

Commissioners Court -December 23, 2008
NOTICE OF A MEETING OF THE
COMMISSIONERS COURT OF HAYS COUNTY, TEXAS



This Notice is posted pursuant to the Texas Open Meetings Act. (VERNON'S TEXAS CODES ANN. GOV. CODE CH.551). The Hays County Commissioners Court will hold a meeting at **9:00 A.M.** on the **23RD day of December, 2008**, in the Hays County Courthouse, Room 301, San Marcos, Texas. An Open Meeting will be held concerning the following subjects:

INVOCATION:

PLEDGE OF ALLEGIANCE - Pledge of Allegiance to the American Flag & Pledge of Allegiance to the Texas Flag
CALL TO ORDER /ROLL CALL

PRESENTATIONS & PROCLAMATIONS

PUBLIC COMMENTS

At this time **3-MINUTE** comments will be taken from the audience on Non-Agenda related topics. To address the Court, please submit a Public Participation/ Witness Form to the County Clerk. Please Complete the Public Participation/ Witness Form in its Entirety.
NO ACTION MAY BE TAKEN BY THE COURT DURING PUBLIC COMMENTS.

CONSENT ITEMS

The following may be acted upon in one motion. A Commissioner, the County Judge, or a Citizen
May request items be pulled for separate discussion and/or action

1	1	Approve payments of county invoices. HERZOG
2	2-7	Approve Commissioner Court Minutes of December 16, 2008. SUMTER/FRITSCH
3	8-9	Authorize County Judge to execute amendment extending contract termination date for CAPCOG Grant 08-12-G16 for Recycling Center. SUMTER/HAUFF/PINNIX

ACTION ITEMS

ROADS

4	10-11	Hold a public hearing to establish traffic regulations on Rich Lane. Possible action may follow. BARTON/BORCHERDING
5	12	Hold a public hearing and possible action to establish traffic regulations (stop sign) on the new park road at the Five Mile Dam Soccer Complex. INGALSBE/PINNIX

SUBDIVISIONS

6	13-15	08-2-54 Blanco River Estates, Replat of Lot 50 & 51; Consider waiver of preliminary plan and public hearing; accept final plat. CONLEY/GARZA
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MISCELLANEOUS

7	16-41	Discussion and possible action to approve the Takings Impact Assessment prepared by Grant Jackson/Naismith Engineering with regard to the proposed Development Regulations. FORD
8	42-43	Discussion and possible action to approve funds for construction of JP bench for new Pct. Office. FORD/KYLE
9	44-45	Discussion and possible action regarding disability benefits and conditions for county employees and general county policies regarding medical disability, disability benefits, and disability retirement. BARTON
10	46-50	Discussion and possible action to authorize the County Judge to execute Change Order #1 to the contract with Westar Construction for a water service connection, in the amount of \$5,700.00. INGALSBE/HAUFF
11	51-59	Discussion and possible action to appoint 10 members to a citizen committee to look at different locations within the county to house a shooting sports complex. BARTON
12	60-83	Discussion and possible action to authorize the County Judge to execute a 381 Economic Development agreement between Hays County and HEB Grocery Company "Project Munch"

		INGALSBE
13	84	Discussion and possible action to authorize County Judge and Special Counsel to execute an Interlocal Agreement with Texas Parks and Wildlife for karst study grant and to negotiate a service contract with Zara Environmental LLC to fulfill the scope of services set forth in the Interlocal Agreement. FORD/HAUFF (BACKUP IS IN YOUR 12/16/08 PACKET)
14	85-96	Discussion and possible action to partner with the City of San Marcos on a Comprehensive Economic Development Plan. INGALSBE/CONLEY

EXECUTIVE SESSIONS

The Commissioners Court will announce it will go into Executive Session, if necessary, pursuant to Chapter 551 of the Texas Government Code, to receive advice from Legal Counsel to discuss matters of land acquisition, litigation, and personnel matters as specifically listed on this agenda. The Commissioners' Court may also announce it will go into Executive Session, if necessary, to receive advice from Legal Counsel regarding any other item on this agenda.

