Antonio and local social service agencies provide assistance in reaching these shelters as part of their supportive services.

### Facilities and Housing Targeted to Homeless Households

	Emergency Shelter Beds		Transitional Housing Beds	Permanent Supportive Housing Beds	
	Year Round Beds (Current & New)	Voucher / Seasonal / Overflow Beds	Current & New	Current & New	Under Development
Households with Adult(s) and Child(ren)	60	25	0	0	0
Households with Only Adults	0	0	0	0	0
Chronically Homeless Households	0	0	0	0	0
Veterans	0	0	0	0	0
Unaccompanied Youth	16	10			

Table 36 - Facilities and Housing Targeted to Homeless Households

**Describe mainstream services, such as health, mental health, and employment services to the extent those services are used to complement services targeted to homeless persons.**

Non-profit organizations in San Marcos provide a number of services to their clients including the shelters previously listed, food distribution, English-as a second language classes, GED preparation courses, counseling and advocacy for victims of rape and family violence, job training for youth and young adults and many other services.

**List and describe services and facilities that meet the needs of homeless persons, particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth. If the services and facilities are listed on screen SP-40 Institutional Delivery Structure or screen MA-35 Special Needs Facilities and Services, describe how these facilities and services specifically address the needs of these populations.**

San Marcos is served by a variety of organizations that address the needs of the homeless including:

- Direct Assistance (food, medication, bus tickets, etc.): Salvation Army, Southside Community Center, St. Vincent De Paul Society
- Food: Hays County Food Bank
- Meals, showers, laundry facilities: Southside Community Center (not limited to their shelter residents)
- Emergency Shelter: Southside Community Center, Salvation Army
- Veterans Service: Hays County Veterans Service Office
- Health Care: Community Action

## **MA-35 Special Needs Facilities and Services – 91.210(d)**

### **Introduction**

**Including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addictions, persons with HIV/AIDS and their families, public housing residents and any other categories the jurisdiction may specify, and describe their supportive housing needs**

Elderly persons and persons with a disability may need accessibility improvements to allow them to remain in their home or to move into a new home. Public housing residents need resources to gain their independence from publicly supported housing and need a sufficient supply of affordable rental/for sale housing units. Persons with addictions often need a group home or other transitional housing to support their recovery. Transitional housing has been identified as a need for persons leaving the family violence shelter and for youth who have “aged out” of the youth shelter and foster care systems.

**Describe programs for ensuring that persons returning from mental and physical health institutions receive appropriate supportive housing**

There is no established supportive, transitional housing in San Marcos for those returning from mental and physical health institutions.

**Specify the activities that the jurisdiction plans to undertake during the next year to address the housing and supportive services needs identified in accordance with 91.215(e) with respect to persons who are not homeless but have other special needs. Link to one-year goals. 91.315(e)**

San Marcos will continue to fund housing rehabilitation programs that work with the elderly, and other low-income homeowners, in an attempt to maintain a safe, accessible home environment. The City will use public service funds to provide supportive services to special needs residents. The City also provides over \$400,000 in general fund dollars to support local non-profit organizations that have programs that benefit the community, including those with special needs. Park and sidewalk projects will improve accessibility for those who have mobility challenges.

**For entitlement/consortia grantees: Specify the activities that the jurisdiction plans to undertake during the next year to address the housing and supportive services needs identified in accordance with 91.215(e) with respect to persons who are not homeless but have other special needs. Link to one-year goals. (91.220(2))**

1. Housing rehabilitation for low/mod homeowner occupied housing units through Southside Community Center
2. Park improvements, including accessibility improvements
3. Public Services support of:
  - a. Victims of family violence
  - b. Children within the Texas Foster Care system

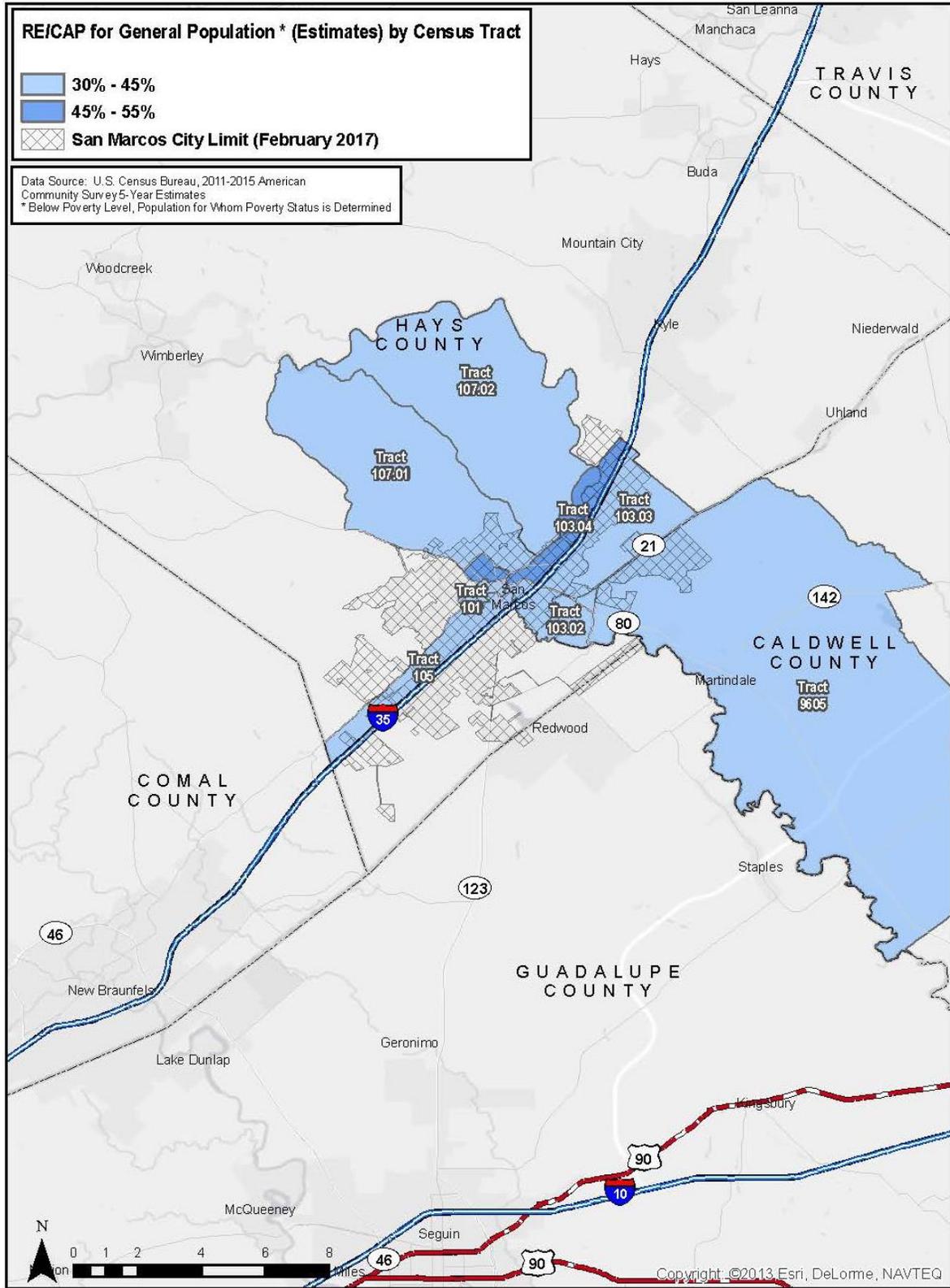
## **2017 Addition to MA-40 Barriers to Affordable Housing – 91.210(e)**

Describe any negative effects of public policies on affordable housing and residential investment.

There are no barriers to affordable housing resulting from public policies of the City of San Marcos. The Updated Analysis of Impediments to Fair Housing Choice found one additional impediment that creates barriers to affordable housing:

1. Census tracts where poverty amongst racial and ethnic populations exceed 30% creating a concentration of poverty.

### Map of R/ECAP Areas by Census Tract



## **MA-40 Barriers to Affordable Housing – 91.210(e) - 2015**

**Describe any negative effects of public policies on affordable housing and residential investment.**

There are no barriers to affordable housing resulting from public policies of the City of San Marcos.

The Analysis of Impediments to Fair Housing Choice found three impediments that create barriers to affordable housing:

1. Lack of affordability of the housing stock;
2. Insufficient income for the local cost of housing; and,
3. Low income residents have limited resources to maintain homes and neighborhood stability.

## MA-45 Non-Housing Community Development Assets – 91.215 (f)

### Introduction

The economic health of a community has a large impact on a household's ability to meet the financial needs of owning or renting their desired housing unit. The data below provides a look at where jobs and economic activity provide employment opportunities.

### Economic Development Market Analysis

#### Business Activity

Business by Sector	Number of Workers	Number of Jobs	Share of Workers %	Share of Jobs %	Jobs less workers %
Agriculture, Mining, Oil & Gas Extraction	53	23	1	0	-1
Arts, Entertainment, Accommodations	1,814	4,099	21	20	-1
Construction	456	362	5	2	-3
Education and Health Care Services	1,513	3,434	17	16	-1
Finance, Insurance, and Real Estate	463	839	5	4	-1
Information	220	435	3	2	0
Manufacturing	753	2,028	9	10	1
Other Services	451	1,039	5	5	0
Professional, Scientific, Management Services	599	1,195	7	6	-1
Public Administration	0	0	0	0	0
Retail Trade	1,389	5,559	16	27	11
Transportation and Warehousing	200	800	2	4	2
Wholesale Trade	307	457	4	2	-1
Total	8,218	20,270	--	--	--

**Table 37 - Business Activity**

**Data** 2007-2011 ACS (Workers), 2011 Longitudinal Employer-Household Dynamics (Jobs)

**Source:**

#### Labor Force

Total Population in the Civilian Labor Force	22,662
Civilian Employed Population 16 years and over	20,373
Unemployment Rate	10.10
Unemployment Rate for Ages 16-24	20.30
Unemployment Rate for Ages 25-65	5.45

**Table 38 - Labor Force**

**Data Source:** 2007-2011 ACS

Occupations by Sector	Number of People /
Management, business and financial	3,521
Farming, fisheries and forestry occupations	1,111
Service	3,334
Sales and office	6,147

Construction, extraction, maintenance and repair		1,260
Production, transportation and material moving		626

**Table 39 - Occupations by Sector**

**Data Source:** 2007-2011 ACS

**Travel Time**

Travel Time	Number	Percentage
< 30 Minutes	13,907	72%
30-59 Minutes	3,974	21%
60 or More Minutes	1,344	7%
<b>Total</b>	<b>19,225</b>	<b>100%</b>

**Table 40 - Travel Time**

**Data** 2007-2011 ACS

**Source:**

**Education:**

**Educational Attainment by Employment Status (Population 16 and Older)**

Educational Attainment	In Labor Force		Not in Labor Force
	Civilian Employed	Unemployed	
Less than high school graduate	1,090	109	730
High school graduate (includes equivalency)	2,771	192	968
Some college or Associate's degree	3,339	318	714
Bachelor's degree or higher	3,840	200	716

**Table 41 - Educational Attainment by Employment Status**

**Data** 2007-2011 ACS

**Source:**

### Educational Attainment by Age

	Age				
	18–24 yrs	25–34 yrs	35–44 yrs	45–65 yrs	65+ yrs
Less than 9th grade	87	192	172	330	793
9th to 12th grade, no diploma	569	470	325	440	173
High school graduate, GED, or alternative	1,394	1,384	1,190	1,357	608
Some college, no degree	15,101	1,870	715	924	593
Associate's degree	653	319	468	103	202
Bachelor's degree	1,237	1,832	700	1,044	421
Graduate or professional degree	152	493	157	530	349

**Table 42 - Educational Attainment by Age**

Data 2007-2011 ACS

Source:

### Educational Attainment – Median Earnings in the Past 12 Months

Educational Attainment	Median Earnings in the Past 12 Months
Less than high school graduate	17,478
High school graduate (includes equivalency)	23,415
Some college or Associate's degree	25,752
Bachelor's degree	33,750
Graduate or professional degree	42,098

**Table 43 – Median Earnings in the Past 12 Months**

Data 2007-2011 ACS

Source:

### Based on the Business Activity table above, what are the major employment sectors within your jurisdiction?

The largest employment sectors are (1) Service industry with 21%; (2) Education and Health Care with 17%; followed closely by Retail trade with 16% of the workforce.

### Describe the workforce and infrastructure needs of the business community:

In a recent survey of regional employers, respondents identified the availability of educated and talented workers, quantity of available workers, and commitment to Greater San Marcos as the top three strengths of the workforce. In terms of weaknesses, however, respondents identified a lack of education and skills, followed by limited job opportunities, and low wages.

### Describe any major changes that may have an economic impact, such as planned local or regional public or private sector investments or initiatives that have affected or may affect job and business growth opportunities during the planning period. Describe any needs for workforce development, business support or infrastructure these changes may create.

The City of San Marcos continues to invest millions of dollars annually in planning and infrastructure to support continued economic development. The following three examples are indicative of the level of support for continued economic development and growth within the City organization and the community at large:

1. CodeSMTX – the rewrite of the City’s Land Development Code so that new development fits the community’s vision for the future. One of the goals is to attract affordable high quality new development within high intensity areas.
2. FM 110 - A major new arterial roadway, jointly funded by the City of San Marcos and Hays County, that will provide vehicular connectivity and access to key infrastructure for the majority of the City, east of Interstate 35.
3. Greater San Marcos Partnership (GSMP) Vision 2020 Strategy - A strategic plan to enhance economic development activities and programs in the region comprised of Hays and Caldwell counties.

**How do the skills and education of the current workforce correspond to employment opportunities in the jurisdiction?**

The 2009-13 American Community Survey shows that in San Marcos 78% of the population 3 and over is enrolled in college or graduate school. Of those 25 and older only 14% have less than a high school degree, with 31% having a bachelor’s degree or higher. In addition to Texas State University, Austin Community College, and Gary Job Corps offer career and technical training.

Compared to the State of Texas and the nation, San Marcos has fairly competitive workforce dynamics. But seen in the context of Central Texas, the San Marcos region must upgrade its complement of adults with college degrees at all levels to get on the radar of top knowledge businesses in the Austin-San Antonio corridor and beyond. In addition, programs and processes may need improvement to better connect existing and future employers with the regional education and training community.

**Describe any current workforce training initiatives, including those supported by Workforce Investment Boards, community colleges and other organizations. Describe how these efforts will support the jurisdiction's Consolidated Plan.**

The Greater San Marcos Partnership, the City’s contracted economic development firm, works closely with existing and prospective businesses and local education providers to ensure that a skilled workforce is available for job openings.

Austin Community College recently expanded their degree and certifications curriculum to meet regional workforce demands, particularly in the areas health sciences, IT, and creative arts. It also is the recipient of a \$300,000 AARP grant which sparked the creation of the Back to Work 50+ - Women’s Economic Stability Initiative. Texas State University has opened the highly successful technology innovator Science Technology and Advanced Research (STAR) Park. Gary Job Corp provides career technical and academic training to youth ages 16 through 24 for careers ranging from health occupations to business technology to construction and manufacturing.

**Does your jurisdiction participate in a Comprehensive Economic Development Strategy (CEDS)?**

Yes. The Capital Area Council of Governments (CAPCOG) completed the 2010-2015 CEDS on behalf of its members, which includes the City of San Marcos.

**If so, what economic development initiatives are you undertaking that may be coordinated with the Consolidated Plan? If not, describe other local/regional plans or initiatives that impact economic growth.**

No economic development initiatives are currently planned for CDBG funding participation. The City of San Marcos provides funding to the Greater San Marcos Partnership (GSMP) which is a public-private partnership focused on job creation, increased investment and creating economic opportunities.

## **MA-50 Needs and Market Analysis Discussion**

### **Are there areas where households with multiple housing problems are concentrated? (Include a definition of "concentration")**

In San Marcos 61% of the renters and 30% of the homeowners have one housing problem – primarily a cost burden that exceeds 30%. Only 2% of renters and 1% of homeowners have two or more housing problems. For the purpose of answering this question, “concentration” means an area having 44% or more of the population. The Housing Cost Burden Map shows that there is a large portion of the City where 44 to 73% of the households have a housing cost burden that exceeds 30% of their income. The only area with a cost burden that exceeds 73% is located in Census Block Group 10905-1 – an area where only 15.83% of the population are low/mod.

### **Are there any areas in the jurisdiction where racial or ethnic minorities or low-income families are concentrated? (Include a definition of "concentration")**

Of the thirteen census tracts in San Marcos, ten have a low/mod population in excess of 51%, the threshold HUD has established as the minimum to be considered a “low/mod area”.

HUD defines high racial/ethnic concentration areas as being census tracts in which a racial or ethnic group’s share of the population is at least 10% greater than that group’s share of the City population as a whole. The ratio used to determine areas of minority concentration based on this definition is 6% or higher for African American neighborhoods and 42% or higher for Hispanic/Latino neighborhoods.

Two census blocks (out of 13) have high concentrations of African American residents while four have high concentrations of Hispanic residents. Five of those six tracts also have low/mod populations in excess of 51%. (See chart in NA-30).

### **What are the characteristics of the market in these areas/neighborhoods?**

The housing market in these areas includes new high-end multi-family housing, university-related housing, older multi- and single-family housing, mobile home parks, public housing and some units of subsidized affordable housing. Several new subdivisions with moderately-priced housing are also located in these areas.

### **Are there any community assets in these areas/neighborhoods?**

These census tracts cover a large segment of San Marcos. There are many community assets in these areas including churches and organizations that support the low to moderate income population. Assets include the Public Library and Recreation Center, City and County government offices, along with State agencies, the hospital and numerous medical offices, public schools, a number of neighborhood parks, major retail areas including major grocery and pharmacy stores, and several community centers.

### **Are there other strategic opportunities in any of these areas?**

The City is expanding the strategic opportunities in these areas by focusing CDBG and Capital Improvements in the areas as well as encouraging economic development, infill affordable housing development and housing rehabilitation.

## Strategic Plan

### 2020 Addition to SP-05 Overview

#### Strategic Plan Overview

Because of the recent and continuing impacts of the COVID-19 pandemic on health systems and the economy, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) made available additional funding through a new program, the Community Development Block Grant (CDBG)-CV Coronavirus Response grant. The City of San Marcos will receive \$425,261 in funding for immediate use upon acceptance of the amendments to the City's 2019 Action Plan by the US Department of Housing and Urban Development (HUD).

HUD has waived some of the typical requirements for this grant to meet the needs of the current situation:

- The City can accept applications from for-profit entities
- Up to 100% of the funds can be used for Public Services
- Comment periods must be a minimum of five days
- The typical needs assessments and market analyses are not required

These funds must be used to prevent, prepare for, and respond to Coronavirus, which can include responding to the economic effects as well as the health impacts of the COVID-19 pandemic. Funding is primarily for projects and programs that benefit low-to-moderate income residents of San Marcos who have been impacted by the COVID-19 pandemic.

The City will be holding an application process to help determine the optimal allocation for the funding, in addition to consulting with local health authorities and reviewing data as applicable.

### SP-05 Overview

#### Strategic Plan Overview

The Strategic Plan addresses the high priority needs of the community as determined through stakeholder input, funding realities, and available partners. The Plan addresses the infrastructure, public facilities, clearance activities, housing, and public services needs of the low/mod areas and citizens of San Marcos.

The City will work in partnership with other entities and non-profit organizations to enhance service delivery systems. The City will provide technical assistance, program monitoring, workshops and information sharing to ensure the goals of the CDBG program are met.

The City is committed to providing affordable housing of choice to low-income and protected classes through educating the public on fair housing issues and rights and affirmatively furthering fair housing. By providing assistance to first-time homebuyers to purchase affordable homes of choice the City is encouraging de-concentration and fair housing choice. The City also helps low-income homeowners maintain their homes through its housing rehabilitation program.

The City strives to improve low-income residential areas, especially those with high concentrations of minorities and other protected classes, by improving parks and other facilities and infrastructure. These public improvements bring the areas up to standards equal to other areas of the city and make the neighborhoods safer and more desirable.

The City's 2015 CDBG allocation will be \$517,077 which will be used to accomplish the goals set out in this Consolidated Plan. For the purposes of planning, the 5-year plan is based on an estimate of an annual allocation of \$500,000 per year, for a total of \$2,500,000 over the course of the 5-year plan. A small amount of additional revenue may be available in the form of Program Income from recaptured funds from the First-Time Homebuyer program when a 5-year affordability period is not completed.

## SP-10 Geographic Priorities – 91.215 (a)(1)

### Geographic Area

Table 44 - Geographic Priority Areas

### General Allocation Priorities

**Describe the basis for allocating investments geographically within the jurisdiction (or within the EMSA for HOPWA)**

The City of San Marcos does not have any specific target areas for CDBG expenditures – essentially, the entire City has a low-mod population, spread throughout all census tracts. Likewise, the City has not geographically prioritized the identified needs of the community.

### Low/Mod Census Tracts

The following chart shows the City’s low/mod population percentages by census tract. All tracts are located in Hays County unless otherwise noted. The source data is the HUD Low/Mod Income Summary Data (LMISD) effective 7-1-2014. The data is found at <https://www.onecpd.info/manage-a-program/acs-low-mod-summary-data-block-groups-places>.

Census Tract	Low/Mod Population	Total Population	Low/Mod Population Percent
960500 (Caldwell Co)	2969	4980	59.61%
210505 (Guadalupe Co.)	725	1480	48.99%
101	1490	2225	66.96%
102	705	960	73.43%
103.02	3100	3875	80.00%
103.03	3375	4930	68.45%
103.04	4310	5215	82.64%
104	4220	6750	62.52%
105	2270	3200	70.94%
106	3010	8435	35.68%
107.01	4745	6770	70.09%
107.02	720	1220	59.02%
109.05	315	1990	15.83%
<b>Total</b>	<b>31,954</b>	<b>52,030</b>	<b>61.41%</b>

Maps showing the percentage of low/mod population of each census block group, as established by the U. S. Department of Housing and Urban Development and released in 2014 are included in this document.

## **2020 Addition to SP-25 Priority Needs - 91.215(a)(2)**

### **Priority Needs**

In addition to the existing programs which will not change as a result of this amendment, Economic Development is hereby added as a Priority Need category available for funding projects and programs through the annual Action Plans. Projects or programs in response to the COVID-19 pandemic can be in any of the following Priority Need categories, as long as they meet the requirements specified in the CDBG-CV regulations and guidance:

- Economic Development
- Public Services
- Affordable Housing
- Public Facilities / Infrastructure / Transportation
- Clearance
- Program Administration

### **Narrative (Optional)**

Due to the nature of the COVID-19 pandemic and subsequent business closures, it is anticipated that programs and projects will particularly be needed to support local businesses and their low-to-moderate income employees, as well as in the public services category. The addition of Economic Development to this Consolidated Plan as a priority need is necessary to enable award of funds in that category.