ADJOURNMENT

Posted by 5:00 o'clock P.M. on the 19TH day of December, 2008.

COMMISSIONERS COURT, HAYS COUNTY, TEXAS

CLERK OF THE COURT

Hays County encourages compliance with the Americans with Disabilities Act (ADA) in the conduct of all public meetings. To that end, persons with disabilities who plan to attend this meeting and who may need auxiliary aids such as an interpreter for a person who is hearing impaired are requested to contact the Hays County Judge's Office at (512) 393-2205 as soon as the meeting is posted (72 hours before the meeting) or as soon as practical so that appropriate arrangements can be made. While it would be helpful to receive as much advance notice as possible, Hays County will make every reasonable effort to accommodate any valid request regardless of when it is received. Braille is not available.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Approve payments of county invoices.

CHECK ONE: ☒ CONSENT ☐ ACTION ☐ EXECUTIVE SESSION

☐ WORKSHOP ☐ PROCLAMATION ☐ PRESENTATION

PREFERRED MEETING DATE REQUESTED: December 23, 2009

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: HERZOG

SPONSORED BY: SUMTER

SUMMARY:

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Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: APPROVE COMMISSIONERS COURT MINUTES OF DECEMBER 16, 2008

CHECK ONE: **X CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**
 ☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: DECEMBER 23,2008

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: FRITSCH

SPONSORED BY: SUMTER

SUMMARY:



DECEMBER 16, 2008

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STATE OF TEXAS *
COUNTY OF HAYS *

ON THIS THE 16TH DAY OF DECEMBER A.D., 2008, THE COMMISSIONERS' COURT OF HAYS COUNTY, TEXAS, MET IN REGULAR MEETING. THE FOLLOWING MEMBERS WERE PRESENT, TO-WIT:

ELIZABETH "LIZ" SUMTER
DEBBIE GONZALES INGALSBE
JEFFERSON W. BARTON
WILL CONLEY
KAREN FORD
LINDA C. FRITSCHKE

COUNTY JUDGE
COMMISSIONER, PCT. 1
COMMISSIONER, PCT. 2
COMMISSIONER, PCT. 3
COMMISSIONER, PCT. 4
COUNTY CLERK

AND THE FOLLOWING PROCEEDINGS WERE HAD, THAT IS:

Chaplain Hicks (Sheriff's office) gave the invocation and Commissioner Barton led the court in the Pledge of Allegiance to the flags. Judge Sumter called the meeting to order.

PRESENTATION OF RETIREMENT AND SERVICE AWARD PLAQUES

Capt. Mike Davenport presented retirement/service awards to Guadalupe Flores (he was not present), Victoria Espinoza (15 yrs), and Sam Courtney (20 yrs). Commissioner Barton presented a retirement/service award to Terry Johnson (12 yrs). Constables Peterson, Kohler, Ayres & Mancillas presented a service award to Constable Pct. 4 Debbie Brown.

DISCUSSION REGARDING VACANCY IN THE OFFICE OF THE HAYS COUNTY SHERIFF UNDER CHAPTER 87, SUBCHAPTER D OF THE TEXAS LOCAL GOVERNMENT CODE [T1-170]

Gary Conner made public comment in support of Bill Huddleston (candidate for County Sheriff). Russ Molenaar made public comment in support of Chief Deputy Sheriff Sherman Brodbeck. Charlie Johnson made public comment in support of Sherman Brodbeck. Judge Sumter spoke of public input members of the court have been receiving – she would like more time for consideration. Commissioner Barton spoke of need for additional time and input before making a decision. Special Counsel Mark Kennedy spoke of conversation he had with the Attorney General's office regarding holding an executive session to consider candidates for the office. He spoke of Chapter 87 of the Local Government Code. People being considered for the position need to be notified of a possible closed executive session. Commissioner Conley spoke of people who have notified him of interest in serving as Sheriff. He is opposed to having an executive session on this issue – he would like for all discussions to be in open court. Commissioner Conley spoke of input he has received from employees of the Sheriff's Department. He spoke in support of appointing Sherman Brodbeck. Commissioner Ford spoke of contact/input she has received and she would like more time for consideration. Commissioner Ingalsbe also requested more time for consideration. Judge Sumter suggested having a special meeting on Monday. Commissioner Conley requested that the record reflect that he asked members of the court that if they've contacted the Sheriff's Department about having someone internally being appointed as Sheriff, a question which has not been answered yet. Commissioner Barton and Commissioner Ingalsbe spoke.

25781 APPROVE PAYMENT OF COUNTY INVOICES [T1-1252]

County Auditor Bill Herzog requested addition of invoice from Don Hudson in the amount of \$3,467. A motion was made by Commissioner Ford, seconded by Commissioner Ingalsbe to approve payment of county invoices in the amount of \$1,416,108.65 plus an additional payment in the amount of \$3,467 as recommended by the County Auditor. Commissioner Ingalsbe, Commissioner Ford, and Judge Sumter voting "Aye". MOTION PASSED Commissioner Barton and Commissioner Conley not present for vote

25782 APPROVE COMMISSIONER COURT MINUTES OF DECEMBER 9, 2008

A motion was made by Commissioner Ford, seconded by Commissioner Ingalsbe to approve Commissioner Court Minutes of December 9, 2008 as presented by the County Clerk. Commissioner Ingalsbe, Commissioner Ford, and Judge Sumter voting "Aye". MOTION PASSED Commissioner Barton and Commissioner Conley not present for vote



- 25783 APPROVE AWARD OF BID #2009-B03R "TRACTORS W/SIDE MOUNT MOWERS FOR THE ROAD DEPARTMENT" TO DIETZ TRACTOR FOR A TOTAL COST OF \$78,998.00 FOR TWO UNITS**

A motion was made by Commissioner Ford, seconded by Commissioner Ingalsbe to approve award of Bid #2009-B03R "Tractors w/side mount mowers for the Road Department" to Dietz Tractor for a total cost of \$78,998.00 for two units. Commissioner Ingalsbe, Commissioner Ford, and Judge Sumter voting "Aye". **MOTION PASSED** Commissioner Barton and Commissioner Conley not present for vote

- 25784 ACCEPT A DONATION OF \$3,000.00 FOR PURCHASE OF A COMPUTER WITH EDITING SOFTWARE AND SCANNER FOR THE HAYS COUNTY HISTORICAL COMMISSION [T1-1295]**

Hays County Historical Commission Chair Kate Johnson spoke in support of accepting this donation to be used to purchase computer, software, and scanner. A motion was made by Judge Sumter, seconded by Commissioner Ford to amend the budget and accept a donation of \$3,000.00 for purchase of a computer with editing software and scanner for the Hays County Historical Commission. All voting "Aye". **MOTION PASSED**

- 25785 AUTHORIZE THE COUNTY JUDGE TO ACCEPT A GRANT AWARD FROM THE TEXAS PARKS AND WILDLIFE DEPARTMENT FOR A U.S. FISH & WILDLIFE SERVICE, COOPERATIVE ENDANGERED SPECIES CONSERVATION FUND (SECTION 6 TRADITIONAL) GRANT IN THE AMOUNT OF \$54,063 FOR A KARST INVERTEBRATE STUDY [T1-1372]**

Grants Administrator Jeff Hauff spoke. Grant funds will be used for a study to determine the distribution of karst invertebrates in Hays County by sampling caves and using hydrogeologic evaluations of those caves to establish management units for the species. 25% match to be provided by Hays County [½ of that to come out of the FY2009 budget and ½ out of the FY2010 budget]. Commissioner Conley voiced his opposition to this study. A motion was made by Commissioner Ford, seconded by Judge Sumter to authorize the County Judge to accept a Grant Award from the Texas Parks and Wildlife Department for a U.S. Fish & Wildlife Service, Cooperative endangered species Conservation Fund (Section 6 Traditional) Grant in the amount of \$54,063 for a Karst Invertebrate Study. Commissioner Ingalsbe, Commissioner Barton, Commissioner Ford, and Judge Sumter voting "Aye". Commissioner Conley voting "No". **MOTION PASSED**