## 2017 Addition to SP-25 Priority Needs - 91.215(a)(2)

### Priority Needs

In addition to the existing programs which will not change as a result of this amendment, the priority needs as identified for the \$25,080,000 in CDBG-DR funds based on the disaster recovery public community meetings and surveys are as follows:

City of San Marcos		
Housing	\$7,524,000	
SF Owner Occupied Rehabilitation, Reconstruction, or Buyout	\$5,000,000	30%
SF 1-4 Unit Rental Rehabilitation, Reconstruction, or Buyout	\$2,524,000	
Infrastructure	\$12,540,000	50%
Planning	\$3,762,000	15%
Admin	\$1,254,000	5%
<b>Total Allocation</b>	<b>\$25,080,000</b>	<b>100%</b>

Housing Priorities with the CDBG Disaster Recovery Funds based on public meetings, needs assessment and individual surveys from the impacted community for housing.

The City intends to allocate **\$7,524,000** of its CDBG-DR funds to the following Housing activities and does not anticipate funding more than approximately 100 homes:

- Single-Family, Owner Occupied Housing Rehabilitation or Reconstruction
- Single-Family, Owner-Occupied Housing Reconstruction (for homes incurring damage that amounts to greater than 50% of the home’s pre-storm value the home will be elevated as required);
- Single-Family, 1-4 Unit Rental Housing Substantial Rehabilitation or Reconstruction for which Elevation will be required
- Elevation w/ Minor Repair; and
- Buyout

The breakout of funds between owner occupied and rental is as follows and was based on the outstanding proportion of owner occupied and rental units that received substantial damage from the flooding (excluding manufactured housing units):



## **SP-25 Priority Needs - 91.215(a)(2) - 2015**

### **Priority Needs**

**Table 45 – Priority Needs Summary**

#### **Narrative (Optional)**

The high priorities identified in the 2015-2019 Consolidated Plan are:

- Affordable Housing
- Public Facilities / Infrastructure / Transportation
- Clearance
- Public Services
- Program Administration

The high priority needs were determined in compliance with the City's Citizen Participation Plan following a series of workshops, small group meetings, and the 2015 Action Plan stakeholder's workshop and public hearing. Each meeting/workshop included a presentation on the City's funding history, eligible activities, national objectives, and fair housing.

Participants and the public were encouraged to complete one or both of the City's surveys – one in paper format and one on-line survey. Paper surveys were provided at each of the workshop and small group meetings and were also available on-line.

Survey results were published on the City's website and presented to the City Council, along with any comments that had been received.

## SP-30 Influence of Market Conditions – 91.215 (b)

### Influence of Market Conditions

Affordable Housing Type	Market Characteristics that will influence the use of funds available for housing type
Tenant Based Rental Assistance (TBRA)	The City does not receive TBRA.
TBRA for Non-Homeless Special Needs	The City does not receive TBRA.
New Unit Production	San Marcos does not anticipate the construction of new housing units directly funded with the CDBG Grant Program.
Rehabilitation	Aging housing stock, especially those homes owned by low-income persons, will need assistance in maintaining the quality, safety, and accessibility of their homes through housing rehabilitation.
Acquisition, including preservation	Acquiring vacant lots for the construction of affordable housing or expanding existing park and green space areas will be considered as funding permits and when appropriate properties are available.

**Table 46 – Influence of Market Conditions**

## SP-35 Anticipated Resources - 91.215(a)(4), 91.220(c)(1,2)

### Introduction

The City anticipates continuing to receive an annual CDBG allocation of approximately \$500,000 and does not expect to become an entitlement community for HOME, ESG, or ADDI funding during the next five years.

### Anticipated Resources

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of Con Plan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG	Public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	\$517,077	\$2,000	\$290,669	\$809,746	\$2,000,000	CDBG funds will be used to address community housing and non-housing priority needs.

Table 47 - Anticipated Resources

### Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied.

The City of San Marcos utilizes both CDBG and General Fund dollars to provide assistance to local non-profit organizations who provide services in the San Marcos area. Although CDBG funds for “public services” are limited to 15% of the annual allocation (\$75,000 for a \$500,000 allocation), the City leverages these limited resources with over \$400,000 in local “Human Services” funds. A citizen advisory board reviews applications for both funding sources and make recommendations to the City Council on funding awards. The City does not require that funded projects/programs provide “matching” funds. However, it is common for CDBG-funded infrastructure and public facility projects to include the use of non-federal funds.

### If appropriate, describe publicly owned land or property located within the jurisdiction that may be used to address the needs identified in the plan

The City anticipates continuing to improve existing parks and install sidewalks in low/mod areas on property currently owned by the City. The *Affordable / Workforce Housing Policy* acknowledges the need for additional land to be made available to organizations such as Habitat for Humanity for Humanity for the construction of affordable housing. If public land becomes available, the City will strive to target it toward the construction of affordable housing.

## **2017 Addition to SP-40 Institutional Delivery Structure – 91.215(k)**

Explain the institutional structure through which the jurisdiction will carry out its consolidated plan including private industry, non-profit organizations, and public institutions.

The City of San Marcos will need assistance to deliver the CDBG-DR funds and will use a portion of the funds to plan, administer and deliver projects to impacted residents and technical programs in infrastructure by utilizing third party consultants.

Assessment of Strengths and Gaps in the Institutional Delivery System

The City of San Marcos must continue to conduct the regular business of the city. The staff will maintain close oversight on any additional support retained to assist with the delivery of the projects. The City will monitor ongoing activities and serve as support for residents with questions or concerns. The City's financial services team will be involved in the monitoring process as well.

As was discussed in the Unmet Needs and Prioritization sections, there are insufficient funds to address all of the unmet needs in both the housing and infrastructure programs.

Provide a summary of the strategy for overcoming gaps in the institutional structure and service delivery system for carrying out a strategy to address priority needs.

The strategy is to examine the additional staffing requirements in the process and utilize experienced consultants and professionals to assist the City in delivery of the CDBG-DR funds. A Request for Proposals was issued to assist in specific capacities for housing. A similar Request for Proposal will likely be issued upon approval of the DR Action Plan Substantial Amendment for infrastructure project.

## SP-40 Institutional Delivery Structure – 91.215(k)

Explain the institutional structure through which the jurisdiction will carry out its consolidated plan including private industry, non-profit organizations, and public institutions.

Responsible Entity	Responsible Entity Type	Role	Geographic Area Served
Hays Caldwell Women’s Center	Non-Profit Organization	Subrecipient – Public Services	Jurisdiction
CASA of Central Texas	Non-Profit Organization	Subrecipient – Public Services	Jurisdiction
Southside Community Center	Non-Profit Organization	Subrecipient – Housing Ownership	Jurisdiction
Habitat for Humanity-San Marcos	Non-Profit Organization	Subrecipient – Housing Ownership	Jurisdiction
United Way of Hays Co.	Non-Profit Organization	Subrecipient – Public Services	Jurisdiction
Community Services – Parks & Recreation Div.	Government	Public Services & Public Facilities	Jurisdiction
San Marcos Public Housing	Public Housing Authority	Affordable Housing-Rental, Public Housing, Homelessness	Jurisdiction

**Table 48 - Institutional Delivery Structure**

### Assess of Strengths and Gaps in the Institutional Delivery System

The City of San Marcos works closely with the local non-profit and faith based organizations to ensure that services are provided to the San Marcos low/mod and homeless populations. The City provides training and technical assistance to enhance their subrecipient partner’s capacity to serve low/mod persons while complying with CDBG program rules.

Gaps in the institutional structure include:

- There is a gap in the level of funding that is available for supportive services; when funds are inadequate services are reduced or eliminated.
- There is also a lack of funds to construct transitional housing.
- Habitat for Humanity – San Marcos has no paid staff and primarily depends on weekend “workdays” to construct new housing units. If additional funding was available to hire an executive director and construction professionals, their rate of production would most likely increase.
- There is a gap in the number of Public Housing/Section 8 Voucher units available locally and the number of persons who need this housing option.
- There is a gap in the shelter options available to single adults in San Marcos.

The City continues to affirmatively further fair housing as part of its institutional service delivery system. Principal actions to lessen impediments to fair housing are:

- Hosting an annual fair housing workshop that is targeted to local housing industry partners;
- Maintaining Fair Housing information on the City’s website;
- Issuing an annual Proclamation declaring April to be Fair Housing Month;

- Providing resources and assisting persons who want to file a fair housing complaint;
- Including “Fair Housing” as a topic in all homebuyer education classes and stakeholder workshops.

The following charts details the availability of services in the San Marcos area.

**Availability of services targeted to homeless persons and persons with HIV and mainstream services**

Homelessness Prevention Services	Available in the Community	Targeted to Homeless	Targeted to People with HIV
<b>Homelessness Prevention Services</b>			
Counseling/Advocacy	X		
Legal Assistance	X		
Mortgage Assistance			
Rental Assistance	X		
Utilities Assistance	X		
<b>Street Outreach Services</b>			
Law Enforcement	X		
Mobile Clinics			
Other Street Outreach Services	X	X	
<b>Supportive Services</b>			
Alcohol & Drug Abuse	X		
Child Care	X		
Education	X		
Employment and Employment Training	X		
Healthcare	X		X
HIV/AIDS	X		X
Life Skills	X		
Mental Health Counseling	X		
Transportation	X	X	X
<b>Other</b>			
Other: Food Bank	X		

Table 49 - Homeless Prevention Services Summary

**Describe the extent to which services targeted to homeless person and persons with HIV and mainstream services, such as health, mental health and employment services are made available to and used by homeless persons (particularly chronically homeless individuals and families, families with children, veterans and their families and unaccompanied youth) and persons with HIV within the jurisdiction:**

Three shelters are available for homeless persons in San Marcos that target specific populations: unaccompanied youth up to age 17; victims of family violence; and families with children. In addition, Southside Community Center provides an evening meal each day, allows persons who are homeless to shower and do laundry, without regard to their shelter status. Food is available from the Hays County Food Bank. Community Action has programs that provide transportation to medical appointments for persons living with HIV. Local non-profit organizations and churches provide direct assistance as they are able for needs such as bus tickets, emergency lodging, and clothing. The Hays County Veteran’s Service Office works with veterans, including those who are homeless, to meet various needs.

**Describe the strengths and gaps of the service delivery system for special needs population and persons experiencing homelessness, including, but not limited to, the services listed above.**

San Marcos has a strong network of non-profit and faith based organizations who are committed to serving the needs of the community. Unfortunately, as is true across the nation, operating funds are always in short supply. Gaps in the delivery system include the lack of a shelter for single individuals who do not fit the specific criteria of the existing shelters; lack of transitional housing for individuals leaving shelters; insufficient public housing and Section 8 Vouchers to meet the local need, lack of funding for programs of supportive services, and lack of rental housing that is affordable to extremely low income persons.

**Provide a summary of the strategy for overcoming gaps in the institutional structure and service delivery system for carrying out a strategy to address priority needs.**

The City will continue to fund social service programs that benefit the low to moderate income citizens of San Marcos using both CDBG and City Human Services funds. The City will consider supporting new development of Low Income Housing Tax Credit (LIHTC) housing as those opportunities arise. The City will continue to waive construction permit fees for the construction of affordable housing or for renovation projects carried out using CDBG funds or by the San Marcos Housing Authority.

## 2017 Addition to SP-45 Goals Summary – 91.215(a)(4)

### Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Needs Addressed	Funding	Goal Outcome Indicator
1	SF Owner Occupied Rehabilitation or Reconstruction	2017	2021	Disaster Recovery Assistance/LMI	Maintain affordable housing after the floods Mitigate damage	\$5,000,000	Repair not more than 50 homes
2	SF 1-4 Unit Rental Rehabilitation or Reconstruction	2017	2021	Disaster Recovery Assistance/LMI	Maintain affordable housing after the floods Mitigate damage	\$2,524,000	Repair not more than 50 homes
3	Midtown	2017	2022	Infrastructure drainage access/LMI	Intersection improvements are proposed including curb cuts and inlet improvements adjacent to the low point locations and inlets for the north side/Rehab facility. Clearing of the existing TxDOT ditch is also proposed as it is currently overgrown, and not well-maintained. Downstream at Davis Road, the existing dual 8'x4' culverts will be supplemented with 2 additional culverts as not to constrict flow	\$850,000	Approximately 82 properties would benefit during local rainfall events up to 25-year frequencies with the proposed improvements. Mobility will be improved.
4	Blanco Gardens	2018	2022	Infrastructure Drainage Access/LMI	By adding a new central storm drain system to Conway & Barbara Drives connected to the existing storm drain system, and providing a new 60-inch outfall to the San Marcos River (supplementing the existing 60-inch outfall); both the existing and proposed systems meet the City's required 25-year criteria. Additional 24-inch connections across River Road into the Woods Apartment Ditch are proposed to provide	\$5,000,000 +500,000 local funds	Approximately 420 properties would benefit during local rainfall events up to 25-year frequencies with the new storm drain system. Mobility will be improved.

					additional relief during lesser events.		
5	Clarewood/Barbara	2018	2022	Infrastructure Drainage Access/LMI	Mitigation and Drainage By adding a new storm drain system to Clarewood Dr. with a connection to both the Bugg Lane system and with a connection to the existing Highway 80 ditch (where ponded water currently flows), the system will meet criteria, and runoff will be captured by the storm drains and ditches instead of ponding in the roadway.	\$2,500,000	Approximately 76 properties would benefit during local rainfall events up to 25-years with the new storm drain system. Mobility will be improved.
6	Uhland Road	2017	2022	Infrastructure for Flood Risk Improvement/LMI	By converting the roadways to depressed curb-and-gutter sections with adequate grading, and adding a new storm sewer system with a new 48-inch outfall to the Blanco River, this area would be brought into compliance meeting the City's 25-year design criteria.	\$4,150,000 +50,000 in local funds	Approximately 166 properties would benefit during local rainfall events up to 25-year frequencies with the new storm drain system and roadway improvements. Mobility will be also improved
7	Planning	2015	2021			\$3,762,000	Assist in the development of an operational program designed to benefit residents impacted by storm
8	Administration	205	2021			\$1,254,000	Effectively administer programs

## Goals Description

1. Due to flooding damage, the city will rehabilitate with elevation if needed, or reconstruct houses that are substantially damaged after the storm due to disaster related impacts of single family owner occupied homes damaged during the storm.
2. Due to flooding damage, the city will rehabilitate, with elevation if needed, or reconstruct SF 1-4 Unit Rental uses that are substantially damaged after the storm due to disaster related impacts during the storm.
3. Intersection improvements are proposed including curb cuts and inlet improvements adjacent to the low point locations and inlets for the north side/Rehab facility. Clearing of the existing TxDOT ditch is also proposed as it is currently overgrown, and not well-maintained. Downstream at Davis Road, the existing dual 8'x4' culverts will be supplemented with 2 additional culverts as not to constrict flow. Lastly the City will consider a future channel along Davis Road or the Railroad near the Lake to connect to the Blanco River, as the Lake is reported to overflow both west and east in heavy events. The project will require coordination with TxDOT for these improvements.
4. By adding a new central storm drain system to Conway & Barbara Drives connected to the existing storm drain system, and providing a new 60-inch outfall to the San Marcos River (supplementing the existing 60-inch outfall); both the existing and proposed systems meet the City's required 25-year criteria. Additional 24-inch connections across River Road into the Woods Apartment Ditch are proposed to provide additional relief during lesser events. Road regrading is proposed for this reach of River Road from Linda to Cape Rd. revising the roadway cross-section to drain towards the Woods apartment ditch. Lastly, there is a potential buyout property on Conway that may be purchased for use as a drainage easement to add an inlet and lead system to drain the alley/easement between Barbara & Conway.
5. Adding a new storm drain system to Clarewood Dr. with a connection to both the Bugg Lane system and with a connection to the existing Highway 80 ditch (where ponded water currently flows), the system will meet criteria, and runoff will be captured by the storm drains and ditches instead of ponding in the roadway. Barbara Drive will be regraded to drain to Bugg Lane for adequate drainage.
6. By converting the roadways to depressed curb-and-gutter sections with adequate grading, and adding a new storm sewer system with a new 48-inch outfall to the Blanco River, this area would be brought into compliance meeting the City's 25-year design criteria.

### Estimate the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined by HOME 91.315(b)(2)

Up to 100 low-income families will be directly benefitted under projects one and two. Projects three through seven will provide area benefit to LMI families and potentially maintain up to 768 needed units of affordable housing.

## SP-45 Goals Summary – 91.215(a)(4)

### Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Needs Addressed	Funding	Goal Outcome Indicator
1	Owner-Occupied Housing Rehab	2015	2019	Affordable Housing	Affordable Housing	\$500,000	Homeowner Housing Rehabilitated – 35 households
2	Parks, Sidewalks, & Public Facilities	2015	2019	Non-Housing Community Development	Public Facilities, Infrastructure, & Transportation	\$1,090,343	Public Facility or Infrastructure Activities other than L/M Housing Benefit = 4500 persons
3	Public Services	2015	2019	Non-Housing Community Development	Public Services	\$375,000	Public Service activities other than L/M Housing Benefit – 2500 persons
4	Clearance of Spot Slum & Blight	2017	2019	Clearance Activities	Clearance Activities	\$140,000	Buildings Demolished – 15 buildings
5	Program Administration	2015	2019	Program Administration	Program Administration	\$500,000	N/A
6.	First Time Homebuyer Program	2016	2019	Affordable Housing	Affordable Housing	\$114,400	Direct Financial Assistance to Homebuyers = 16 households
7	Land Acquisition for Affordable Housing	2017	2019	Affordable Housing	Affordable Housing	90,003	Homeowner Housing Added – 3 household housing units
\$2,809,746.00							

Table 50 – Goals Summary

### Goal Descriptions

1. The rehabilitation of owner-occupied single-family housing targeted to homeowners with a family income less than 80% of AMI. The program reduces construction code violations, thus increasing safety of the residents, preserves property values, improves accessibility, and reduces risk of the occupant families becoming homeless.
2. This non-housing community development goal will provide the City with the opportunity to improve community parks, community centers, and public sidewalks that serve low/mod neighborhoods.
3. Support for programs provided to low/mod residents in an amount not to exceed 15% of the annual CDBG allocation.
4. This goal will allow the City to remove vacant, dangerous structures and clear the lots of debris.
5. The oversight and administration of the CDBG program to ensure compliance with all program goals and policies.
6. Down payment and closing cost assistance for new homebuyers whose household income is at or below 80% of the Area Median Income.

7. Purchase of vacant lots to be used by Habitat for Humanity or other non-profit homebuilder to construct affordable housing.

**Estimate the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined by HOME 91.315(b)(2)**

- Housing rehab - 7 families per year = 35 total households, of which 15 are estimated to be extremely low; 15 are estimated to be low-income; and 5 are estimated to be moderate-income
- First-Time Homebuyer - 4 families per year for 4 years = 16 moderate-income households
- Land Acquisition - 3 households with 2 estimated to be low-income and one to be moderate-income families

## **SP-50 Public Housing Accessibility and Involvement – 91.215(c)**

### **Need to Increase the Number of Accessible Units (if Required by a Section 504 Voluntary Compliance Agreement)**

There is no Section 504 compliance agreement for this PHA. The biggest problem with public housing is not the accessibility of its units; rather, the number of Public housing units is inadequate to meet the needs of the LMI population in San Marcos as is shown by the continuous waiting lists for all types of public housing. Compounding the problem is the 2015 flood damage experienced by the 100 units of public housing at the C. M. Allen Homes complex, which temporarily displaced the residents of all the units. The PHA is looking at options for funding the necessary repairs to allow those displaced residents to return to this complex.

### **Activities to Increase Resident Involvements**

A five-member board, including a resident board member, oversees the organization. The board is appointed by the Mayor of the City of San Marcos. Each public housing complex has a resident Council or Assembly group which holds periodic meetings. A youth development program serves about 90 youth at three sites providing mentors, tutors, homework assistance, computer labs, and social opportunities. The Family Self-Sufficiency program provides residents an opportunity to learn new life/career skills, to save for future needs, and to move out of public housing. The Housing Authority continues to partner with local agencies, faith-based organizations, Texas State University, and the City to bring resources to its residents.

**Is the public housing agency designated as troubled under 24 CFR part 902?** No.

## **SP-55 Barriers to affordable housing – 91.215(h)**

### **Barriers to Affordable Housing**

Housing affordability is a key component to the quality of life of San Marcos residents. A number of factors create a barrier to affordable housing, which is generally accepted to mean that no more than 30% of a household's gross annual income is spent on housing, including utilities. A housing cost burden exists when the household's housing costs exceeds 30% of their income.

The City adopted an *Affordable / Workforce Housing Policy* in 2014. This policy identified 5 housing issues, established goals, and provided strategies for accomplishing the goals. This policy was reviewed during the creation of this Consolidated Plan. In 2013 the City adopted an updated Analysis of Impediments to Fair Housing Choice (AI) and adopted an "AI Action Plan" in 2014. The annual CAPER will report on the City's progress in addressing these impediments.

There are no identified barriers to affordable housing resulting from the public policies of the City of San Marcos. The Analysis of Impediments to Fair Housing Choice found three impediments that create barriers to affordable housing:

1. Lack of affordability of the housing stock;
2. Insufficient income for the local cost of housing; and,
3. Low income residents have limited resources to maintain homes and neighborhood stability.

### **Strategy to Remove or Ameliorate the Barriers to Affordable Housing**

#### Impediment "A" Lack of Housing Affordability

1. Providing a first-time homebuyer program for closing cost and down payment assistance
2. Purchasing land for Habitat for Humanity.
3. Construction permitting and impact fees are waived for Habitat for Humanity projects.
4. The City will update its *Infill Housing Development Incentives* policy to provide incentives for affordable housing development.

#### Impediment "B" Insufficient income for local housing costs

1. The City provides a \$25,000 homestead exemption for homeowners sixty-five and older or with a disability, thus reducing their property tax burden.
2. The City has programs to help reduce living expenses, such as utility bills, including:
  - a. Home Energy Analysis providing recommendations on how to reduce electric energy consumption and monthly costs.
  - b. Energy Efficient Home Heating/AC Rebate Program offers rebates for purchase of eligible energy efficient products.
3. A Bill Averaging Program that allows residents to equalize energy costs over a 12-month period, avoiding peak bills in the winter and summer months.

4. Utility Assistance Program – Low-income families, elderly residents on fixed incomes, or disabled residents on a fixed income are eligible to apply for assistance with a one-time yearly payment of the electric, water, and wastewater portions of their monthly utility bill.
5. The City’s Water/Wastewater Department (W/WW) sponsors several programs that help encourage families to conserve and lower utility bills, including:
  - a. Water Surveys generating a report with specific water conservation strategies.
  - b. Flush-Smart (toilet) Rebate Program
  - c. Wash-Smart (washing machine) Rebate Program
  - d. Rainwater Harvesting Rebate Program

Impediment “C” Low income residents have limited resources to maintain homes and neighborhood stability.

1. The City continues to support the Southside Community Center housing rehabilitation program with both City and CDBG funds.
2. The City waives construction permitting fees for CDBG-funded housing rehabilitation projects.
3. The City also participates in the annual Texas State University student initiative “Bobcat Build” as a supporting partner. This volunteer one-day community service project in 2014 had over 4,400 volunteers and served numerous jobsites throughout San Marcos, many benefitting the City’s elderly, low-income homeowners.
4. The City sponsors neighborhood-wide cleanup activities, and provides opportunities for brush drop-off, household hazardous waste collection, and a recycling program through Green Guy Recycling that accepts tires, Freon-containing appliances, and electronics.

## **SP-60 Homelessness Strategy – 91.215(d)**

### **Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs**

The City will continue to support local non-profit agencies that serve homeless persons such as Southside Community Center and the Hays County Food Bank using Human Services funding (from the City General Fund).

### **Addressing the emergency and transitional housing needs of homeless persons**

As has been previously detailed, three shelters are available in San Marcos to specific populations: A family violence shelter; a youth shelter; and an emergency family shelter. No shelter is available for single men and women who do not fit these profiles. However, shelters are available in nearby Austin and San Antonio and local social service agencies often provide assistance in reaching these shelters. The City supports the operation of these local shelters using both CDBG and Human Services funding.

**Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again.**

The lack of transitional housing is a gap in housing options available in San Marcos. No funding has been identified to close this gap.

**Help low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are likely to become homeless after being discharged from a publicly funded institution or system of care, or who are receiving assistance from public and private agencies that address housing, health, social services, employment, education or youth needs**

Public housing is being provided by the San Marcos Housing Authority. The City makes referrals to the PHA in response to inquiries for housing assistance. In addition, the City continues to foster the partnership between the PHA and City staff to assist families in obtaining a home of their own.

## **SP-65 Lead based paint Hazards – 91.215(i)**

### Actions to address LBP hazards and increase access to housing without LBP hazards

All houses in the rehabilitation and reconstruction programs built prior to 1978 will be tested for lead paint hazards by a qualified firm and the test results determine which houses require lead-based paint interim control measures and clearance reports.

All applicants for the housing program will receive a copy of the “Protect Your Family from Lead in Your Home” booklet (also available in Spanish). Houses constructed prior to 1978 must pass a lead hazard evaluation inspection prior to loan closing.

### How are the actions listed above related to the extent of lead poisoning and hazards?

The City has a number of housing units that were constructed prior to 1978, and many of these homes are occupied by low-income families. However, not every pre-1978 house contains lead paint.

The annual elevated lead blood level testing results in Hays County shows a very minimal number of tested children show an elevated level. In 2011 less than 5 children out of 1,628 tested in Hays County showed elevated levels that presented a health threat. Based on these experiences, the City’s strategies for addressing LBP as detailed above are reasonable.

### How are the actions listed above integrated into housing policies and procedures?

The City’s CDBG-DR policy housing program’s policy manuals will include Lead-based Paint Hazard reduction requirements including risk assessment, notifications, using the appropriate level of control/mitigation measures, and clearance for houses found to contain lead paint that will be disturbed by the rehab project.

## **SP-65 Lead based paint Hazards – 91.215(i) - 2015**

### **Actions to address LBP hazards and increase access to housing without LBP hazards**

All houses to be included in the Southside Community Center's housing rehabilitation program are tested for lead paint hazards by a qualified firm and the test results determine which houses require lead-based paint interim control measures and clearance reports.

The City's First Time Homebuyer Program applicants receive a copy of the *"Protect Your Family from Lead in Your Home"* booklet (also available in Spanish). Houses constructed prior to 1978 must pass a lead hazard evaluation inspection prior to loan closing.

### **How are the actions listed above related to the extent of lead poisoning and hazards?**

The City has a number of housing units that were constructed prior to 1978, and many of these homes are occupied by low-income families. However, not every pre-1978 house contains lead paint. Each year 7 houses are tested for lead paint prior to the commencement of rehabilitation activities. Results typically show that 2 to 3 houses tested have no lead paint and of those containing lead paint, often it is a small, specific area, such as a door or window frame. The annual elevated lead blood level testing results in Hays County shows a very minimal number of tested children show an elevated level. In 2011 less than 5 children out of 1,628 tested in Hays County showed elevated levels that presented a health threat.

Based on these experiences, the City's strategies for addressing LBP as detailed above are reasonable.

### **How are the actions listed above integrated into housing policies and procedures?**

The City's housing programs will comply with all Lead-based Paint Hazard reduction requirements including risk assessment, notifications, using the appropriate level of control/mitigation measures, and clearance for houses found to contain lead paint that will be disturbed by the rehab project.

## **SP-70 Anti-Poverty Strategy – 91.215(j)**

### **Jurisdiction Goals, Programs and Policies for reducing the number of Poverty-Level Families**

The City's approach to reducing poverty focuses on elimination of financial barriers to economic advancement, with an emphasis on affordable housing.

#### **Strategy 1. Adopting Policies that Support Housing Affordability**

The City's Comprehensive Plan provides the following Neighborhood and 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."* Supporting that vision, the City has adopted an *Affordable / Workforce Housing Policy* that defines issues associated with the expansion and preservation of diverse, affordable housing choices in San Marcos and identifies specific goals and strategies to address those issues in a manner consistent with the City's Comprehensive Plan.

This policy included direction to staff to review development codes to (a) reduce/remove regulatory barriers to allow alternative housing types that foster affordability; (b) modify development regulations that increase costs without clear rationale or benefit, such as lot sizes, setbacks, and street width standards; (c) to update the City's Infill Housing Incentive program to provide incentives to develop new affordable housing; and (d) ensure that the non-conforming residential structure standards provide maximum flexibility, without compromising safety.

#### **Strategy 2. Providing Economic Development Programs and Support**

The City of San Marcos has adopted an Economic Development Incentives Policy that provides construction and utility infrastructure incentives, fee waivers, project tax abatement and sales tax rebates that can be made available to expanding or new industries / businesses.

The City has contracted with a private firm to provide economic development services for the community. Their charge is to attract employers to San Marcos offering better-paying jobs to low-income residents with secondary school education, and facilities for residents to improve employment skills.

#### **Other Measures**

In addition, the City provides support to non-profit organizations that provide supportive services that help improve economic opportunity and remove other financial burdens, including self-sufficiency programs, educational attainment and skill training, assistance with government benefits, and health care assistance.

#### **How are the Jurisdiction poverty reducing goals, programs, and policies coordinated with this affordable housing plan?**

Elements of the affordable housing plan that tie to reducing poverty include:

- Providing homebuyer education classes to the PHA Family Self-Sufficiency program participants;
- Ensuring the elimination/reduction of barriers to private development of affordable housing in the City's development codes
- Continuing an active role in the preservation and improvement of existing housing;

- Ensuring that all first-time homebuyers complete a program of homebuyer education;
- Continuing to provide City-funded programs to reduce housing costs;
- Continuing to support direct assistance services through CDBG and Human Service funding provided to local non-profit organizations.

## **SP-80 Monitoring – 91.230**

**Describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements**

The City has established standards and procedures for monitoring Subrecipients. This includes preparing a risk assessment and formalizing a monitoring plan based on the assessment. Subrecipient monitoring includes a review of financial management practices, procurement and contracting, FHEO compliance, and lead based paint compliance and income eligibility determination as applicable. Monitoring checklists, similar to those found in the HUD Monitoring Handbook, are used as part of the monitoring review.

Subrecipients submit quarterly progress reports that are reviewed to ensure that projects are on-track. Data from the reports is used to update the project status in IDIS. On-site technical assistance is provided if requested or if issues are raised by the quarterly reports.

The City monitors active construction projects for compliance with Davis-Bacon Act requirements, including on-site employee interview. Staff members compare interview results with weekly payroll records to ensure compliance.

City inspectors and Project Managers monitor construction projects for code and plan compliance and the project architect or engineer provides oversight, including draw request approval, for all projects. Building permits, and all required inspections, are obtained for rehabilitation projects.

Income eligibility is verified for each First Time Homebuyer applicant, housing rehabilitation beneficiaries, and for Habitat for Humanity homebuyers that purchase a house constructed on a CDBG-purchased lot.

The City's Finance Department staff monitors the annual reports for all Subrecipients who expend \$500,000 or more in federal funding.

# CITY COUNCIL MEETING

Tuesday, June 2, 2020

## Amending the 2015 Consolidated Plan for HUD Federal Grants

Consider approval of Resolution to Adopt

CDBG  
Disaster Recovery

CDBG  
Entitlement

CDBG  
Mitigation

CDBG  
Coronavirus

## Proposed Amendments to add CDBG-CV

- Add priority need category: Economic Development
- Add CDBG-CV grant: \$425,261

CDBG  
Disaster Recovery

CDBG  
Entitlement

CDBG  
Mitigation

CDBG  
Coronavirus

## NEXT STEPS – CDBG-CV Grant

May 19	Public hearing on amendments to 2015-2019 Consolidated Plan to add CDBG-CV and Economic Development priority
May 24-30	Public comment period
June 2	Request City Council approval
	Consider specific programs
June 7-13	Public comment period on programs
June 16	Decide on programs

CDBG  
Disaster Recovery

CDBG  
Entitlement

CDBG  
Mitigation

CDBG  
Coronavirus

## Amendment to the 2015-2019 Consolidated Plan Staff Recommendation

Staff recommends that City Council approve a Resolution adopting the 2015-2019 Consolidated Plan as amended, authorizing the City Manager to act as the Official Representative of the City in matters related to CDBG Programs and Action Plans, and declaring an effective date.



## Legislation Text

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**File #:** ID#20-328, **Version:** 1

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**AGENDA CAPTION:**

Hold discussion on Capes Dam and Hays County Parks proposals, and provide direction to the City Manager.

**Meeting date:** June 2, 2020

**Department:** Requested by Council Member Mihalkanin and Gonzales

**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:** Please see below for timeline.

**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.
- Core Services
- Not Applicable

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

Choose an item.

**Background Information:**

January 15, 2013, City Council approved Planned Development District (PDD) zoning for The Woodlands of San Marcos development project, and received 20 acres of dedicated parkland along the San Marcos River, which includes Cape's Dam and the Mill Race.

September 23, 2014, the Parks and Recreation Advisory Board received a presentation from Dr. Thom Hardy regarding work done by the Meadows Center in regards to a study of the safety and environmental issues associated with Cape's Dam. Scientific evaluation was completed which recommended the removal of Cape's Dam and filling of the Mill Race.

February 22, 2016, City Council held a Cape's Dam Workshop where they received a presentation from Dr. Thom Hardy, and provided direction to Staff to bring back an action item that would approve the removal of the dam and the filling of the mill race. Click to read minutes [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/02222016-805).  
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/02222016-805>>

March 15, 2016, City Council approved a motion to remove Cape's Dam. Click [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/03152016-820).  
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/03152016-820>> to read minutes.

June 21, 2016, a stakeholder meeting was held at fish hatchery, including US Fish and Wildlife Service (USFWS), Texas Historical Commission (THC), US Army Corps of Engineers (USACE), Hays County Historical Commission, and the City. THC stated that the dam, mill race and associated structures retain sufficient historic integrity to remain eligible for listing in the National Register. USFWS stated that leaving the dam in place, in whole or in part, would make the City ineligible for USFWS funding for the project.

August 16, 2016, Council received a presentation from USFWS regarding the Cape's Dam removal planning and permitting process. The USFWS report states that the dam, "acts as a barrier to fish and other aquatic species" and "is in severe disrepair and poses a safety hazard to recreational users." Due to the conflicting positions of USFWS and THC, and the competing interests of other interested stakeholders, the City determines that the best course of action is to suspend the UFWS permit process and further investigate removal, repair and replacement options. Click [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/08162016-851).  
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/08162016-851>> to read minutes.

October 4, 2018: Historic Preservation Commission recommended approval of designating Thompson/Cape Dam and Ditch Engineering Structure as a local historic landmark (4-2). Click [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/10042018-1482).  
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/10042018-1482>> to read minutes.

November 27, 2018: Planning and Zoning Commission recommended denial of designating Thompson/Cape Dam and Ditch Engineering Structure as a local historic landmark (5-4). Click [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/11272018-1536).  
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/11272018-1536>> to read minutes.

January 15, 2019: City Council was briefed in executive session to discuss possible partnership opportunities with Hays County and the Hays County Historical Commission.

January 29, 2019: City Council considered an item designating Cape's Dam as a historic landmark. This action was postponed for up to 6 months while staff gathered more information related to the project. Click [here](https://san-marcos-tx.legistar.com/View.ashx?M=M&ID=651926&GUID=D6B73902-0C86-4E25-A305-9B354DF051FA) <<https://san-marcos-tx.legistar.com/View.ashx?M=M&ID=651926&GUID=D6B73902-0C86-4E25-A305-9B354DF051FA>> to read minutes.

June 18, 2019: City Council was briefed in Work Session on status of possible partnership opportunities with Hays County and the Hays County Historical Commission. Presentation from County on proposed project anticipated in fall 2019. Click [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/06182019-1757). <<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/06182019-1757>> to read minutes

October 15, 2019: City Council received a presentation from Vista Planning & Design on behalf of Hays County and the Hays County Historical Commission regarding a visioning study for Cape's Dam, the Mill Race, Thompson's Island & San Marcos River. Council provided consensus for staff to seek what permissions and permits would be needed from State and Federal agencies to remove or repair the dam. Click [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/10152019-1896). <<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/10152019-1896>> to read minutes.

January 7, 2020: City Council was briefed in Work Session regarding the possible permitting process depending on the direction of Council to remove, rehab or rebuild the dam. Council provided direction for Staff to conduct further studies and provided a number of items to be addressed. Click [here](http://san-marcos-tx.granicus.com/player/clip/1445?view_id=9) <[http://san-marcos-tx.granicus.com/player/clip/1445?view\\_id=9](http://san-marcos-tx.granicus.com/player/clip/1445?view_id=9)> to view the video of that meeting.

### **Funding Currently Available**

Currently there is \$174,628 remaining of the \$250,000 that was originally funded for the Cape's Camp Improvement and Dam Project. To date \$75,372 of the funds allocated have been used to fund previous studies on Cape's Dam and the Mill Race.

### **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.



# *Cape's Dam, Mill Race, Thompson's Island & San Marcos River*

## *Visioning Study*

*City Council Work Session  
October 15, 2019*

# Presentation

Receive presentation from Hays County regarding Cape's Dam and seek Council direction on proposed project and possible partnership opportunities with Hays County and the Hays County Historical Commission.

# Background

## February 22, 2016: Capes Dam Workshop

- Presentation by Dr. Thomas Hardy
- Effects of changing height of Cape's Dam on recreation, Texas wild rice and fountain darter habitat (Hardy Report – 10/12/15)

## August 15, 2016: Capes Dam Council Presentation

- Presentation by Mike Montagne, U.S. Fish and Wildlife Service
- Capes Dam Removal Analysis (Hydraulic Hardy Report – 3/27/2017)
- Supplement Cape's Dam and Mill Race Assessment (Supplemental Assessment-Hardy Report – 5/23/17)

## January 11, 2019: Capes Dam Memo Staff Update

# Background

January 15, 2019: City Council briefed in executive session to discuss possible partnership opportunities with Hays County and the Hays County Historical Commission.

January 29, 2019: City Council considered an item designating Cape's Dam as a historic landmark. This action was postponed for up to 6 months while staff gathered more information related to the project.

June 18, 2019: City Council briefed in Work Session on status of possible partnership opportunities with Hays County and the Hays County Historical Commission. Presentation from County on proposed project anticipated in fall 2019.

# City Council Direction Needed

- Does Council want to proceed with an agreement with Hays County to partner on renovation/rehabilitation of Cape's Dam?
- Does Council want to explore the larger visioning/master plan concept with Hays County?



## A note regarding this presentation:

**A master plan** by its very nature and definition seeks a broad perspective from as many voices as possible to craft a plan and strategy that serves the most amount of residents in the best possible manner.

**This presentation** and the maps, comments, and strategies are conceptual only. The information contained in the work is only to explore the potential of a more comprehensive master plan.

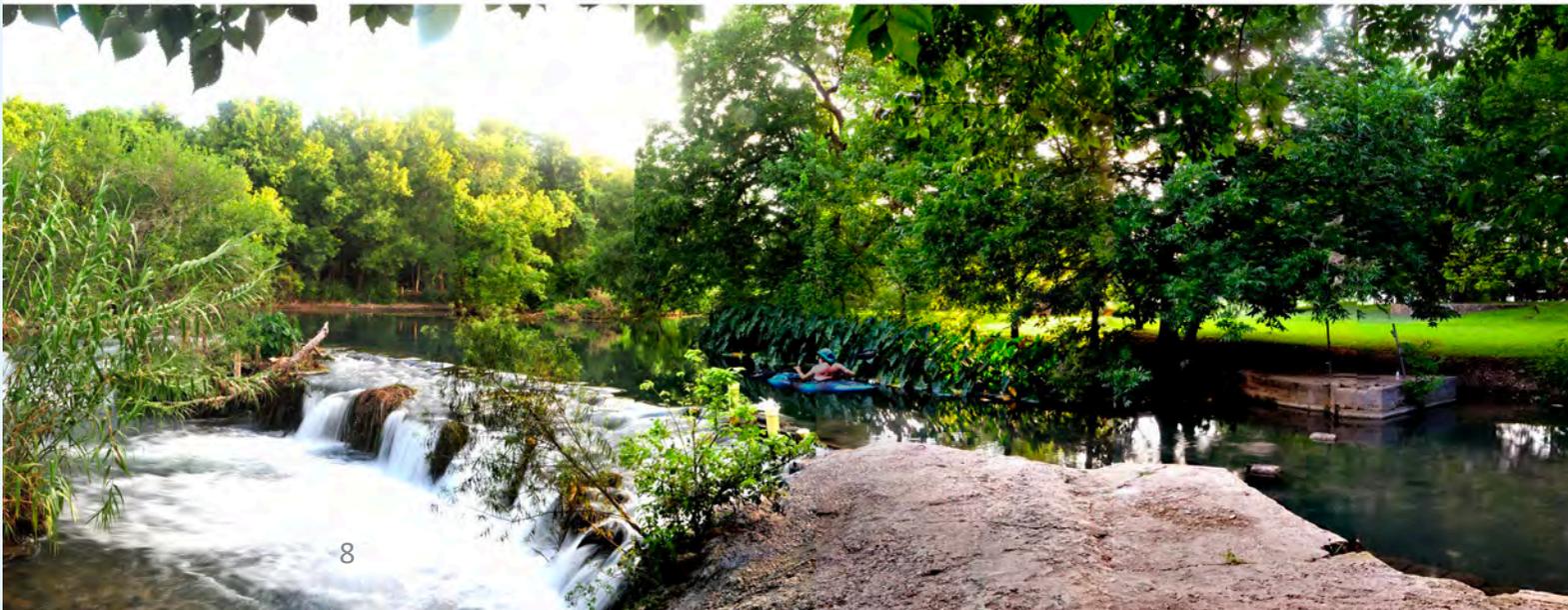


# The vision presented here;

Seeks to promote the rehabilitation and interpretation of the Thompson/Cape dam, mill race, Thompson/Cape mill site and turbine structure, as a special place;

*the very beginning of San Marcos industry.*





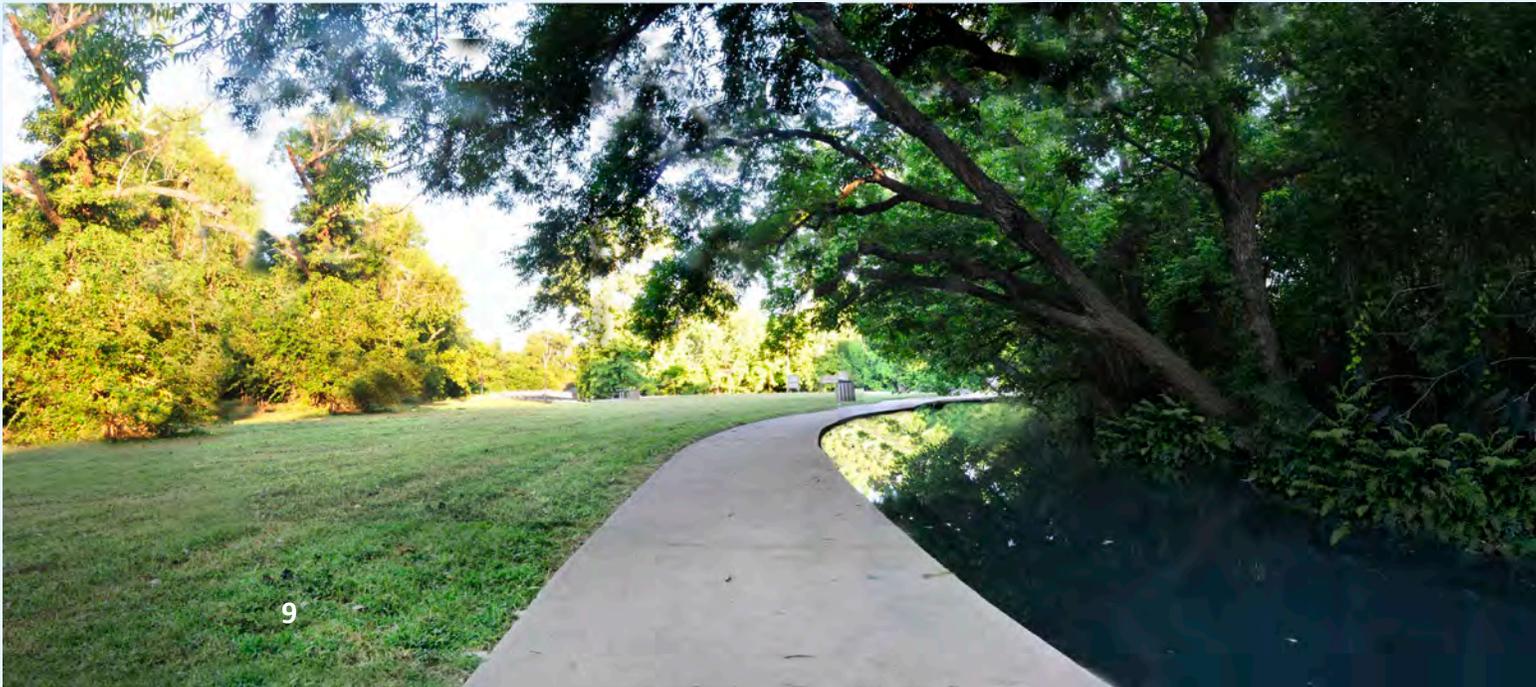
## Thompson/Cape Dam & Mill Race Gate,

- Crib dam rehabilitation
- Limited River Access points
- Historic interpretation