- 25786 APPROVE TEXAS TUITION PROMISE FUNDS AS A PAYROLL DEDUCTION [T1-2179]**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Conley to approve Texas Tuition Promise Funds as a payroll deduction and waive current enrollment policy regarding payroll deductions. All voting "Aye". **MOTION PASSED**

EXECUTIVE SESSION PURSUANT TO SECTION 551.087 OF THE TEXAS GOVERNMENT CODE TO DISCUSS ECONOMIC DEVELOPMENT NEGOTIATION REGARDING PROJECT MUNCH [T1-2320]

Court convened into closed executive session at 11:20 a.m. and reconvened into open meeting at 11:55 a.m. No discussion and no action taken in open court.

- 25787 APPROVE PAYMENT FOR 351.50 HOURS OF COMPENSATION TIME ACCUMULATED BY DEPUTY MARK HANNA IN THE HAYS COUNTY CONSTABLE PCT. 2 OFFICE [T1-2335]**

Note: Posted agenda shows 674.75 hours – should have been 351.50 hours. Constable Pct. 2 James Kohler spoke of overtime that has been accumulating over the years. Commissioner Barton spoke of new deputy vacancy in the department that will soon be filled. County Treasurer Michele Tuttle spoke of county policy of 120 hours for compensation time. Judge Sumter spoke of only allowing payment down to 120 hours. Commissioner Barton spoke of amount of work in Precinct 2. A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to approve payment down to 120 hours of compensation time accumulated by Deputy Mark Hanna in the Hays County Constable Pct. 2 office. All voting "Aye". **MOTION PASSED**



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25788 DISCUSSION OF POLICIES FOR ADMINISTERING THE ROAD BOND PACKAGE WITH ACTION [T1-2693]

Mike Weaver (Prime Strategies Inc.) spoke of projects Phase I, Phase 2A, and Phase 2B; Project Consultants; Project Schedules; Schedule Summary; Cash Flows; and Next Steps. Bond Counsel Dan Wegmiller spoke of funding. Mike Weaver spoke of Professional Services Contract, Work Authorizations, Invoicing, Change Orders, Construction Guidelines, Environmental Process, Utility Relocation, and Utility Agreements. [T2-657] A motion was made by Judge Sumter, seconded by Commissioner Conley to approve Commissioners ability to sign off on Work Authorizations and Invoices - to go directly to the Auditor's Office - and if a County Commissioner is out (and we put together a 7-day approval) invoices will come to the County Judge; and furthermore, to authorize Commissioners to sign Change Orders up to \$25,000 cap for a total 10% increase over the original amount of the contract or decreases by more than 20% - anything other than 10% above or 20% below will come to Commissioners Court for approval. All voting "Aye". MOTION PASSED [T2-788] A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to ask Special Counsel to work with our Program Manager to develop a standard professional services contract that can be used by the County with all the road bond project consultants and our contractors. All voting "Aye". MOTION PASSED

25789 AUTHORIZE THE COUNTY JUDGE TO EXECUTE THE RECEIPT OF BIDS PERTAINING TO THE SALE OF OBLIGATIONS DESIGNATED AS "HAYS COUNTY, TEXAS LIMITED TAX BONDS, SERIES 2008" [T1-1360]

Bond Counsel Dan Wegmiller (Specialized Public Finance Inc) provided a list of bids received (10 bidders). A motion was made by Judge Sumter, seconded by Commissioner Conley to authorize the County Judge to accept recommendation of First Southwest Company at 4.482336% and to sell bonds in the amount of \$9,985,000 and authorize the County Judge to execute the receipt of bids pertaining to the sale of obligations designated as "Hays County, Texas Limited Tax Bonds, Series 2008" All voting "Aye". MOTION PASSED

25790 AUTHORIZE THE COUNTY JUDGE TO EXECUTE AN ORDER BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS AUTHORIZING THE ISSUANCE OF "HAYS COUNTY, TEXAS LIMITED TAX BONDS, SERIES 2008"

[T2-1000] A motion was made by Judge Sumter, seconded by Commissioner Conley to authorize the County Judge to execute an Order by the Commissioners Court of Hays County, Texas authorizing the issuance of "Hays County, Texas Limited Tax Bonds, Series 2008". All voting "Aye". MOTION PASSED

25791 AUTHORIZE THE PURCHASING DEPARTMENT TO ADVERTISE A REQUEST FOR PROPOSAL FOR THE DESIGN OF FM 110/SAN MARCOS LOOP [T2-1025]

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Conley to authorize the Purchasing Department to advertise a Request For Proposal for the design of FM 110/San Marcos Loop All voting "Aye". MOTION PASSED

25792 ISSUE A REQUEST FOR QUALIFICATIONS TO "PRE-CERTIFY" ENGINEERING AND PROFESSIONAL SERVICES FOR THE COUNTY'S ROAD BOND PROJECTS AND OTHER ROADS AS DETERMINED BY THE COMMISSIONERS COURT [T2-1110]

Commissioner Barton recommended advertising for ten categories: (1) general civil and roadway design; (2) geo-technical services; (3) environmental services; (4) bridge and structural engineering, (5) hydrology and drainage studies; (6) utility coordination and re-location; (7) ROW acquisition; (8) survey; (9) aerial and/or sub-surface mapping (should be combined with survey? Or with utility re-location); and (10) public involvement and public information. Proposed points: 20 points for qualification of firm or team 20 points for project manager qualifications 20 points for qualification if key personnel 20 points for availability of key personnel (includes both work load, office locations, and physical locations) 10 points for diversity 5 points for quality submittal 5 points for demonstrated understanding. A motion was made by Commissioner Barton, seconded by Commissioner Conley to authorize Purchasing to advertise, for a date in early January, to issue a Request For Qualifications to "Pre-Certify" engineering and professional services for the county's road bond projects and other roads as determined by the Commissioners Court. All voting "Aye". MOTION PASSED



- 25793 APPROVE THE SCOPE OF WORK AND FEES ESTIMATE BY LAN FOR THE DACY LANE IMPROVEMENTS AND TO AUTHORIZE COMMISSIONER INGALSBE AND SPECIAL COUNSEL TO NEGOTIATE A CONTRACT FOR SAME [T2-1195]**

A motion was made by Commissioner Ingalsbe, seconded by Commissioner Barton to approve the scope of work and fees estimate by LAN for the Dacy Lane improvements and to authorize Commissioner Ingalsbe, Commissioner Barton, and Special Counsel to negotiate a contract for same. All voting "Aye". MOTION PASSED

- 25794 AUTHORIZE THE COUNTY JUDGE TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF NIEDERWALD FOR THE ONGOING MAINTENANCE, REPAIR AND/OR UPGRADE OF ROADWAYS WITHIN THE INCORPORATED LIMITS OF THE CITY OF NIEDERWALD [T2-1271]**

A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to authorize the County Judge to enter into an Interlocal Agreement with the City of Niederwald for the ongoing maintenance, repair and/or upgrade of roadways within the incorporated limits of the City of Niederwald. All voting "Aye". MOTION PASSED

- 25795 APPROVE AN ALIGNMENT FOR DACY LANE APPROVED BY THE CITY OF KYLE; AND AUTHORIZE COMMISSIONER INGALSBE AND SPECIAL COUNSEL TO NEGOTIATE AN INTERLOCAL AGREEMENT WITH THE CITY OF KYLE FOR THE CONSTRUCTION OF DACY LANE [T2-1388]**