## Mill Race

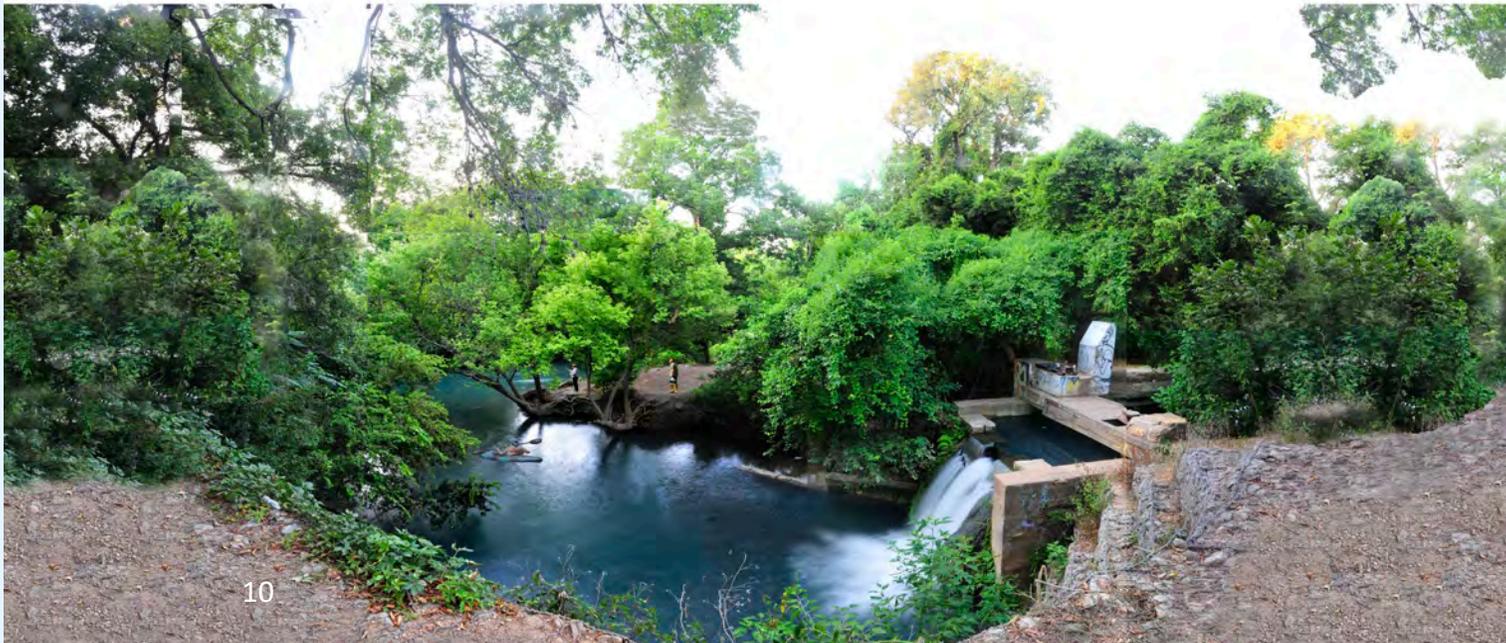
- Higher water level in the Mill Race
- Safety access
- Passive, low level development





## Thompson Dam & Mill Pond

- Safety railing & Access
- Observation platform
- Kayak ingress/egress
- Bank Stabilization



# Overall Goals:



# Overall Goals:



*Prioritize historic features & environmental beauty*

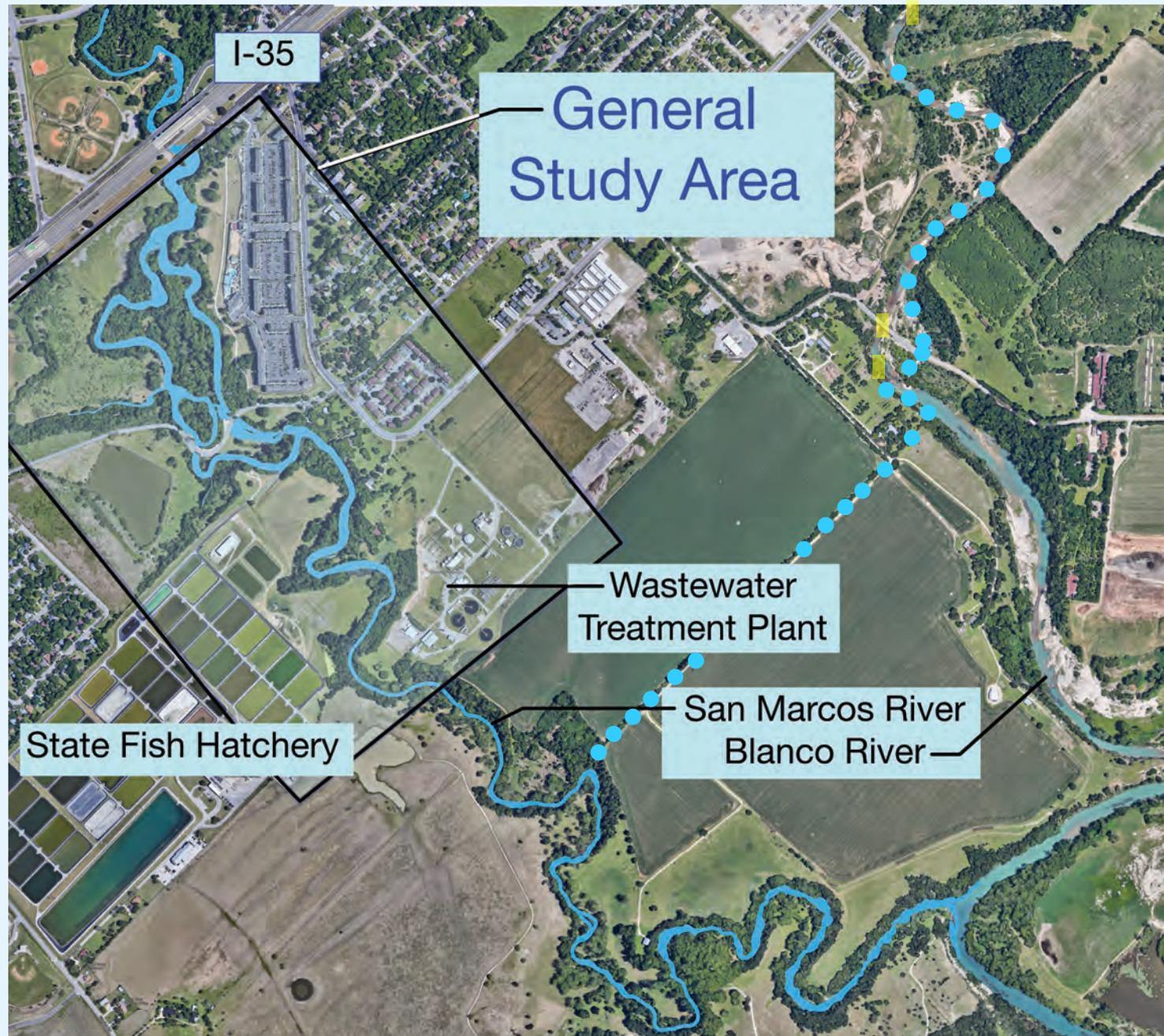


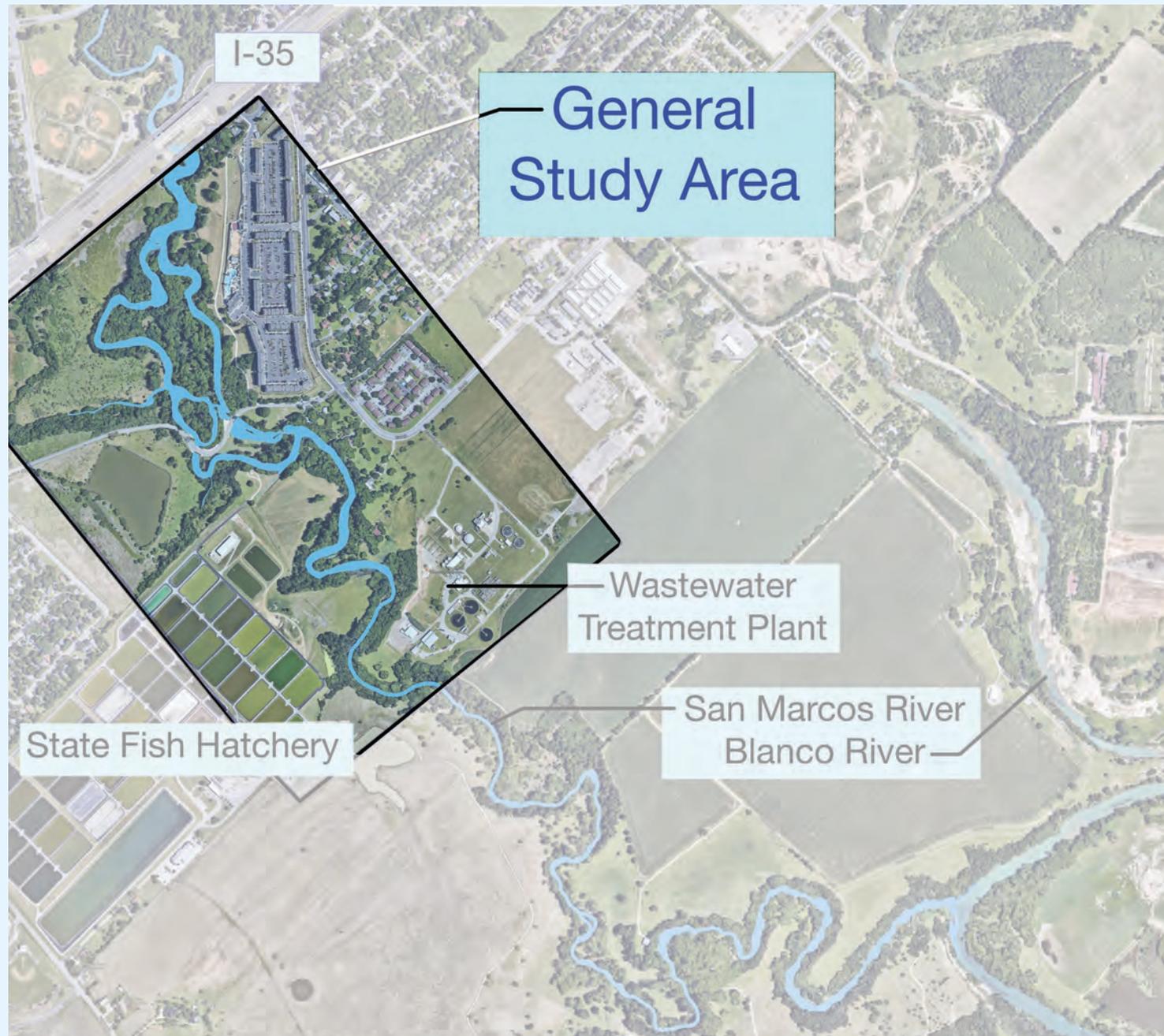
# Overall Goals:

*Achieving a balanced approach* for historic structure rehabilitation, educational interpretation, and leisurely activities while preserving the ecological integrity of the San Marcos River through pragmatic conservation and restoration initiatives.

*Providing a special & diverse asset* to be enjoyed by San Marcos and Hays County residents, accessed by trails reaching out in all directions.

*Providing comprehensive safety and access,* focusing on ADA, EMS servicing, Trails, & Water Access.







# *#1 Achieving a Balanced Approach:*

Vision Study Caters to Three Main Areas:

*Environmental Integrity;* A level of respect and action for the habitat and the sensitive species that exist there.

*Historic Rehabilitation + Interpretation;*  
Understanding our history to learn and guide us forward.

*Social and Leisure Access Equity;*  
New asset for an underserved area of San Marcos.

## *#1 Achieving a Balanced Approach:*

*Environmental Integrity;* A level of respect and action for the habitat and the sensitive species that exist there.

## Analysis & Strategies

- Coordination with all necessary City and County departments
- Existing conditions assessment
- Flow-through design modeling of a rehabilitated Cape's Dam as part of the assessment informing design
- Post assessment after first phase improvements completed
- Monitoring to include recreational activity seasonal levels
- Establishment for strategies including river access points
- Terrestrial survey conducted on sensitive landscapes.
- Invasive species removal

*#1 Achieving a Balanced Approach:*

*Historic Rehabilitation + Interpretation;*

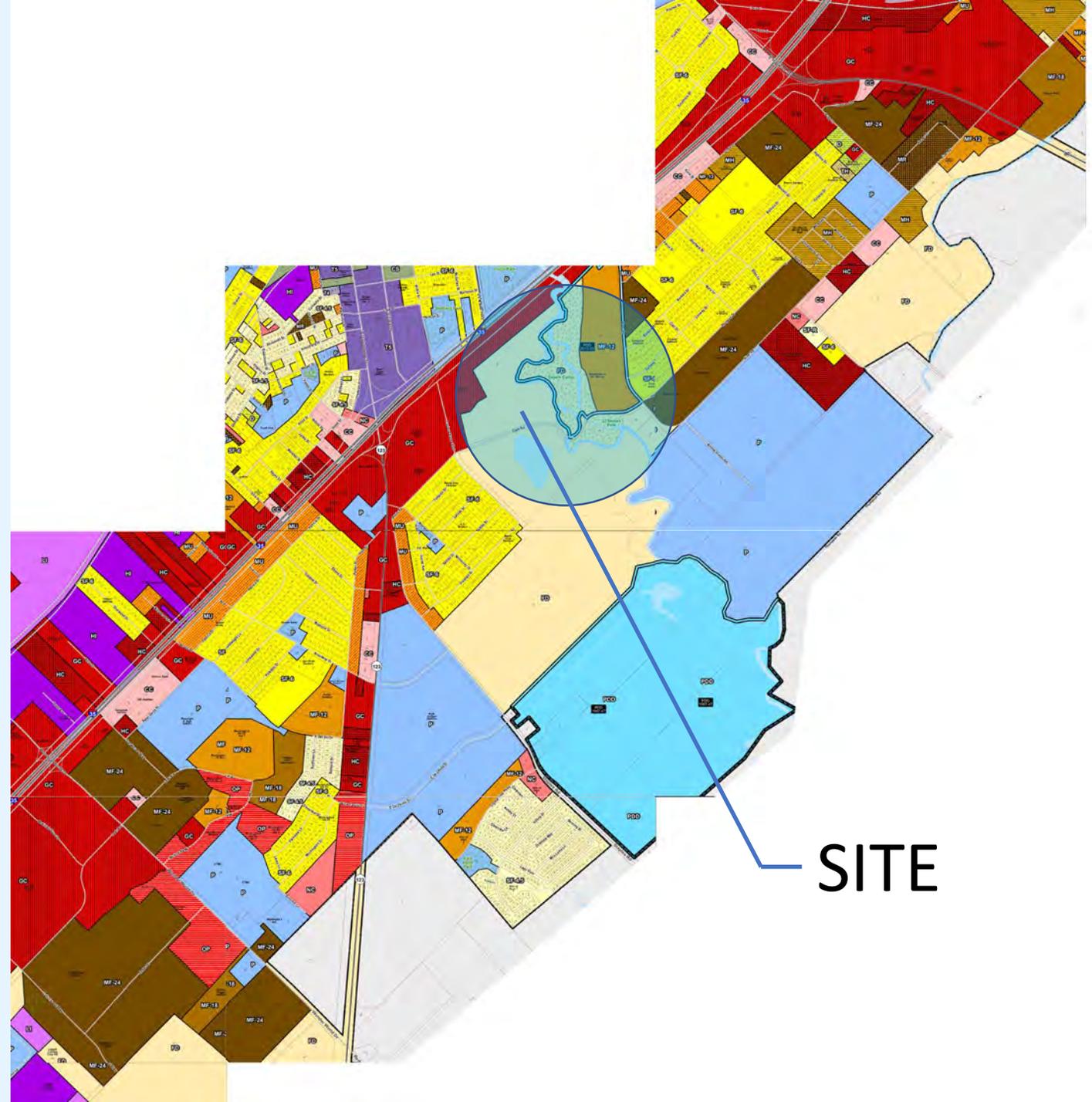
Understanding our history to learn and guide us forward.



# *#1 Achieving a Balanced Approach:*

## *Social Equity;*

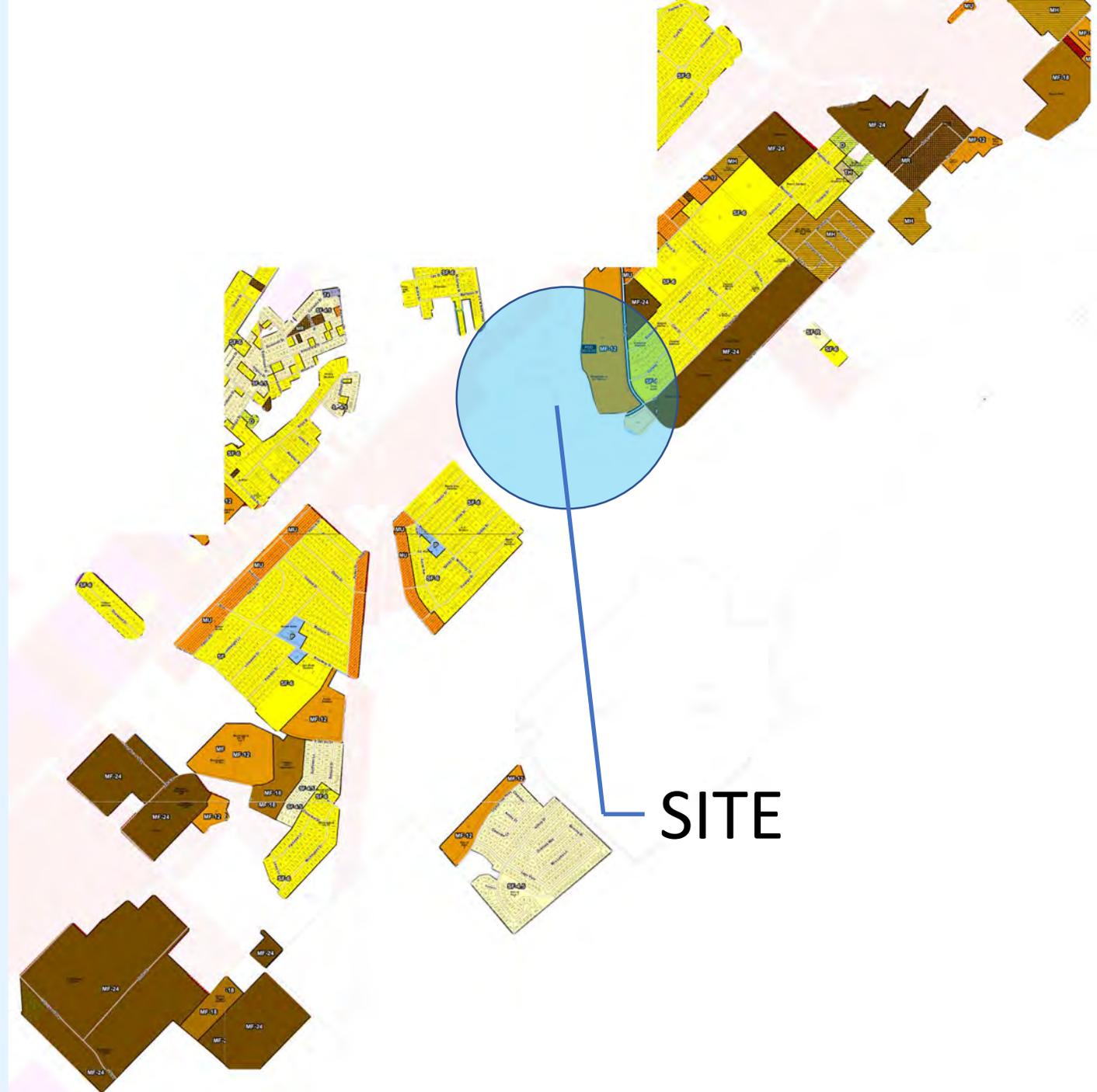
New asset for an underserved areas of San Marcos.



# *#1 Achieving a Balanced Approach:*

## *Social Equity;*

New asset for an underserved areas of San Marcos.

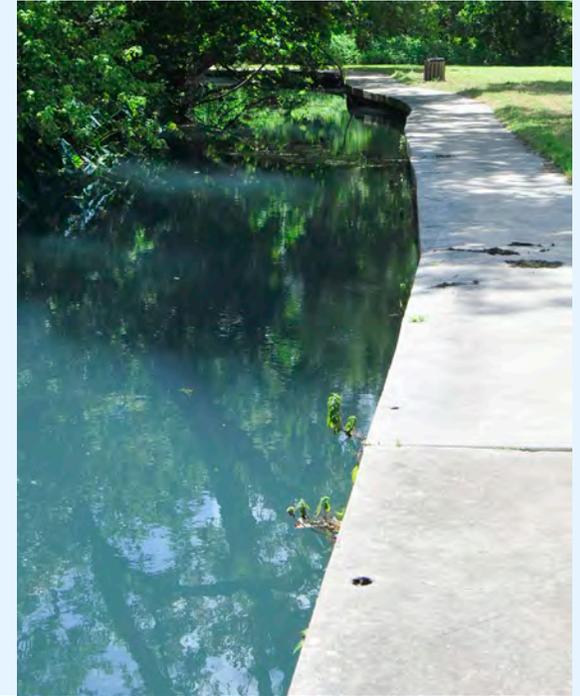


## *#2 Providing a Special and Diverse Asset:*

- A place for historians to understand San Marcos History better
- A place for people interested in natural places for bird watching, hiking, relaxing, environmental study
- A place to learn about urban impacts on the environment
- A place to relax and enjoy being outdoors

## #3 Access & Safety:

- Mill race water level to low; ingress/egress challenges
- Cape Road, sight distance, speed, dangerous edge.
- Waterfall; tragedy
- Cape's Dam; swimming and boating hazard
- ADA access upgrades on Cape's Road
- Comprehensive ADA review necessary



### *#3 Access & Safety:*

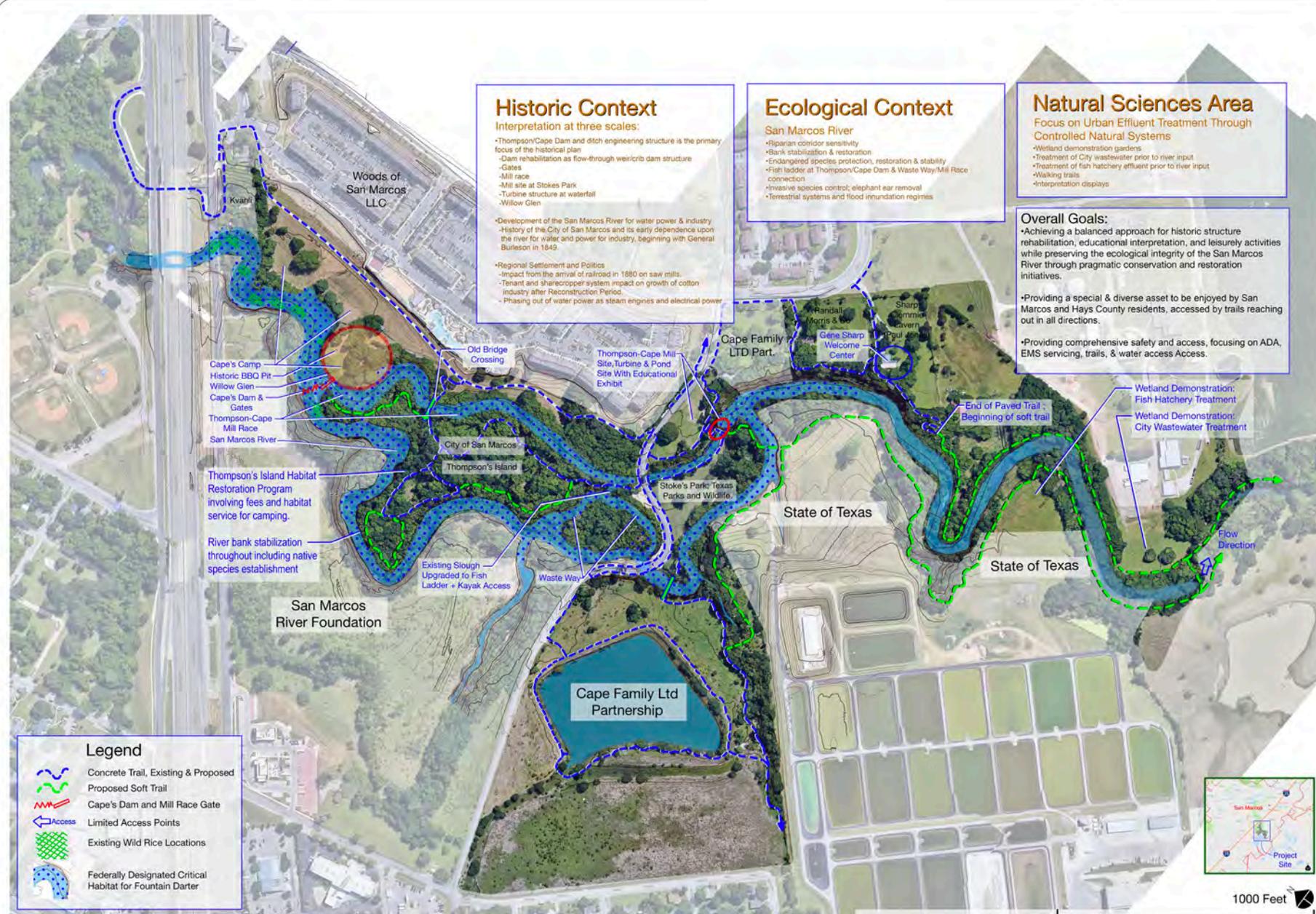
A master planning process includes the lens of emergency services and stakeholder discussions.