A public meeting was held in Kyle to gather input from property owners, recommendation by LAN was for Route B because this alignment did not displace anyone, the City of Kyle has verbally committed to contributing \$2 million towards this project. A motion was made by Commissioner Ingalsbe, seconded by Commissioner Barton to approve Alignment B for Dacy Lane approved by the City of Kyle; and authorize Commissioner Ingalsbe and Special Counsel to negotiate an Interlocal Agreement with the City of Kyle for the construction of Dacy Lane. All voting "Aye". MOTION PASSED

- 25796 EXTEND MAINTENANCE FISCAL SURETY UNTIL JANUARY 8, 2011 FOR THE STREET AND DRAINAGE IMPROVEMENTS IN THE MOUNT OLIVE RANCH SUBDIVISION [T2-1490]**

Subdivision Coordinator Clint Garza gave staff recommendation for extending the maintenance fiscal surety for Mount Olive Ranch Subdivision until January 8, 2011. A motion was made by Commissioner Conley, seconded by Commissioner Ford to extend maintenance fiscal surety until January 8, 2011 for the street and drainage improvements in the Mount Olive Ranch Subdivision. All voting "Aye". MOTION PASSED

- 25797 [08-2-61, 203 LOTS] - LOS ALTOS HILLS SUBDIVISION - APPROVE PRELIMINARY PLAN**

[T2-1527] Subdivision Coordinator, Clint Garza gave staff recommendation for approval of preliminary plan. A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to approve Preliminary Plan of Los Altos Hills Subdivision. All voting "Aye". MOTION PASSED

- 25798 [08-2-65 - 1 LOT] - EL REGALO DE LA PAZ LOT 1 - WAIVE PUBLIC HEARING AND APPROVE PARTIAL VACATION AND REPLAT OF LOT 1 AND APPROVE PRELIMINARY PLAN [T2-1596]**

Subdivision Coordinator, Clint Garza gave staff recommendation for approval of preliminary plan. A motion was made by Commissioner Ford, seconded by Commissioner Conley to waive public hearing and approve partial vacation and replat of Lot 1 and approve Preliminary Plan of El Regalo De La Paz Lot 1. All voting "Aye". MOTION PASSED

PRESENTATION BY HALFF ASSOCIATES, INC. REGARDING DEVELOPMENT OF A COUNTYWIDE DRAINAGE BASIN MASTER PLAN AND DISCUSSION OF FLOODING OR DRAINAGE ISSUES IN LOCAL AREAS [T2-1630]

PE Wes Birdwell gave a powerpoint presentation outlining the goals of this effort and the potential partnerships involved in funding the plan.



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25799 APPROVE RESOLUTION AUTHORIZING THE COUNTY JUDGE TO SUBMIT A GRANT APPLICATION TO THE TEXAS WATER DEVELOPMENT BOARD FOR UP TO \$300,000 UNDER THE FLOOD PROTECTION PLANNING PROGRAM AND TO SIGN ALL DOCUMENTS ASSOCIATED WITH THIS APPLICATION [T2-2400]

A motion was made by Judge Sumter, seconded by Commissioner Conley to approve resolution authorizing the County Judge to submit a Grant Application to the Texas Water Development Board for up to \$300,000 under the Flood Protection Planning Program and to sign all documents associated with the application. All voting "Aye". MOTION PASSED

DISCUSSION AND POSSIBLE ACTION REGARDING ECONOMIC NEGOTIATIONS RELATED TO THE POSSIBLE LOCATION OF A DISTRIBUTION CENTER FOR U.S. FOOD SERVICE IN THE UNINCORPORATED AREA OF THE COUNTY, EAST OF BUDA. THE COURT MAY MEET IN EXECUTIVE SESSION UNDER SECTION 551.087 OF THE TEXAS GOVERNMENT CODE BEFORE OR AFTER A PUBLIC PRESENTATION AND DISCUSSION [T2-2414]

A powerpoint presentation was given by John Fowler (US Foodservice), Susan Harris (Site Solutions Inc.), and Ann Woessner (Jones Lang Lasalle) regarding U. S. Food Service and the proposed location of a distribution center in the unincorporated area of the county east of Buda. Warren Ketteman (Buda Economic Development) spoke of the Sunfield MUD.