- Structural systems for natural grass EMS drives
- Emergency call boxes
- Safe ingress/egress places
- Traffic calming
- Addressing existing unsafe conditions
- Lighting as appropriate



First Map:

# Historic & Ecological Framework



### Historic Context

Interpretation at three scales:

- Thompson/Cape Dam and ditch engineering structure is the primary focus of the historical plan
- Dam rehabilitation as flow-through weir/crib dam structure
- Gates
- Mill race
- Mill site at Stokes Park
- Turbine structure at waterfall
- Willow Glen

-Development of the San Marcos River for water power & industry

- History of the City of San Marcos and its early dependence upon the river for water and power for industry, beginning with General Burleson in 1849.

-Regional Settlement and Politics

- Impact from the arrival of railroad in 1880 on saw mills.
- Tenant and sharecropper system impact on growth of cotton industry after Reconstruction Period.
- Phasing out of water power as steam engines and electrical power

### Ecological Context

San Marcos River

- Riparian corridor sensitivity
- Bank stabilization & restoration
- Endangered species protection, restoration & stability
- Fish ladder at Thompson/Cape Dam & Waste Way/Mill Race connection
- Invasive species control; elephant ear removal
- Terrestrial systems and flood inundation regimes

### Natural Sciences Area

Focus on Urban Effluent Treatment Through Controlled Natural Systems

- Wetland demonstration gardens
- Treatment of City wastewater prior to river input
- Treatment of fish hatchery effluent prior to river input
- Walking trails
- Interpretation displays

### Overall Goals:

- Achieving a balanced approach for historic structure rehabilitation, educational interpretation, and leisurely activities while preserving the ecological integrity of the San Marcos River through pragmatic conservation and restoration initiatives.
- Providing a special & diverse asset to be enjoyed by San Marcos and Hays County residents, accessed by trails reaching out in all directions.
- Providing comprehensive safety and access, focusing on ADA, EMS servicing, trails, & water access Access.

### Legend

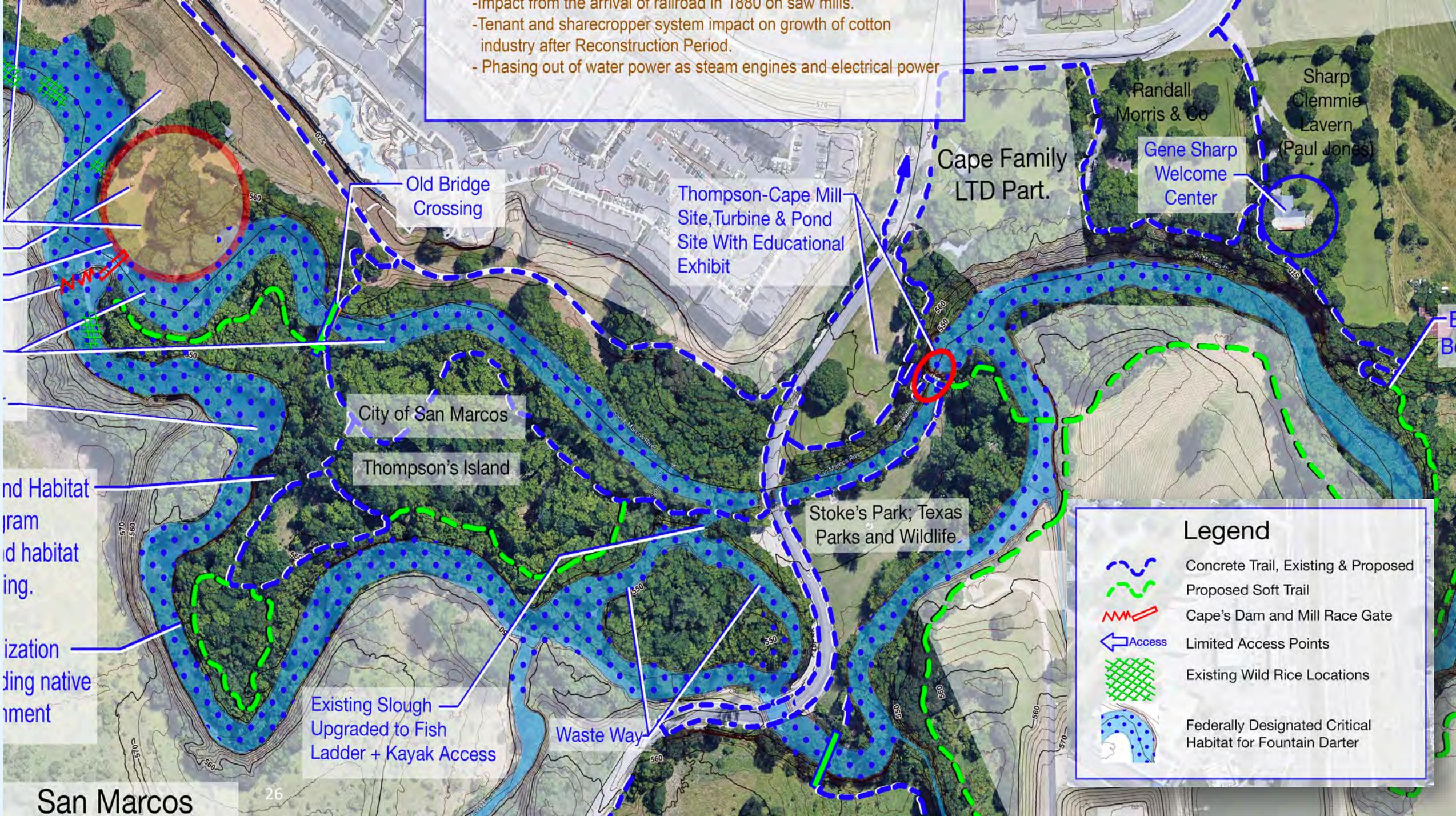
- Concrete Trail, Existing & Proposed
- Proposed Soft Trail
- Cape's Dam and Mill Race Gate
- Limited Access Points
- Existing Wild Rice Locations
- Federally Designated Critical Habitat for Fountain Darter

Vista Planning & Design  
Landscape Architecture  
Site Planning  
Master Planning  
E. Mitchell Wright ASLA, AICP, LEED AP  
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info@vistaplanningdesign.com

San Marcos River Vision Study  
San Marcos, Texas



- Impact from the arrival of railroad in 1880 on saw mills.  
 - Tenant and sharecropper system impact on growth of cotton industry after Reconstruction Period.  
 - Phasing out of water power as steam engines and electrical power



Old Bridge Crossing

Thompson-Cape Mill Site, Turbine & Pond Site With Educational Exhibit

Cape Family LTD Part.

Gene Sharp Welcome Center

Sharp Clemmie Lavern (Paul Jones)

City of San Marcos

Thompson's Island

Stoke's Park; Texas Parks and Wildlife

Existing Slough Upgraded to Fish Ladder + Kayak Access

Waste Way

### Legend

-  Concrete Trail, Existing & Proposed
-  Proposed Soft Trail
-  Cape's Dam and Mill Race Gate
-  Access
-  Existing Wild Rice Locations
-  Federally Designated Critical Habitat for Fountain Darter

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## Ecological Context

- Riparian corridor sensitivity
- Bank stabilization & restoration
- Endangered species protection, restoration & stability
- Fish ladder at Thompson/Cape Dam & Waste Way/Mill Race connection
- Invasive species control
- Terrestrial systems
- Leave No Trace/ controlled access
- Regional Riparian Water Quality; Mitigation of City & State impacts
- Program of extensive assessment
- Program of conservation projects

## Historic Context

- Thompson/Cape Dam and ditch engineering structure is the primary focus of the historical plan
  - Dam rehabilitation as flow-through weir/crib dam structure
  - Mill site, gates, mill race, turbine structure/ waterfall, mill pond
- Development of the San Marcos River for water power & industry
- History of regional settlement and politics; The industrial beginnings of San Marcos
- Program of assessment and comprehensive interpretation

## Natural Sciences Park

- Wetland demonstration gardens
  - Treatment of City wastewater
  - Treatment of fish hatchery effluent
- Walking trails
- Program of Education
  - Interpretation displays

**Legend**

- Concrete Trail, Existing & Proposed
- Proposed Soft Trail
- Cape's Dam and Mill Race Gate
- Limited Access Points
- Existing Wet River Locations
- Federally Designated Critical Habitat for Fountain Darter

**Historic Context**  
Interpretation of three sites

• Thompson/Cape Dam and ditch engineering structure is the primary focus of the historical plan

• Dam rehabilitation as flow-through weir/crib dam structure

• Mill site, gates, mill race, turbine structure/ waterfall, mill pond

• Development of the San Marcos River for water power & industry

• History of regional settlement and politics; The industrial beginnings of San Marcos

• Program of assessment and comprehensive interpretation

**Ecological Context**

• Riparian corridor sensitivity

• Bank stabilization & restoration

• Endangered species protection, restoration & stability

• Fish ladder at Thompson/Cape Dam & Waste Way/Mill Race connection

• Invasive species control

• Terrestrial systems

• Leave No Trace/ controlled access

• Regional Riparian Water Quality; Mitigation of City & State impacts

• Program of extensive assessment

• Program of conservation projects

**Natural Sciences Park**  
Focus on Urban Ecosystem (Streambed Through) Controlled Natural Systems

• Wetland demonstration gardens

• Treatment of City wastewater

• Treatment of fish hatchery effluent

• Walking trails

• Program of Education

• Interpretation displays

Overall Goals:

- Developing a special & diverse asset to be enjoyed by San Marcos and Hays County residents
- Providing comprehensive ADA access, Parking, Trails, & Water Access

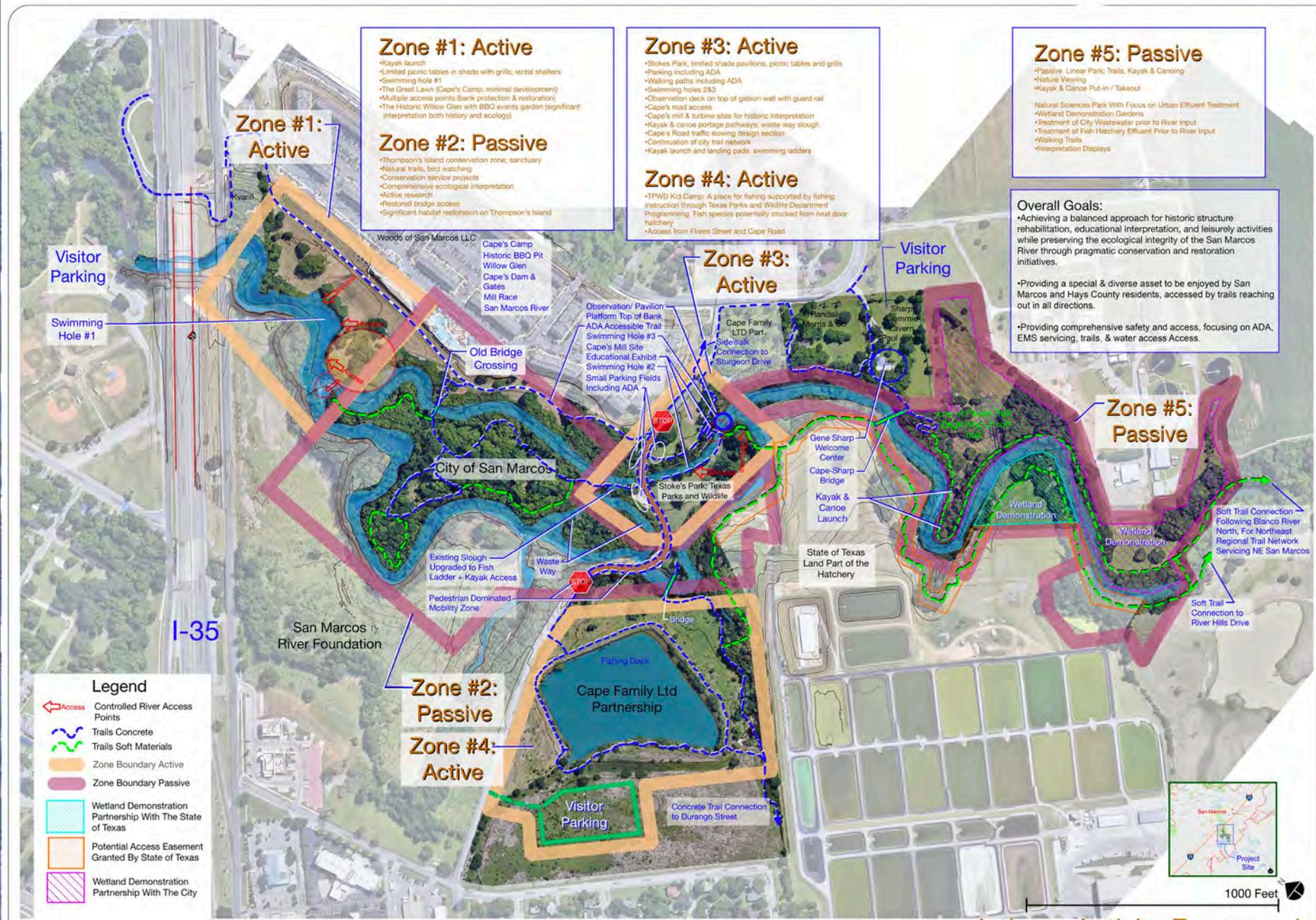
Vista Planning & Design  
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San Marcos, TX 78666  
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San Marcos River Master Plan  
San Marcos, Texas



Second Map:

# *Leisure Activity Framework*



**Zone #1: Active**

- Kayak launch
- Limited picnic tables in shade with grills, rental shelters
- Swimming hole #1
- The Great Lawn (Cape's Camp; minimal development)
- Multiple access points (bank protection & restoration)
- The Historic Willow Glen with BBO events garden (significant interpretation both history and ecology)

**Zone #2: Passive**

- Thompson's Island conservation zone, sanctuary
- Natural trails, bird watching
- Conservation service projects
- Comprehensive ecological interpretation
- Active research
- Restored bridge access
- Significant habitat restoration on Thompson's Island

**Zone #3: Active**

- Stokes Park, limited shade pavilions, picnic tables and grills
- Parking including ADA
- Walking paths including ADA
- Swimming holes 2&3
- Observation deck on top of gabion wall with guard rail
- Cape's road access
- Cape's mill & turbine sites for historic interpretation
- Kayak & canoe portage pathways, waste way slough
- Cape's Road traffic slowing design section
- Continuation of city trail network
- Kayak launch and landing pads: swimming ladders

**Zone #4: Active**

- THWD Kid Camp: A place for fishing supported by fishing instruction through Texas Parks and Wildlife Department Programming. Fish species potentially stocked from next door hatchery
- Access from Flores Street and Cape Road

**Zone #5: Passive**

- Passive Linear Park; Trails, Kayak & Canoeing
- Nature Viewing
- Kayak & Canoe Put-in / Takeout

Natural Sciences Park With Focus on Urban Effluent Treatment

- Wetland Demonstration Gardens
- Treatment of City Wastewater prior to River Input
- Treatment of Fish Hatchery Effluent Prior to River Input
- Walking Trails
- Interpretation Displays

**Overall Goals:**

- Achieving a balanced approach for historic structure rehabilitation, educational interpretation, and leisurely activities while preserving the ecological integrity of the San Marcos River through pragmatic conservation and restoration initiatives.
- Providing a special & diverse asset to be enjoyed by San Marcos and Hays County residents, accessed by trails reaching out in all directions.
- Providing comprehensive safety and access, focusing on ADA, EMS servicing, trails, & water access Access.

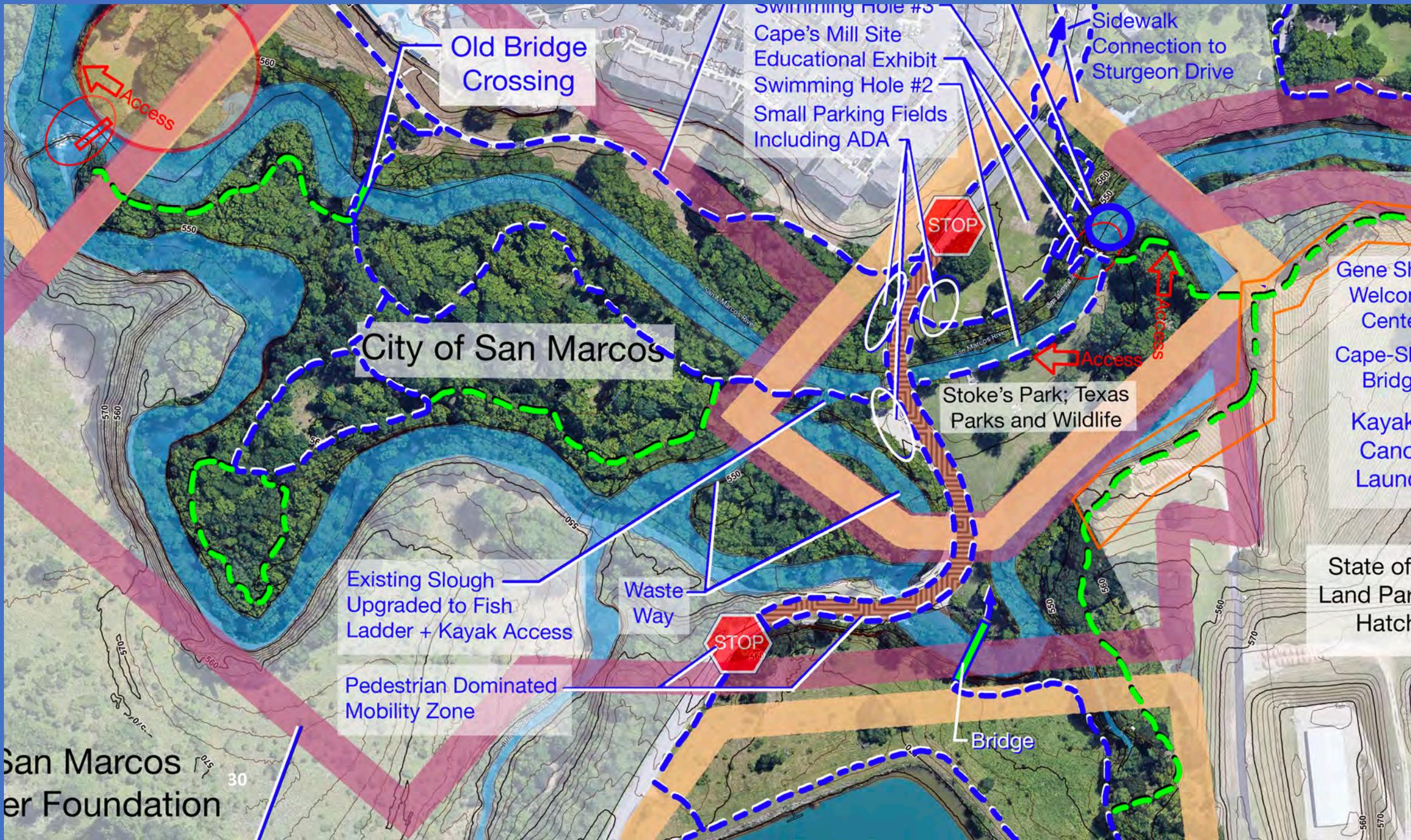
- Legend**
- ← Access
  - Controlled River Access Points
  - Trails Concrete
  - Trails Soft Materials
  - Zone Boundary Active
  - Zone Boundary Passive
  - Wetland Demonstration Partnership With The State of Texas
  - Potential Access Easement Granted By State of Texas
  - Wetland Demonstration Partnership With The City



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 Sao Paulo Architecture  
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 mwright@vistaplanningdesign.com

San Marcos River Vision Study  
 San Marcos, Texas





Old Bridge Crossing

Swimming Hole #3  
Cape's Mill Site  
Educational Exhibit  
Swimming Hole #2  
Small Parking Fields Including ADA

Sidewalk Connection to Sturgeon Drive

City of San Marcos

Stoke's Park; Texas Parks and Wildlife

Existing Slough Upgraded to Fish Ladder + Kayak Access

Waste Way

Pedestrian Dominated Mobility Zone

Bridge

Gene S. Welcome Center  
Cape-S. Bridge  
Kayak Launch

State of Land Park Hatch

San Marcos River Foundation

# Leisure Activity Goals:



Z1

## Zone #1: Active

- Kayak launch
- Cape's Camp- The Great Lawn; minimal development)
- Multiple access points (bank protection & restoration)
- The historic Willow Glen with BBQ events garden (significant interpretation both history and ecology)

- Prioritize local residents by limited parking areas
- Prioritize safety
- Controlled river access
- Provide wide variety of experiences
- Low level improvements not detracting from natural beauty

Z3

## Zone #3: Active

- Stokes Park; limited improvements
- Parking including ADA
- Walking paths including ADA
- Observation deck on top of gabion wall with guard rail
- Cape road access
- Cape's mill & turbine sites for historic interpretation
- Kayak & canoe portage pathways; waste way slough
- Cape Road traffic slowing design
- Continuation of City trail network
- Kayak launch and landing pads; swimming ladders

Z4

## Zone #4: Active

- TPWD Kid Fish: A place for fishing supported by fishing instruction through Texas Parks and Wildlife Department programming. Fish species potentially stocked from next door hatchery
- Access from Flores Street and Cape Road

# Leisure Activity Goals:

- Prioritize local residents by limited parking areas
- Prioritize safety
- Controlled river access
- Provide wide variety of experiences
- Low level improvements not detracting from natural beauty

## Zone #5: Passive

- Passive linear park; trails, kayak & canoeing
- Nature viewing
- Kayak & canoe put-in / takeout
- Natural sciences park with focus on effluent treatment with wetland demonstration gardens
- Interpretation displays