HIRE A CONSTRUCTION COORDINATOR ABOVE THE 25TH PERCENTILE

[T3-333] A motion was made by Commissioner Barton, seconded by Commissioner Ingalsbe to hire a Construction Coordinator above the 25th percentile in the amount of \$60,000 (55th percentile). All voting "Aye". MOTION PASSED

EXECUTIVE SESSION PURSUANT TO SECTION 551.074, TEXAS GOVERNMENT CODE, TO INTERVIEW, EVALUATE AND DELIBERATE THE APPOINTMENT AND SALARY FOR THE POSITION OF COMMUNICATIONS SPECIALIST. POSSIBLE ACTION MAY FOLLOW IN OPEN COURT

[T3-343] Court convened into closed executive session at 5:10 p.m. and reconvened into open meeting at 6:10 p.m. No discussion and no action taken.

Court was adjourned.

I, LINDA C. FRITSCH, COUNTY CLERK and EXOFFICIO CLERK OF THE COMMISSIONERS' COURT, do hereby certify that the foregoing contains a true and accurate record of the proceedings had by the Hays County Commissioners' Court on DECEMBER 16, 2008.



LINDA C. FRITSCH, COUNTY CLERK AND EXOFFICIO
CLERK OF THE COMMISSIONERS' COURT OF
HAYS COUNTY, TEXAS



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Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Authorize County Judge to execute amendment extending contract termination date for CAPCOG Grant 08-12-G16 for Recycling Center.

CHECK ONE: ☒ **CONSENT** ☐ **ACTION** ☐ **EXECUTIVE SESSION**
 ☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED: NA – Contract time extension only

LINE ITEM NUMBER OF FUNDS REQUIRED: NA

REQUESTED BY: Hauff/Pinnix

SPONSORED BY: Sumter

SUMMARY:

A grant contract was executed on March 24, 2008 with the Capital Area Council of Governments for a Solid Waste Implementation Grant for a third recycling center in the eastern part of the County. Suitable property has not yet been found on which to locate this center. The current grant contract expires on December 31, 2008.

A contract extension was requested from CAPCOG to allow for more time to find a suitable property for the recycling center. A contract amendment has been issued extending the expiration date to April 30, 2009.

SOLID WASTE EQUIPMENT AND SERVICES

Upon execution, this amendment:

Subdivision/Road/Staff Review Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Hold a public hearing to establish traffic regulations on Rich Lane.

CIRCLE ONE ACTION ITEM Subdivision Road Staff Recommendation

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED: n/a

LINE ITEM NUMBER OF FUNDS REQUIRED: n/a

REQUESTED BY: Jerry Borcharding

SPONSORED BY: Commissioner Barton

SUMMARY:

To establish: a stop sign on Rich Lane at Turnersville Road, CR 106, and set a speed limit of 30 MPH.

STAFF REVIEW/COMMENTS

ENVIRONMENTAL HEALTH DIRECTOR:

ROAD DIRECTOR:

STAFF RECOMMENDATIONS:

Precinct 2
Rich Lane

Proposed/Recommended Traffic Regulations:
Stop Signs and Speed Limits As Indicated Below



1. Stop traffic on Rich Lane at intersection of Turnersville Rd, CR 106.
2. Set speed limit of 30MPH on Rich Lane.

Subdivision/Road/Staff Review Agenda Item Request Form

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Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Hold a Public Hearing with Possible Action to establish traffic regulations (stop sign) on the new park road at the Five Mile Dam Soccer Complex

CHECK ONE: ☐ Subdivision ☒ Road ☐ Staff Recommendation

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Pinnix

SPONSORED BY: Ingalsbe

SUMMARY: This action would establish a stop sign at the intersection of the new Park Road and Old Stagecoach Road as one is exiting the park.