## Z2 Zone #2: Passive

- Thompson's Island conservation zone; sanctuary
- Natural trails, bird watching

## Zone #4: Active

- Conservation service projects
- Comprehensive ecological interpretation
- Active research
- Restored bridge access
- Significant habitat restoration on Thompson's Island

**Legend**

- Controlled River Access Points
- Trails Concrete
- Trails Soft Materials
- Zone Boundary Active
- Zone Boundary Passive
- Wetland Demonstration Partnership With The State of Texas
- Potential Access Easement Granted By State of Texas
- Wetland Demonstration Partnership With The City

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Design

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Dallas, Texas 75244  
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San Marcos River Master Plan  
San Marcos, Texas

Exhibit

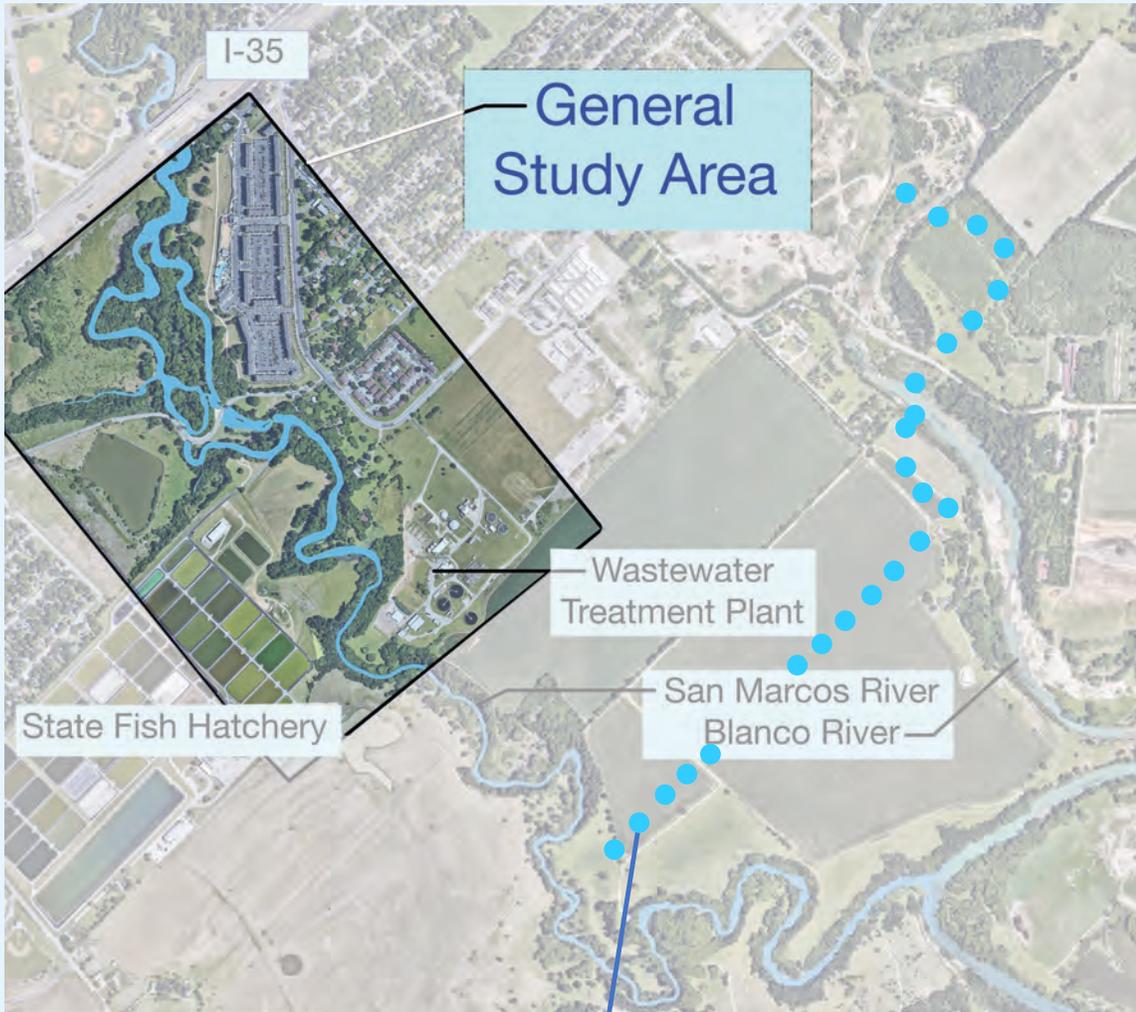
The information on this graphic represents and does not constitute a warranty. Property boundaries are shown in general information only and should not be relied upon as a source.

A scenic photograph of a river flowing through a lush green forest. In the foreground, a large, light-colored rock ledge slopes down towards the water. The river features a small waterfall with white, frothy water cascading over rocks. A person in a blue kayak is positioned in the middle ground, navigating the river. The background is filled with dense, vibrant green trees, and sunlight filters through the canopy, creating a bright and airy atmosphere. The overall scene conveys a sense of natural beauty and outdoor recreation.

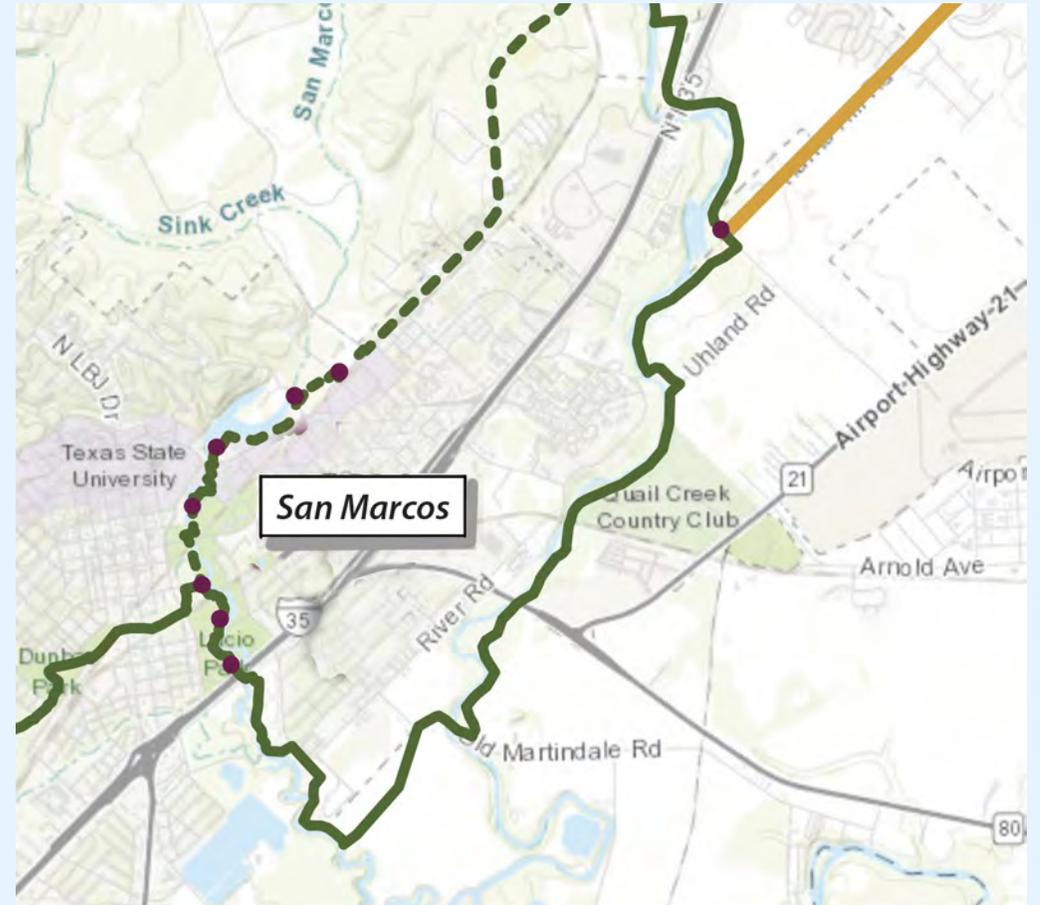
*Opportunities!*

# Unique Leisure Opportunities

- Multiple Public Jurisdictions working together.
- Providing a beautiful asset to an underserved area of San Marcos
- Creating potential trail linkages, including the Emerald Crown Trail.
- An area for educational aspects of natural and cultural interpretation, demonstration, and restoration to a high value environmental quality, and leisure activities.



Emerald Crown Trail

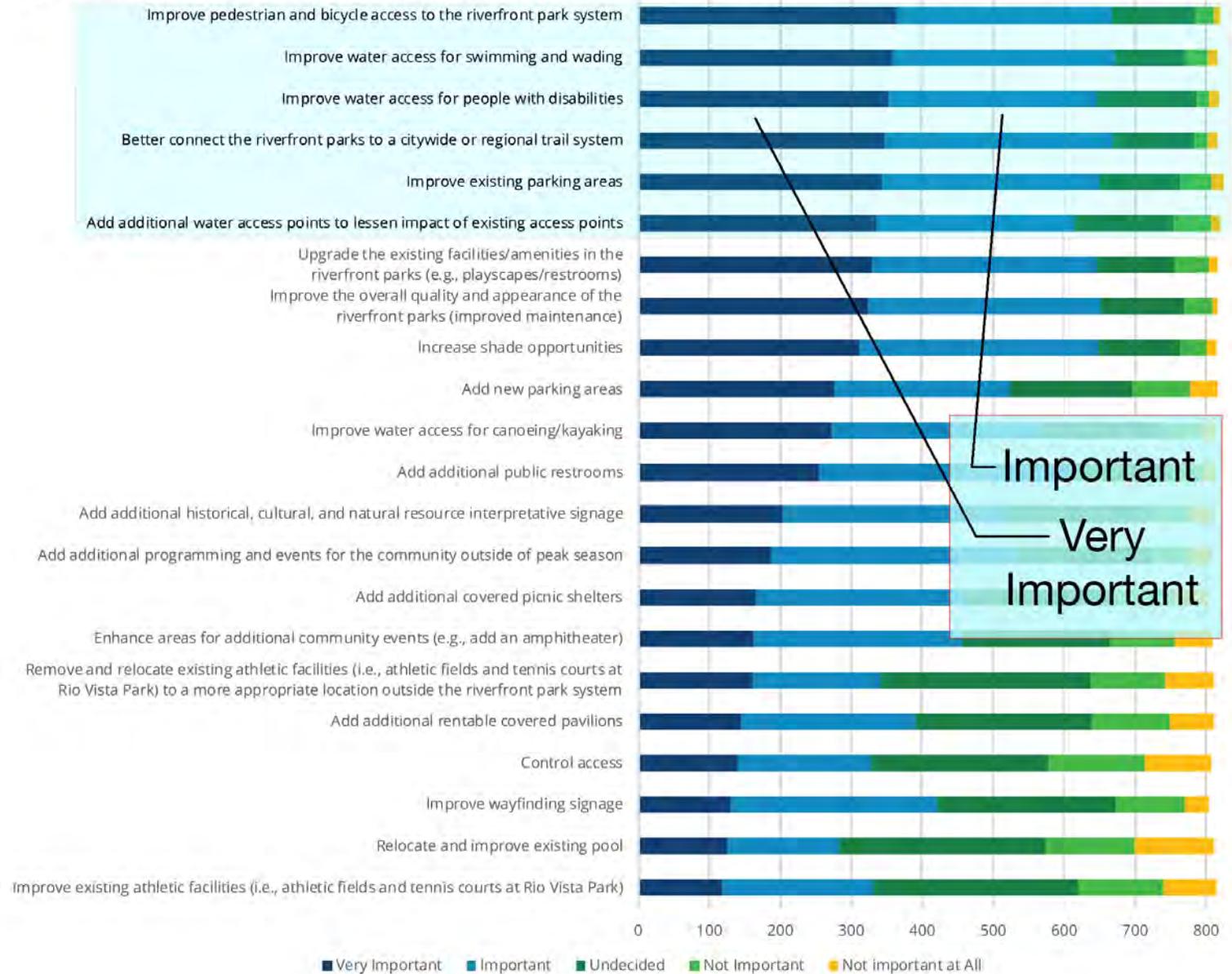


# THE EMERALD CROWN TRAIL MASTER PLAN

March 2019

# San Marcos Parks, Recreation, and Open Space Master Plan

Figure 3.18, How Important Is It For the City to Address the Following Parks, Recreation, and Trail Issues?



# *How Important Is it For the City to Address the Following Parks, Recreation, and Trail Issues?*

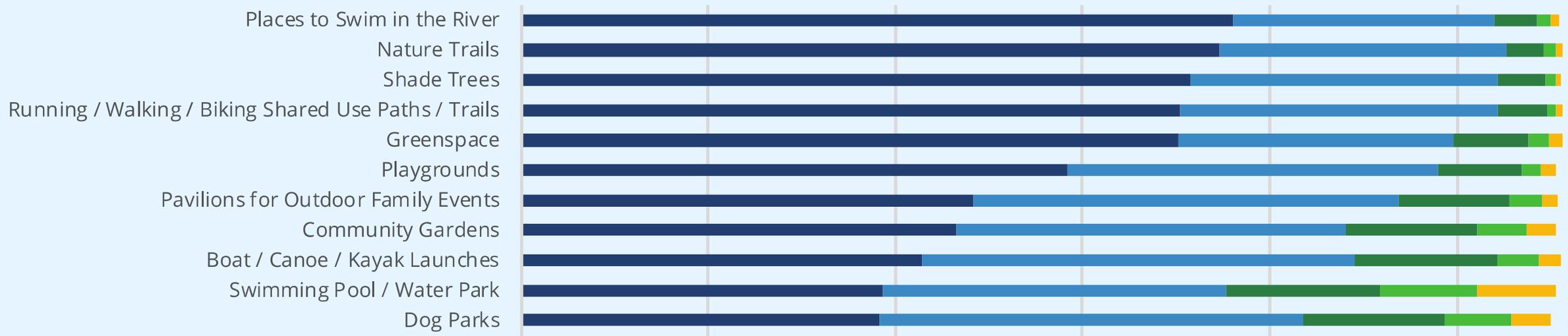
- 1) Improve pedestrian and bicycle access to the riverfront park system
- 2) Improve water access for swimming and wading
- 3) Improve water access for people with disabilities
- 4) Better connect the riverfront parks to a citywide or regional trail system
- 5) Improve existing parking areas
- 6) Add additional Water access points to lessen impact of existing access points

# On a separate survey...again...

- 1) Places to swim in the river
- 2) Nature trails
- 3) Shade trees
- 4) Running/walking/biking shared use paths/trails

to be provided or added in San Marcos.

**Figure 3.16, Importance of Park Facilities to be Provided or Added in San Marcos**



## City Council Direction Needed

- Does Council want to proceed with an agreement with Hays County to partner on renovation/rehabilitation of Cape's Dam?
- Does Council want to explore the larger visioning/master plan concept with Hays County?

# Next Steps

- If Council provides direction on proposed project concept at a future council meeting, the City would negotiate an interlocal agreement designating the terms of the partnership covering items such as:
  - Financial participation of City
  - Design, permitting, and construction participation and responsibilities
  - Termination clause
  - Land acquisition and/or related leases
  - Compliance with HCP conservation measures
  - Operation and maintenance responsibilities
  - Safety of park users and emergency access
  - Park Rules and Enforcement
  - Neighboring developments and conflicts with access or alcohol
  - Public participation, outreach and engagement in master plan
  
- Any special considerations or concerns from Council?
- Future work session to review formal plan?

*QUESTIONS?*

**ORDINANCE NO. 2020 - \_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS , TEXAS ADOPTING YOUTH PROGRAMS STANDARDS OF CARE FOR 2020; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE**

**Recitals:**

1. The City’s Parks and Recreation Department has determined that certain minimum standards of care are necessary to health, safety, and welfare of individuals participating in youth recreation programs; and

2. The State of Texas Human Resources Code Chapter 42 exempts certain after-school and summer recreation programs from state licensing requirements as identified in Subsection 42.041(14) stating "an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;" and;

3. The City Council of the City of San Marcos has determined that Youth Programs Standards of Car will be beneficial to the City of San Marcos and should be adopted as recommended by Staff; and

4. The City Council of the City of San Marcos, Texas has the authority under its Home Rule Charter and under the laws of the State of Texas to adopt regulations aimed to protect the health, safety, and general welfare of its citizens.

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

**SECTION 1.** The following standards of care are adopted by ordinance

**Youth Programs Standards of Care**

**CITY OF SAN MARCOS YOUTH PROGRAMS STANDARDS OF CARE**

**I. PURPOSE**

To provide basic childcare regulations for recreation activities operated by the San Marcos Parks and Recreation Department. This will allow the department to qualify as exempt from requirements of the Texas Human Resources Code.

**II. DEFINITIONS**

- A. City** - City of San Marcos
- B. City Council** - City Council of the City of San Marcos, Texas
- C. Department** - Department of the City of San Marcos
- D. Youth Program(s)** - City of San Marcos Youth Programs that last one consecutive week (five days) or longer.
- E. Operations Manual** - Notebook of policies, procedures, required forms, organizational and programming information relevant to City of San Marcos Youth Programs.
- F. Program Manual** – Notebook of information given to Activity Leaders which includes rosters, attendance sheets, lesson plans, disciplinary action forms, etc.

- G. Director** - City of San Marcos Parks and Recreation Department Director or his/her designee.
- H. Program Coordinator or Coordinator** - City of San Marcos seasonal, temporary staff who has been assigned administrative responsibility for a City of San Marcos Youth Program.
- I. Program Assistant Coordinator or Assistant Coordinator** – City of San Marcos seasonal, temporary staff, who has been assigned responsibility to implement the City's Youth Programs under the general supervisor of the Program Coordinator.
- J. Program Site Supervisor or Site Supervisor** - City of San Marcos seasonal, temporary staff who has been assigned responsibility to implement the City's Youth Programs.
- K. Activity Leader** – City of San Marcos seasonal staff, temporary staff who has been assigned responsibility to implement the City's Youth Programs.
- L. Program Site** - Area or facilities where City of San Marcos Youth Programs are held.
- M. Participant** - A youth whose parent(s) or guardian(s) have completed all required registration procedures and are determined to be eligible for a City of San Marcos Youth Program.
- N. Parent(s)** - This term will be used to represent one or both parent(s) or guardian(s) who have legal custody and authority to enroll their child(ren) in the City of San Marcos Youth Program.
- O. Program Staff** - Term used to describe the person or persons who have been hired or have volunteered to work for the City of San Marcos and have been assigned responsibility for managing, administering, or implementing some or all portions of the San Marcos Youth Programs. This definition also includes Program Coordinator, Program Assistant Coordinator, Program Site Supervisor, and Activity Leader.

### III. ORGANIZATION

- A.** Implementation of the San Marcos Youth Programs Standards of Care is the responsibility of the Director and Program Staff.
- B.** Youth Programs to which these Standards of Care will apply are Spring Break Camp, Summer Fun, Discovery Camp, Camp Quest, Holiday Camp, and other non-school day programs that last one consecutive week (five days) or longer.
- C.** Each Program Site will have a current copy of the Standards of Care available for the public and Program Staff.
- D.** Parents of Participants will be given access to a current copy of the Standards of Care prior to the start of the Youth Program, preferably during the registration process.
- E.** Criminal background checks will be conducted on prospective Program Staff. If results of the criminal check indicate that an applicant has been convicted of any of the following offenses, he or she will not be considered for employment:
  1. A felony or a misdemeanor classified as an offense against a person or family,
  2. A felony or a misdemeanor classified as public indecency,
  3. A felony or a misdemeanor violation of any law intended to control the possession or distribution of any controlled substance,
  4. Any offense involving moral turpitude, or
  5. Any offense that would potentially put the City of San Marcos or participants at risk.
  6. In addition, checks of the Texas Department of Public Safety database for the Texas Sex Offender Registration Program will be conducted on prospective Program Staff. If results of the check indicate that an applicant is a registered sex offender, he or she will not be considered for employment.

### IV. FISCAL MANAGEMENT

- A. The program will follow the written policies and procedures of fiscal management set forth by the City of San Marcos.
- B. The program will have sound fiscal management and operational oversight of the program.
- C. The program will have a written budget.
- D. Financial statements of the program will be reviewed regularly by the Director and adjustments will be made as needed.

**V. STAFFING**

**A. Program Coordinator-Job Descriptions and Essential Job Functions**

Essential Job Functions:

- 1. Supervises Assistant Site Supervisor and Activity Leader positions; trains and educates workers concerning City and departmental policies and procedures; supervises and administers program activities on playground campus site for youth program participants.
- 2. Supervises and trains summer workers about City and Parks and Recreation policies and procedures; manages and administers the Youth Program.
- 3. Prepares and schedules on and off campus site activities.
- 4. Drives to each activity site to supervise and train employees; oversees, administers and monitors program activities. Maintains program documentation and responds to "on-call" situations.
- 5. On-call 24 hours for any problem or situation which may arise which involves the Youth Program and activities.
- 6. Other Miscellaneous Duties: Parent and child counseling.

Minimum Requirements:

- 1. An Associate's Degree in Education, Recreation Administration, or related field is required. Commensurate combination of education and experience may be considered.
- 2. Two years' supervisory experience working with children in recreation and/or education setting is required.
- 3. Valid Texas Driver's License with acceptable driving record.
- 4. CPR/First Aid Certification is required during week of training- administered by COSM
- 5. Required to do Community Services
- 6. Required to work a full 10 weeks with the program.

**B. Program Assistant Coordinator-Job Descriptions and Essential Job Functions**

Essential Job Functions:

- 1. Assists with the supervision and training of summer workers about City and Parks and Recreation policies and procedures; assists with the management and administration of the Youth Program.
- 2. Schedules arts and crafts classes at playground sites and orders supplies and equipment.
- 3. Assists in preparing and scheduling on and off campus site activities for school age children at sites.

4. Drives to each activity site to supervise and train employees; monitors program activities, and responds to on-call situations; schedule bus transportation to all off campus activities.
5. Other Miscellaneous Duties: Occasional parent and child counseling.

Minimum Qualifications:

1. Associate's Degree in Education, Recreation Administration or related field is required. Commensurate combination of education and experience may be considered.
2. One-year supervisory experience working with children in a recreation and/or educational setting is required.
3. Valid Texas Driver's License with acceptable driving record.
4. CPR/First Aid Certification is required during week of training- administered by COSM
5. Required to do Community Services.
6. Required to work a full 10 weeks with the program

**C. Program Site Supervisor- Job Descriptions and Essential Job Functions**

Essential Job Functions

1. Supervises Assistant Site Supervisor and Activity Leader positions; trains and educates workers concerning City and departmental policies and procedures; supervises and administers program activities on playground campus site for participants.
2. Performs child supervision duties for both on and off campus activities; administers first aid; enforces safety rules; fills out necessary forms and paperwork; and performs safety inspections daily.
3. Encourages participation in activities, ensures children are accounted for at all times, and adheres to safety policies and procedures including pickup and drop off of children.
4. Organize and supervise recreational program activities on playground campus sites and offsite including structured activities; bowling, swimming, movies, and special field trips including transporting kids by bus.
5. Maintains program site area; cleans floors, picks up trash; cleans bathrooms and performs other janitorial work as needed.

Minimum Qualifications:

1. High school diploma or GED equivalent
2. Two (2) years related experience required
3. Must possess a valid Texas Driver's License with acceptable driving record.
4. Ability to learn and administer first aid
5. Required to do some community outreach
6. Required to work a full length of the program.

**D. Activity Leader - Job Descriptions and Essential Job Functions**

Essential Job Functions:

1. Performs child supervision duties for both on and off campus program activities; administers first aid; enforces adherence to safety rules; fills out handwritten forms; performs safety inspections daily.
2. Administers recreation activities on a playground campus site including structured activities; bowling, skating, swimming, movies and special field trips.
3. Maintains program site area; cleans floors; picks up trash; cleans bathrooms and performs other janitorial work as needed.

Minimum Qualifications:

1. Must be at least 16 years of age.
2. Required to do some community outreach
3. Required to work a full length the program.

**E. Training/Orientation**

1. The Department is responsible for providing training and orientation to Youth Program staff in working with Participants and for specific job responsibilities. Coordinators will provide each Leader with a Staff Handbook specific to each Youth Program.
2. Program Staff must be familiar with the Standards of Care for Youth Programs as adopted by the City Council.
3. Program Staff must be familiar with the Youth Program's policies, including discipline, guidance, and release of Participants as outlined in the Staff Handbook.
4. Program Staff will be trained in appropriate procedures to handle emergencies.
5. Program Staff will be trained in areas including City, Department, and Youth Program policies and procedures, recreation activities organization, safety issues, program organization, and other areas as required by assigned Youth Program.
6. Program Staff will be required to sign an acknowledgment that they received the required training.

**F. Criminal Background Checks and Drug Testing:** Criminal background checks will be conducted on prospective employees. Applicants may be disqualified if they have a job related criminal conviction. A prospective employee will be subject to a drug test prior to hiring.

**G.** Before being hired, applicants must successfully complete a qualifying interview, clear a criminal history background check and pass a drug test.

**H. Staffing Ratios:**

1. In a Youth Program, the standard ratio of Participants to Program Staff is 15 to 1, based on average daily attendance. In the event a Leader is unable to report to the Program Site, the Coordinator will assign a replacement.
2. Ratios may be adjusted to provide adequate supervision during higher risk activities, such as field trips, swimming, etc.
3. Each Participant will have a Program Staff who is responsible for him or her and who is aware of details of the Participant's habits, interests and any special needs as identified by the Participant's Parents during the registration process.

## **VI. PROGRAM OPERATIONS**

### **A. Enrollment**

1. Before a child can become a Youth Program Participant, a parent or guardian must register their child and provide the following information:
  - A. Name, address, cell phone, work phone, and home telephone numbers;
  - B. Contact names and telephone numbers in case of emergency;
  - C. The names and telephone numbers of people to whom the child can be released;
  - D. A statement of the child's special conditions and/or needs;
  - E. Emergency medical authorization with doctor's name and telephone number;
  - F. A signed liability waiver;
  - G. A signed release to participate in Youth Programs, including water activities, riding the bus, bowling, movies, and field trips;
  - H. Designation of need for reasonable accommodations;
  - I. Signed acknowledgement of program code of conduct; and
  - J. Proof of date of birth
  - K. Week(s) of participation
  - L. Whether or not photography of the Participant is permitted

### **B. Special Needs**

1. The parent should inform Program Staff in writing of any Participant needs that would affect their ability to participate in organized group activities.
2. The City is committed to providing children with an equal opportunity to participate in the City's programs and services in accordance with the Americans with Disabilities Act (ADA). Any requests for accommodations will be individually assessed to determine the reasonableness of the request, and if the City can meet the particular needs of the Participant without fundamentally altering the program or services involved. Every reasonable accommodation will be made to address Participants with special needs.

### **C. Field Trips & Transportation**

1. Program Staff will be attentive and considerate of the Participant's safety on field trips and during any transportation provided by the Youth Program.
2. During field trips, Program Staff will have authorization for emergency medical care and emergency contact information for each Participant.
3. Program Staff will have a written list of the Participants in their group and must check the roll frequently, specifically before departure to and from destination.
4. Program Staff will have first aid supplies.
5. Before a Participant can be transported to and from City sponsored activities, the parent must give their permission.
6. First aid supplies will be available in all Youth Program vehicles that transport Participants.
7. There will be at least one staff member in the vehicle that is certified in CPR, First Aid, and AED.
8. Before a participant may be transported to or from a city-sponsored activity, a transportation form, completed by a parent of the participant, must be filed with a coordinator.

9. Every program vehicle used for transporting youth participants must be equipped with:
  - a. First aid supplies and a first aid emergency care guide that are easily accessible to program employees in the vehicle; and
  - b. An operable fire extinguisher that is installed in the passenger compartment of the vehicle and that is easily accessible to program employees in the vehicle.

#### **D. Participant Pick Up & Drop Off**

1. A completed and signed registration form, including pick-up authorization, must be on file for each Participant.
2. These forms must be updated each year.
3. The original signer of the Pick-Up Authorization Form may contact the center by email or in person to add a new Authorized Person, with written notification.
4. Participants must only be signed out by an Authorized Person listed on the Pick-Up Authorization Form. One staff person must monitor the sign in/out duties each day.
5. Authorized Persons must present picture ID to pick up a Participant.
6. Authorized persons must be 18 or older unless the person is 16 or older and a sibling of the Participant.
7. Sign in/sign out sheets will be kept by the Parks and Recreation Department for two years after the Youth Program has ended.
8. Participants may be signed out by a custodial parent, unless court paperwork is given to Program Staff.
9. Participants must be picked up by the end of the assigned Youth Program. If a child is picked up after 5:30 PM, a late fee will be assessed at a rate of \$6 for every 15 minutes. If a child has not been picked up within thirty (30) minutes after the program has ended and a parent/legal guardian or emergency contact cannot be reached, the police will be called.
10. If an Authorized Person attempts to pick up a Participant while appearing intoxicated, staff will ask if there is another person who can pick up the Participant.
11. If any unauthorized person attempts to pick up a child, staff should:
  - a. Call the Program Coordinator.
  - b. Politely inform the person that they do not have permission to release the child to them.
  - c. Ask the person to leave.
  - d. Move the Participant at risk to another room or area.
  - e. Have another Program Staff in the pick-up area.
  - f. The Coordinator should call the original Authorized Person to inform them of the unauthorized pick up attempt.
  - g. If necessary, Program Staff should call 911.

#### **E. Discipline**

1. Program Staff will execute discipline and guidance in a consistent manner based on the best interests of Participants.
2. There will be no cruel treatment or harsh punishment (physical or verbal abuse). Examples of discipline that IS NOT allowed include, but are not limited to:
  - a. Using physical punishment or any action administered to the body such as, but not limited to rough handling, or forcing child(ren) to assume an uncomfortable position,

- b. Restraining movement by tying, enclosing in a confined space, shaking, or using exercise as punishment.
  - c. Being verbally abusive, including, but not limited to, threats, belittling remarks, humiliation, embarrassment, or frightening a child.
  - d. Giving any child the authority to punish another child.
  - e. Placing a child out of visual/hearing range, in the dark, or in an unventilated area.
  - f. Punishing a child for a toileting accident.
  - g. Taunting a child by or any other form of jeering.
  - h. Giving preferential attention to any child over another child.
3. To protect a child from injuring themselves, other Participants, or Program staff, the child may be removed and/or isolated if deemed necessary.
  4. Program Staff will use brief, supervised, separation (time out) from the group, if necessary.
  5. Discipline Guidelines:
    - a. **First intervention**
      - a. Program staff will counsel the participant concerning behavior expectations, the appropriate behavior and the possible consequences for the behavior demonstrated.
    - b. **Second intervention**
      - a. The participant will not be allowed to participate in activities for 5 to 10 minutes (length of time will vary according to the behavior).
    - c. **Third intervention**
      - a. Assistant Site and/or Site Supervisor will talk to the parent, or person designated to pick up the participant concerning behavior.

**The first three could take place in a short period of time depending on the response of the participant.**

- d. **Fourth intervention**
  - a. A one to three day suspension could be determined by Program Coordinator and Site Supervisor, depending on the severity of the behavior or incident. A parent conference may be required.
  - b. If you received a Discipline Notice, your child will not be able to return to camp until parents have met with Program Coordinator.
- e. **Fifth intervention**

Participant will be dismissed from program for the remainder of the summer.

6. Serious offenses include, but are not limited to:
  1. Disrespectful behavior toward other participants and program staff
  2. Leaving the defined boundaries of site or field trip facility
  3. Refusal to follow rules, policies and staff directions
  4. Physical/Verbal abuse (BULLYING) or any sort of threat WILL NOT BE TOLERATED and are grounds for dismissal from the program.
  5. Possession of anything that can be considered a weapon.
  6. Inappropriate or sexually provocative behaviors.
  7. Possession of over the counter, illegal drugs or unauthorized prescription drugs, tobacco, or alcohol
  8. Serious offenses will SKIP interventions 1 through 3 and may lead to suspension or dismissal.

**Serious offenses will NOT BE TOLERATED and are grounds for IMMEDIATE dismissal from the program.**

7. The following rules have been designed to provide a fun, safe and healthy environment for all children in the program. Parents are asked to read and share these procedures with their children.
  - a. Children will be required to follow program rules as well as any rules posted at field trip sites.
  - b. Children will not be allowed to show disrespect to staff or other children through actions or words.
  - c. Leaving the defined boundaries of any site or field trip facility will not be allowed.
  - d. Abusive language, mishandling of equipment, defacing of property and theft is not acceptable behavior.
  - e. Children will not be allowed to be physically or verbally abusive to other children.
  - f. Over the counter, illegal drugs or unauthorized prescription drugs, tobacco, or alcohol are not permitted on site.
  - g. Any weapon of any nature found in the possession of a child will be permanently confiscated and the child will be removed immediately from program and may be reported and subject to action by local law enforcement authorities.
  - h. Inappropriate or sexually provocative behaviors will not be tolerated and may be reported to and subject to action by the appropriate authorities.
  - i. Each child will help clean up after every activity.
  - j. If parents would like to bring a special treat for their child's birthday or other special events, they must notify the Site Supervisor two days prior to the event.

## **VII. FACILITY STANDARDS**

### **A. Inspection/Monitoring/Enforcement**

1. Program staff will perform an inspection of the facility prior to the start of the Youth Program to maintain compliance with the Standards of Care.
2. Program staff will report any issues within the facility using the forms created and available for that use.

### **B. Program Area**

1. The Youth Program's indoor space (when applicable) meets the physical, social, emotional, and cognitive needs of Participants.
2. The Youth Program's outdoor space (when applicable) is large enough, appropriately equipped, and safe to allow Participants to be active and independent.
3. The Youth Program's space meets the needs related to planning, activities, and storage.
4. Buildings, grounds, and equipment on the Program Site are regularly inspected, cleaned, repaired, and maintained to protect Participants' health.

## **VIII. HEALTH & SAFETY**

## **I. Health**

### **A. Illness or Injury**

1. A Participant who is considered to be a health or safety concern to other Participants or Program Staff will not be admitted to the Youth Program.
2. Illnesses and injuries will be handled in a manner to protect the health of all Participants and Program Staff. Participants having a temporal fever over 100.4 degrees will not be allowed back into the Youth Program for 24 hours.
3. Program Staff will follow emergency procedures for injured Participants or for Participants with symptoms of an acute illness.
4. In the event of an emergency and/or serious accident, Parents will be notified immediately. If necessary, the local ambulance service will transport the Participant to the nearest hospital.
5. In the case of a minor accident or injury (bumps and bruises), the Program Staff will administer first aid, monitor the Participant, and notify the Parents at pick-up.
6. Parents will be notified if a child is injured in a way that necessitates emergency care.
7. Program Staff will follow the recommendations of the Texas Department of State Health Services concerning the admission or readmission of any Participant after a communicable disease, and a doctor's note will be required allowing Participant's readmission to the program.
8. Parents should notify Program staff if a child has lice. Lice checks will be administered randomly and when needed. Any child found with lice will discreetly be sent home and letter will be sent out to camp parents. Child will be unable to return to camp until lice and nits have been removed. They will be checked by staff upon return.
9. If a Participant becomes sick while in the program, the Parent or Authorized Person(s) must contact staff within one hour to arrange pick up. If no contact is made within one hour after initial contact by staff, the police will be notified.

## **II. Safety**

- A. Program Staff will supervise Participants to ensure their safety.
- B. Program Staff will inspect Program Sites daily checking for sanitation and safety concerns that might affect the health and safety of Participants.
- C. Program Site equipment and supplies will be safe for Participants use.
- D. Program Staff will have first aid supplies available at each Program Site in a designated location, during transportation, and for the duration of any off-site activity.
- E. The Youth Program will ensure that all Program Staff working with participants are trained in CPR, First, and AED.
- F. Participants will have access to clean drinking water at all times.
- G. Program Site air conditioners, electric fans, and heaters will be mounted out of Participant's reach or have safeguards that keep Participants from being injured.

## **III. Emergencies**

### **Fire/Required Evacuation**

If there is a fire at on campus during camp hours follow the following steps:

- Have the children line up silently at nearest exit.
- Exit building to a secure location a safe distance away from the school.

- Call 911.
- Call Program Coordinator.
- In the event that the facility must be evacuated parents will be notified by phone of the pick-up location.

### **Finding a Participant with a Weapon**

If you find a participant with a weapon (i.e. knife, gun, stun gun, fire crackers) in their bag or on them, seclude the child immediately. Call 911, wait for police to arrive and follow their instructions. Notify your Program Coordinator immediately.

### **Missing Child**

If any staff suspects a child is missing, notify the Site Supervisor immediately.

Site Supervisor will:

- Have all children sit down and call roll.
- Notify Activity Leaders of situation and have them check the restrooms and all surrounding facilities.
- Notify Program Coordinator.
- If unable to locate child after trying all of the above, contact child's parents.
- Upon permission from parents, call 911.

### **Outside Influenced Dangers**

- Intoxicated persons should be asked to leave the area by the site supervisor. Because of the unpredictability of the behavior of an intoxicated person, the police should be called to help with the situation no matter what its severity is.
- Disturbances: Disturbances originating outside the jurisdiction of the program and affecting patrons of the facility or program should be referred to the proper authorities
  - SMPD Non-Emergency Phone: 512-753-2101, #1
- Animals: Wild or stray animals on site grounds, call SM Animal Control at 512-805-2655
- Theft: All thefts should be reported to the Site Supervisor and Program Coordinator. The proper action will be taken in response to the level of theft determined by the Program Coordinator.

### **Severe Weather Procedures**

- **Thunderstorm/Lightning**

In the event of lightning or a thunderstorm, take all participants inside. Do not allow children go outside until the storm has passed.

- **Tornado**

If a tornado watch is in effect for Hays County, all participants are to stay indoors. If a tornado warning is issued for Hays County, the Program Coordinator will call each site. When you receive this call, immediately have the children follow the tornado procedures:

- Children line up silently and walk to the nearest restroom or inner most room of the building.
- If you are in a restroom, have children line up against the wall(s), face the wall, duck down sitting on their knees and place their head as far in their lap as

possible. Have all children place their hands over their heads covering their ears and neck.

- o When the tornado warning expires, you will receive a call from one of the Program Coordinator to let you know it is okay to return to camp activities.

#### **IV. Communication**

- A. Each remote Program Site will have a cell phone to allow the Program Site to be contacted by Program Staff. Each Program Site will have access to a telephone for use in contacting Program Staff or making emergency telephone calls. At each Program Site the Coordinator will post the following telephone numbers adjacent to a telephone accessible to all Program Staff:
  - 1. City of San Marcos ambulance or emergency medical services
  - 2. City of San Marcos Police Department
  - 3. City of San Marcos Fire Department
  - 4. Parks and Community Services Department Administrative Office
  - 5. Telephone numbers and address for the Program Site itself
  - 6. Telephone number of Coordinator's office
  - 7. Program participants' emergency contact information
  - 8. Poison Control

#### **V. Nutrition**

- A. The program will follow the Texas Department of Agriculture Food and Nutrition Guidelines when meals are provided by the City of San Marcos Nutrition Program. Additionally, in keeping with Healthy Eating and Physical Activity (HEPA) Standards, the program will:
  - 1. Serve whole grain-rich products.
  - 2. Provide plain potable water at all times at no cost to youth and staff.
  - 3. Serve plain low-fat milk, plain or flavored nonfat milk or milk alternative limited to 8 fluid ounces per day for elementary school students and 12 fluid ounces per day for middle and high school students.
  - 4. Serve only 100% fruit or vegetable juice with no added sweeteners or 100% juice diluted with water with no added sweeteners.
  - 5. Serve only non-caffeinated beverages.
- B. Breakfast and lunch will be provided through San Marcos CISD Child Nutrition Services.
- C. Special snacks may be provided during the program. Parents must note any food allergies on Participant's registration form.
  - 1. Food brought from home may only be shared between siblings.

#### **VI. Suspected Abuse**

- A. Program Staff will receive basic training related to child abuse prevention and how to report suspected abuse.
- B. Concerns about a child should be brought to the attention of the Program Coordinator. The Program Coordinator will then collect all relevant information by:
  - 1. Talking to staff involved with the child for input and information
  - 2. Talking to parents/guardians (if appropriate)
  - 3. Contacting the Youth Services Manager to discuss if a report needs to be filed
- C. If deemed necessary, the Youth Services Coordinator will report suspected child abuse to the Texas Department of Family and Protective Services, in accordance with the Texas

Family Code, telephone number, 1-800-252-5400 or filing a report at [https://www.txabusehotline.org/Login/WebSite\\_UI/Report-anon.aspx](https://www.txabusehotline.org/Login/WebSite_UI/Report-anon.aspx).

**VII. Toilet Facilities**

- A. The Program Site will have toilets located and equipped so Participants can use them independently and Program Staff can monitor as needed.
- B. An adequate number of lavatories will be provided.

**VIII. Sanitation**

- A. The indoor Program Sites must have adequate light, ventilation, air conditioning and heat.
- B. The Program Site will have an adequate supply of water meeting the Texas Department of State Health standards for drinking water. Water will be supplied to the Participants in a safe and sanitary manner.
- C. All waste matters will be kept in a leak-proof container.

**SECTION 2.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**SECTION 3.** This Ordinance shall become adopted and effective upon its second reading and compliance with the City Charter.

**PASSED AND APPROVED** on first reading this 2nd day of June, 2020.

**PASSED, APPROVED, ADOPTED** on second reading this 16th day of June, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney

**ORDINANCE NO. 2020 - \_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS , TEXAS ADOPTING YOUTH PROGRAMS STANDARDS OF CARE FOR 2020; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE**

**Recitals:**

1. The City’s Parks and Recreation Department has determined that certain minimum standards of care are necessary to health, safety, and welfare of individuals participating in youth recreation programs; and

2. The State of Texas Human Resources Code Chapter 42 exempts certain after-school and summer recreation programs from state licensing requirements as identified in Subsection 42.041(14) stating "an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;" and;

3. The City Council of the City of San Marcos has determined that Youth Programs Standards of Car will be beneficial to the City of San Marcos and should be adopted as recommended by Staff; and

4. The City Council of the City of San Marcos, Texas has the authority under its Home Rule Charter and under the laws of the State of Texas to adopt regulations aimed to protect the health, safety, and general welfare of its citizens.

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

**SECTION 1.** The following standards of care are adopted by ordinance

**Youth Programs Standards of Care**

**CITY OF SAN MARCOS YOUTH PROGRAMS STANDARDS OF CARE**

**I. PURPOSE**

To provide basic childcare regulations for recreation activities operated by the San Marcos Parks and Recreation Department. This will allow the department to qualify as exempt from requirements of the Texas Human Resources Code.

**II. DEFINITIONS**

- A. City** - City of San Marcos
- B. City Council** - City Council of the City of San Marcos, Texas
- C. Department** - Department of the City of San Marcos
- D. Youth Program(s)** - City of San Marcos Youth Programs that last one consecutive week (five days) or longer.
- E. Operations Manual** - Notebook of policies, procedures, required forms, organizational and programming information relevant to City of San Marcos Youth Programs.
- F. Program Manual** – Notebook of information given to Activity Leaders which includes rosters, attendance sheets, lesson plans, disciplinary action forms, etc.

- G. Director** - City of San Marcos Parks and Recreation Department Director or his/her designee.
- H. Program Coordinator or Coordinator** - City of San Marcos seasonal, temporary staff who has been assigned administrative responsibility for a City of San Marcos Youth Program.
- I. Program Assistant Coordinator or Assistant Coordinator** – City of San Marcos seasonal, temporary staff, who has been assigned responsibility to implement the City's Youth Programs under the general supervisor of the Program Coordinator.
- J. Program Site Supervisor or Site Supervisor** - City of San Marcos seasonal, temporary staff who has been assigned responsibility to implement the City's Youth Programs.
- K. Activity Leader** – City of San Marcos seasonal staff, temporary staff who has been assigned responsibility to implement the City's Youth Programs.
- L. Program Site** - Area or facilities where City of San Marcos Youth Programs are held.
- M. Participant** - A youth whose parent(s) or guardian(s) have completed all required registration procedures and are determined to be eligible for a City of San Marcos Youth Program.
- N. Parent(s)** - This term will be used to represent one or both parent(s) or guardian(s) who have legal custody and authority to enroll their child(ren) in the City of San Marcos Youth Program.
- O. Program Staff** - Term used to describe the person or persons who have been hired or have volunteered to work for the City of San Marcos and have been assigned responsibility for managing, administering, or implementing some or all portions of the San Marcos Youth Programs. This definition also includes Program Coordinator, Program Assistant Coordinator, Program Site Supervisor, and Activity Leader.

### III. ORGANIZATION

- A.** Implementation of the San Marcos Youth Programs Standards of Care is the responsibility of the Director and Program Staff.
- B.** Youth Programs to which these Standards of Care will apply are Spring Break Camp, Summer Fun, Discovery Camp, Camp Quest, Holiday Camp, and other non-school day programs that last one consecutive week (five days) or longer.
- C.** Each Program Site will have a current copy of the Standards of Care available for the public and Program Staff.
- D.** Parents of Participants will be given access to a current copy of the Standards of Care prior to the start of the Youth Program, preferably during the registration process.
- E.** Criminal background checks will be conducted on prospective Program Staff. If results of the criminal check indicate that an applicant has been convicted of any of the following offenses, he or she will not be considered for employment:
  1. A felony or a misdemeanor classified as an offense against a person or family,
  2. A felony or a misdemeanor classified as public indecency,
  3. A felony or a misdemeanor violation of any law intended to control the possession or distribution of any controlled substance,
  4. Any offense involving moral turpitude, or
  5. Any offense that would potentially put the City of San Marcos or participants at risk.
  6. In addition, checks of the Texas Department of Public Safety database for the Texas Sex Offender Registration Program will be conducted on prospective Program Staff. If results of the check indicate that an applicant is a registered sex offender, he or she will not be considered for employment.

### IV. FISCAL MANAGEMENT

- A. The program will follow the written policies and procedures of fiscal management set forth by the City of San Marcos.
- B. The program will have sound fiscal management and operational oversight of the program.
- C. The program will have a written budget.
- D. Financial statements of the program will be reviewed regularly by the Director and adjustments will be made as needed.

**V. STAFFING**

**A. Program Coordinator-Job Descriptions and Essential Job Functions**

Essential Job Functions:

- 1. Supervises Assistant Site Supervisor and Activity Leader positions; trains and educates workers concerning City and departmental policies and procedures; supervises and administers program activities on playground campus site for youth program participants.
- 2. Supervises and trains summer workers about City and Parks and Recreation policies and procedures; manages and administers the Youth Program.
- 3. Prepares and schedules on and off campus site activities.
- 4. Drives to each activity site to supervise and train employees; oversees, administers and monitors program activities. Maintains program documentation and responds to "on-call" situations.
- 5. On-call 24 hours for any problem or situation which may arise which involves the Youth Program and activities.
- 6. Other Miscellaneous Duties: Parent and child counseling.

Minimum Requirements:

- 1. An Associate's Degree in Education, Recreation Administration, or related field is required. Commensurate combination of education and experience may be considered.
- 2. Two years' supervisory experience working with children in recreation and/or education setting is required.
- 3. Valid Texas Driver's License with acceptable driving record.
- 4. CPR/First Aid Certification is required during week of training- administered by COSM
- 5. Required to do Community Services
- 6. Required to work a full 10 weeks with the program.

**B. Program Assistant Coordinator-Job Descriptions and Essential Job Functions**

Essential Job Functions:

- 1. Assists with the supervision and training of summer workers about City and Parks and Recreation policies and procedures; assists with the management and administration of the Youth Program.
- 2. Schedules arts and crafts classes at playground sites and orders supplies and equipment.
- 3. Assists in preparing and scheduling on and off campus site activities for school age children at sites.

4. Drives to each activity site to supervise and train employees; monitors program activities, and responds to on-call situations; schedule bus transportation to all off campus activities.
5. Other Miscellaneous Duties: Occasional parent and child counseling.

Minimum Qualifications:

1. Associate's Degree in Education, Recreation Administration or related field is required. Commensurate combination of education and experience may be considered.
2. One-year supervisory experience working with children in a recreation and/or educational setting is required.
3. Valid Texas Driver's License with acceptable driving record.
4. CPR/First Aid Certification is required during week of training- administered by COSM
5. Required to do Community Services.
6. Required to work a full 10 weeks with the program

**C. Program Site Supervisor- Job Descriptions and Essential Job Functions**

Essential Job Functions

1. Supervises Assistant Site Supervisor and Activity Leader positions; trains and educates workers concerning City and departmental policies and procedures; supervises and administers program activities on playground campus site for participants.
2. Performs child supervision duties for both on and off campus activities; administers first aid; enforces safety rules; fills out necessary forms and paperwork; and performs safety inspections daily.
3. Encourages participation in activities, ensures children are accounted for at all times, and adheres to safety policies and procedures including pickup and drop off of children.
4. Organize and supervise recreational program activities on playground campus sites and offsite including structured activities; bowling, swimming, movies, and special field trips including transporting kids by bus.
5. Maintains program site area; cleans floors, picks up trash; cleans bathrooms and performs other janitorial work as needed.

Minimum Qualifications:

1. High school diploma or GED equivalent
2. Two (2) years related experience required
3. Must possess a valid Texas Driver's License with acceptable driving record.
4. Ability to learn and administer first aid
5. Required to do some community outreach
6. Required to work a full length of the program.

**D. Activity Leader - Job Descriptions and Essential Job Functions**

Essential Job Functions:

1. Performs child supervision duties for both on and off campus program activities; administers first aid; enforces adherence to safety rules; fills out handwritten forms; performs safety inspections daily.
2. Administers recreation activities on a playground campus site including structured activities; bowling, skating, swimming, movies and special field trips.
3. Maintains program site area; cleans floors; picks up trash; cleans bathrooms and performs other janitorial work as needed.

Minimum Qualifications:

1. Must be at least 16 years of age.
2. Required to do some community outreach
3. Required to work a full length the program.

**E. Training/Orientation**

1. The Department is responsible for providing training and orientation to Youth Program staff in working with Participants and for specific job responsibilities. Coordinators will provide each Leader with a Staff Handbook specific to each Youth Program.
2. Program Staff must be familiar with the Standards of Care for Youth Programs as adopted by the City Council.
3. Program Staff must be familiar with the Youth Program's policies, including discipline, guidance, and release of Participants as outlined in the Staff Handbook.
4. Program Staff will be trained in appropriate procedures to handle emergencies.
5. Program Staff will be trained in areas including City, Department, and Youth Program policies and procedures, recreation activities organization, safety issues, program organization, and other areas as required by assigned Youth Program.
6. Program Staff will be required to sign an acknowledgment that they received the required training.

**F. Criminal Background Checks and Drug Testing:** Criminal background checks will be conducted on prospective employees. Applicants may be disqualified if they have a job related criminal conviction. A prospective employee will be subject to a drug test prior to hiring.

**G.** Before being hired, applicants must successfully complete a qualifying interview, clear a criminal history background check and pass a drug test.

**H. Staffing Ratios:**

1. In a Youth Program, the standard ratio of Participants to Program Staff is 15 to 1, based on average daily attendance. In the event a Leader is unable to report to the Program Site, the Coordinator will assign a replacement.
2. Ratios may be adjusted to provide adequate supervision during higher risk activities, such as field trips, swimming, etc.
3. Each Participant will have a Program Staff who is responsible for him or her and who is aware of details of the Participant's habits, interests and any special needs as identified by the Participant's Parents during the registration process.

## **VI. PROGRAM OPERATIONS**

### **A. Enrollment**

1. Before a child can become a Youth Program Participant, a parent or guardian must register their child and provide the following information:
  - A. Name, address, cell phone, work phone, and home telephone numbers;
  - B. Contact names and telephone numbers in case of emergency;
  - C. The names and telephone numbers of people to whom the child can be released;
  - D. A statement of the child's special conditions and/or needs;
  - E. Emergency medical authorization with doctor's name and telephone number;
  - F. A signed liability waiver;
  - G. A signed release to participate in Youth Programs, including water activities, riding the bus, bowling, movies, and field trips;
  - H. Designation of need for reasonable accommodations;
  - I. Signed acknowledgement of program code of conduct; and
  - J. Proof of date of birth
  - K. Week(s) of participation
  - L. Whether or not photography of the Participant is permitted

### **B. Special Needs**

1. The parent should inform Program Staff in writing of any Participant needs that would affect their ability to participate in organized group activities.
2. The City is committed to providing children with an equal opportunity to participate in the City's programs and services in accordance with the Americans with Disabilities Act (ADA). Any requests for accommodations will be individually assessed to determine the reasonableness of the request, and if the City can meet the particular needs of the Participant without fundamentally altering the program or services involved. Every reasonable accommodation will be made to address Participants with special needs.

### **C. Field Trips & Transportation**

1. Program Staff will be attentive and considerate of the Participant's safety on field trips and during any transportation provided by the Youth Program.
2. During field trips, Program Staff will have authorization for emergency medical care and emergency contact information for each Participant.
3. Program Staff will have a written list of the Participants in their group and must check the roll frequently, specifically before departure to and from destination.
4. Program Staff will have first aid supplies.
5. Before a Participant can be transported to and from City sponsored activities, the parent must give their permission.
6. First aid supplies will be available in all Youth Program vehicles that transport Participants.
7. There will be at least one staff member in the vehicle that is certified in CPR, First Aid, and AED.
8. Before a participant may be transported to or from a city-sponsored activity, a transportation form, completed by a parent of the participant, must be filed with a coordinator.

9. Every program vehicle used for transporting youth participants must be equipped with:
  - a. First aid supplies and a first aid emergency care guide that are easily accessible to program employees in the vehicle; and
  - b. An operable fire extinguisher that is installed in the passenger compartment of the vehicle and that is easily accessible to program employees in the vehicle.

#### **D. Participant Pick Up & Drop Off**

1. A completed and signed registration form, including pick-up authorization, must be on file for each Participant.
2. These forms must be updated each year.
3. The original signer of the Pick-Up Authorization Form may contact the center by email or in person to add a new Authorized Person, with written notification.
4. Participants must only be signed out by an Authorized Person listed on the Pick-Up Authorization Form. One staff person must monitor the sign in/out duties each day.
5. Authorized Persons must present picture ID to pick up a Participant.
6. Authorized persons must be 18 or older unless the person is 16 or older and a sibling of the Participant.
7. Sign in/sign out sheets will be kept by the Parks and Recreation Department for two years after the Youth Program has ended.
8. Participants may be signed out by a custodial parent, unless court paperwork is given to Program Staff.
9. Participants must be picked up by the end of the assigned Youth Program. If a child is picked up after 5:30 PM, a late fee will be assessed at a rate of \$6 for every 15 minutes. If a child has not been picked up within thirty (30) minutes after the program has ended and a parent/legal guardian or emergency contact cannot be reached, the police will be called.
10. If an Authorized Person attempts to pick up a Participant while appearing intoxicated, staff will ask if there is another person who can pick up the Participant.
11. If any unauthorized person attempts to pick up a child, staff should:
  - a. Call the Program Coordinator.
  - b. Politely inform the person that they do not have permission to release the child to them.
  - c. Ask the person to leave.
  - d. Move the Participant at risk to another room or area.
  - e. Have another Program Staff in the pick-up area.
  - f. The Coordinator should call the original Authorized Person to inform them of the unauthorized pick up attempt.
  - g. If necessary, Program Staff should call 911.

#### **E. Discipline**

1. Program Staff will execute discipline and guidance in a consistent manner based on the best interests of Participants.
2. There will be no cruel treatment or harsh punishment (physical or verbal abuse). Examples of discipline that IS NOT allowed include, but are not limited to:
  - a. Using physical punishment or any action administered to the body such as, but not limited to rough handling, or forcing child(ren) to assume an uncomfortable position,

- b. Restraining movement by tying, enclosing in a confined space, shaking, or using exercise as punishment.
  - c. Being verbally abusive, including, but not limited to, threats, belittling remarks, humiliation, embarrassment, or frightening a child.
  - d. Giving any child the authority to punish another child.
  - e. Placing a child out of visual/hearing range, in the dark, or in an unventilated area.
  - f. Punishing a child for a toileting accident.
  - g. Taunting a child by or any other form of jeering.
  - h. Giving preferential attention to any child over another child.
3. To protect a child from injuring themselves, other Participants, or Program staff, the child may be removed and/or isolated if deemed necessary.
  4. Program Staff will use brief, supervised, separation (time out) from the group, if necessary.
  5. Discipline Guidelines:
    - a. **First intervention**
      - a. Program staff will counsel the participant concerning behavior expectations, the appropriate behavior and the possible consequences for the behavior demonstrated.
    - b. **Second intervention**
      - a. The participant will not be allowed to participate in activities for 5 to 10 minutes (length of time will vary according to the behavior).
    - c. **Third intervention**
      - a. Assistant Site and/or Site Supervisor will talk to the parent, or person designated to pick up the participant concerning behavior.

**The first three could take place in a short period of time depending on the response of the participant.**

- d. **Fourth intervention**
  - a. A one to three day suspension could be determined by Program Coordinator and Site Supervisor, depending on the severity of the behavior or incident. A parent conference may be required.
  - b. If you received a Discipline Notice, your child will not be able to return to camp until parents have met with Program Coordinator.
- e. **Fifth intervention**

Participant will be dismissed from program for the remainder of the summer.

6. Serious offenses include, but are not limited to:
  1. Disrespectful behavior toward other participants and program staff
  2. Leaving the defined boundaries of site or field trip facility
  3. Refusal to follow rules, policies and staff directions
  4. Physical/Verbal abuse (BULLYING) or any sort of threat WILL NOT BE TOLERATED and are grounds for dismissal from the program.
  5. Possession of anything that can be considered a weapon.
  6. Inappropriate or sexually provocative behaviors.
  7. Possession of over the counter, illegal drugs or unauthorized prescription drugs, tobacco, or alcohol
  8. Serious offenses will SKIP interventions 1 through 3 and may lead to suspension or dismissal.

**Serious offenses will NOT BE TOLERATED and are grounds for IMMEDIATE dismissal from the program.**

7. The following rules have been designed to provide a fun, safe and healthy environment for all children in the program. Parents are asked to read and share these procedures with their children.
  - a. Children will be required to follow program rules as well as any rules posted at field trip sites.
  - b. Children will not be allowed to show disrespect to staff or other children through actions or words.
  - c. Leaving the defined boundaries of any site or field trip facility will not be allowed.
  - d. Abusive language, mishandling of equipment, defacing of property and theft is not acceptable behavior.
  - e. Children will not be allowed to be physically or verbally abusive to other children.
  - f. Over the counter, illegal drugs or unauthorized prescription drugs, tobacco, or alcohol are not permitted on site.
  - g. Any weapon of any nature found in the possession of a child will be permanently confiscated and the child will be removed immediately from program and may be reported and subject to action by local law enforcement authorities.
  - h. Inappropriate or sexually provocative behaviors will not be tolerated and may be reported to and subject to action by the appropriate authorities.
  - i. Each child will help clean up after every activity.
  - j. If parents would like to bring a special treat for their child's birthday or other special events, they must notify the Site Supervisor two days prior to the event.

## **VII. FACILITY STANDARDS**

### **A. Inspection/Monitoring/Enforcement**

1. Program staff will perform an inspection of the facility prior to the start of the Youth Program to maintain compliance with the Standards of Care.
2. Program staff will report any issues within the facility using the forms will be created and available for that use. ~~to program staff to use for reporting any issues within the facility.~~

### **B. Program Area**

1. The Youth Program's indoor space (when applicable) meets the physical, social, emotional, and cognitive needs of Participants.
2. The Youth Program's outdoor space (when applicable) is large enough, appropriately equipped, and safe to allow Participants to be active and independent.
3. The Youth Program's space meets the needs related to planning, activities, and storage.
4. Buildings, grounds, and equipment on the Program Site are regularly inspected, cleaned, repaired, and maintained to protect Participants' health.

## **VIII. HEALTH & SAFETY**

### **I. Health**

#### **A. Illness or Injury**

1. A Participant who is considered to be a health or safety concern to other Participants or Program Staff will not be admitted to the Youth Program.
2. Illnesses and injuries will be handled in a manner to protect the health of all Participants and Program Staff. Participants having a temporal fever over 100.4 degrees will not be allowed back into the Youth Program for 24 hours.
3. Program Staff will follow emergency procedures for injured Participants or for Participants with symptoms of an acute illness.
4. In the event of an emergency and/or serious accident, Parents will be notified immediately. If necessary, the local ambulance service will transport the Participant to the nearest hospital.
5. In the case of a minor accident or injury (bumps and bruises), the Program Staff will administer first aid, monitor the Participant, and notify the Parents at pick-up.
6. Parents will be notified if a child is injured in a way that necessitates emergency care.
7. Program Staff will follow the recommendations of the Texas Department of State Health Services concerning the admission or readmission of any Participant after a communicable disease, and a doctor's note will be required allowing Participant's readmission to the program.
8. Parents should notify Program staff if a child has lice. Lice checks will be administered randomly and when needed. Any child found with lice will discreetly be sent home and letter will be sent out to camp parents. Child will be unable to return to camp until lice and nits have been removed. They will be checked by staff upon return.
9. If a Participant becomes sick while in the program, the Parent or Authorized Person(s) must contact staff within one hour to arrange pick up. If no contact is made within one hour after initial contact by staff, the police will be notified.

#### **II. Safety**

- A. Program Staff will supervise Participants to ensure their safety.
- B. Program Staff will inspect Program Sites daily checking for sanitation and safety concerns that might affect the health and safety of Participants.
- C. Program Site equipment and supplies will be safe for Participants use.
- D. Program Staff will have first aid supplies available at each Program Site in a designated location, during transportation, and for the duration of any off-site activity.
- E. The Youth Program will ensure that all Program Staff working with participants are trained in CPR, First, and AED.
- F. Participants will have access to clean drinking water at all times.
- G. Program Site air conditioners, electric fans, and heaters will be mounted out of Participant's reach or have safeguards that keep Participants from being injured.

#### **III. Emergencies**

##### **Fire/Required Evacuation**

If there is a fire at on campus during camp hours follow the following steps:

- Have the children line up silently at nearest exit.

- Exit building to a secure location a safe distance away from the school.
- Call 911.
- Call Program Coordinator.
- In the event that the facility must be evacuated parents will be notified by phone of the pick-up location.

### **Finding a Participant with a Weapon**

If you find a participant with a weapon (i.e. knife, gun, stun gun, fire crackers) in their bag or on them, seclude the child immediately. Call 911, wait for police to arrive and follow their instructions. Notify your Program Coordinator immediately.

### **Missing Child**

If any staff suspects a child is missing, notify the Site Supervisor immediately.

Site Supervisor will:

- Have all children sit down and call roll.
- Notify Activity Leaders of situation and have them check the restrooms and all surrounding facilities.
- Notify Program Coordinator.
- If unable to locate child after trying all of the above, contact child's parents.
- Upon permission from parents, call 911.

### **Outside Influenced Dangers**

- Intoxicated persons should be asked to leave the area by the site supervisor. Because of the unpredictability of the behavior of an intoxicated person, the police should be called to help with the situation no matter what its severity is.
- Disturbances: Disturbances originating outside the jurisdiction of the program and affecting patrons of the facility or program should be referred to the proper authorities
  - SMPD Non-Emergency Phone: 512-753-2101, #1
- Animals: Wild or stray animals on site grounds, call SM Animal Control at 512-805-2655
- Theft: All thefts should be reported to the Site Supervisor and Program Coordinator. The proper action will be taken in response to the level of theft determined by the Program Coordinator.

### **Severe Weather Procedures**

- **Thunderstorm/Lightning**

In the event of lightning or a thunderstorm, take all participants inside. Do not allow children go outside until the storm has passed.

- **Tornado**

If a tornado watch is in effect for Hays County, all participants are to stay indoors. If a tornado warning is issued for Hays County, the Program Coordinator will call each site. When you receive this call, immediately have the children follow the tornado procedures:

- Children line up silently and walk to the nearest restroom or inner most room of the building.
- If you are in a restroom, have children line up against the wall(s), face the wall, duck down sitting on their knees and place their head as far in their lap as

possible. Have all children place their hands over their heads covering their ears and neck.

- o When the tornado warning expires, you will receive a call from one of the Program Coordinator to let you know it is okay to return to camp activities.

#### **IV. Communication**

- A. Each remote Program Site will have a cell phone to allow the Program Site to be contacted by Program Staff. Each Program Site will have access to a telephone for use in contacting Program Staff or making emergency telephone calls. At each Program Site the Coordinator will post the following telephone numbers adjacent to a telephone accessible to all Program Staff:
  - 1. City of San Marcos ambulance or emergency medical services
  - 2. City of San Marcos Police Department
  - 3. City of San Marcos Fire Department
  - 4. Parks and Community Services Department Administrative Office
  - 5. Telephone numbers and address for the Program Site itself
  - 6. Telephone number of Coordinator's office
  - 7. Program participants' emergency contact information
  - 8. Poison Control

#### **V. Nutrition**

- A. The program will follow the Texas Department of Agriculture Food and Nutrition Guidelines when meals are provided by the City of San Marcos Nutrition Program. Additionally, in keeping with Healthy Eating and Physical Activity (HEPA) Standards, the program will:
  - 1. Serve whole grain-rich products.
  - 2. Provide plain potable water at all times at no cost to youth and staff.
  - 3. Serve plain low-fat milk, plain or flavored nonfat milk or milk alternative limited to 8 fluid ounces per day for elementary school students and 12 fluid ounces per day for middle and high school students.
  - 4. Serve only 100% fruit or vegetable juice with no added sweeteners or 100% juice diluted with water with no added sweeteners.
  - 5. Serve only non-caffeinated beverages.
- B. Breakfast and lunch will be provided through San Marcos CISD Child Nutrition Services.
- C. Special snacks may be provided during the program. Parents must note any food allergies on Participant's registration form.
  - 1. Food brought from home may only be shared between siblings.

#### **VI. Suspected Abuse**

- A. Program Staff will receive basic training related to child abuse prevention and how to report suspected abuse.
- B. Concerns about a child should be brought to the attention of the Program Coordinator. The Program Coordinator will then collect all relevant information by:
  - 1. Talking to staff involved with the child for input and information
  - 2. Talking to parents/guardians (if appropriate)
  - 3. Contacting the Youth Services Manager to discuss if a report needs to be filed
- C. If deemed necessary, the Youth Services Coordinator will report suspected child abuse to the Texas Department of Family and Protective Services, in accordance with the Texas

Family Code, telephone number, 1-800-252-5400 or filing a report at [https://www.txabusehotline.org/Login/WebSite\\_UI/Report-anon.aspx](https://www.txabusehotline.org/Login/WebSite_UI/Report-anon.aspx).

**VII. Toilet Facilities**

- A. The Program Site will have toilets located and equipped so Participants can use them independently and Program Staff can monitor as needed.
- B. An adequate number of lavatories will be provided.

**VIII. Sanitation**

- A. The indoor Program Sites must have adequate light, ventilation, air conditioning and heat.
- B. The Program Site will have an adequate supply of water meeting the Texas Department of State Health standards for drinking water. Water will be supplied to the Participants in a safe and sanitary manner.
- C. All waste matters will be kept in a leak-proof container.

**SECTION 2.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**SECTION 3.** This Ordinance shall become adopted and effective upon its second reading and compliance with the City Charter.

**PASSED AND APPROVED** on first reading this 2nd day of June, 2020.

**PASSED, APPROVED, ADOPTED** on second reading this 16th day of June, 2020.

Jane Hughson  
Mayor

Attest:

Tammy K. Cook  
Interim City Clerk

Approved:

Michael J. Cosentino  
City Attorney



Legislation Text

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**File #:** ID#20-317, **Version:** 1

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**AGENDA CAPTION:**

Executive Session in accordance with the following Government Code Sections:

- A. §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding state law preemption of city ordinances regulating the sale or use of single-use packages and containers.
- B. §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding pending litigation, to wit: *The Mayan at San Marcos River, LLC and City of Martindale v. City of San Marcos*, Docket No. 04-19-00018-CV in the 4<sup>th</sup> Court of Appeals of Texas

**Meeting date:** 6/2/2020

**Department:** City Clerk's Office on behalf of the City Council

**Amount & Source of Funding**

**Funds Required:** Click or tap here to enter text.

**Account Number:** Click or tap here to enter text.

**Funds Available:** Click or tap here to enter text.

**Account Name:** Click or tap here to enter text.

**Fiscal Note:**

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

**City Council Goal:** [Please select goal from dropdown menu below]

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:**

Click or tap here to enter text.

**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.



## Legislation Text

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**File #:** ID#20-318, **Version:** 1

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**AGENDA CAPTION:**

Consider action, by motion, regarding the following Executive Session items held during the Work Session and/or Regular Meeting:

- A. §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding state law preemption of city ordinances regulating the sale or use of single-use packages and containers.
- B. §Sec.551.071 of the Texas Government Code: Consultation with attorney - to receive advice of legal counsel regarding pending litigation, to wit: *The Mayan at San Marcos River, LLC and City of Martindale v. City of San Marcos*, Docket No. 04-19-00018-CV in the 4<sup>th</sup> Court of Appeals of Texas

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**Fiscal Note:**

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

**City Council Goal:** [Please select goal from 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:**

Click or tap here to enter text.

**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.