STAFF REVIEW/COMMENTS

ENVIRONMENTAL HEALTH DIRECTOR:

ROAD DIRECTOR:

STAFF RECOMMENDATIONS:

Agenda Item Request Form

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Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM:

08-2-54 Blanco River Estates, Replat of Lot 50 & 51; Consider waiver of preliminary plan and public hearing; accept final plat.

TYPE OF ITEM: ACTION

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED: N/A

REQUESTED BY: Garza

SPONSORED BY: Conley

SUMMARY:

Blanco River Estates is a recorded subdivision located off Windy Ridge Road in Precinct 3. The proposed replat will adjust the lot line between the two lots and will add .14 acres to lot 51. Windy Ridge is a private road and part of the .14 acre addition is a portion of this roadway. Each lot is to be served by individual OSSF's and individual wells. Because this is a simple lot line adjustment the owners would like a waiver of preliminary plan and public notification, pursuant to Hays County Subdivision Regulations Article XI, 11.3.

BLANCO RIVER ESTATES REPLAT OF LOTS 50 AND 51 A SUBDIVISION IN HAYS COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, WE, FRANCIS J. RICHARDS AND MARY A. RICHARDS, OWNERS OF A RECORD 2.40 ACRE TRACT OF LAND, KNOWN AS LOT 51, BLANCO RIVER ESTATES, A SUBDIVISION RECORDED IN VOLUME 1, PAGE 96, PLAT RECORDS OF HAYS COUNTY, TEXAS, OUT OF THE 181.41 ACRES SURVEY IN HAYS COUNTY, TEXAS, AS CONVEYED TO US BY DEED DATED FEBRUARY 13, 2008, AND RECORDED IN VOLUME 3330, PAGE 765, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND ALL OF A RECORD 0.14 ACRE TRACT OF LAND CONVEYED TO US BY DEED DATED NOVEMBER 8, 2008, AND RECORDED IN VOLUME 3517, PAGE 472, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND ALL OF A RECORD 0.22 ACRE TRACT OF LAND CONVEYED TO US BY DEED DATED NOVEMBER 4, 2008, AND RECORDED IN VOLUME 3517, PAGE 481, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, SAVE AND EXCEPT A 0.34 ACRE TRACT OF LAND CONVEYED TO J. H. McLAURY BY DEED DATED NOVEMBER 4, 2008, AND RECORDED IN VOLUME 3517, PAGE 477, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE 2.45 ACRES OF LAND TO BE KNOWN AS "BLANCO RIVER ESTATES REPLAT OF LOT 50 AND 51" IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT TO ANY AND ALL EASEMENTS AND RESTRICTIONS HERETOFORE GRANTED AND DO HEREBY DEDICATE TO THE OWNERS OF THE PROPERTY THE USE OF THE STREETS AND EASEMENTS SHOWN HEREON.

IN WITNESS WHEREOF, FRANCIS J. RICHARDS AND MARY A. RICHARDS
HAS CAUSED THESE PRESENTS TO BE EXECUTED, AND THERE UNTO DULY AUTHORIZED THIS _____ DAY OF
_____ A.D. 2008.

FRANCIS J. RICHARDS
OWNER

DATE

MARY A. RICHARDS
OWNER

DATE

STATE OF TEXAS
COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED
FRANCIS J. RICHARDS, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO
THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE
SAME FOR THE PURPOSES AND CONSIDERATION THEREIN STATED.

NOTARY PUBLIC IN AND FOR _____
COUNTY, TEXAS
COMMISSION EXPIRES _____
PRINT NAME _____

STATE OF TEXAS
COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED
MARY A. RICHARDS, 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 STATED.

NOTARY PUBLIC IN AND FOR _____
COUNTY, TEXAS
COMMISSION EXPIRES _____
PRINT NAME _____

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, I, J. H. McLAURY, OWNER OF A RECORD 2.584 ACRE TRACT OF LAND, KNOWN AS
LOT 50, BLANCO RIVER ESTATES, A SUBDIVISION RECORDED IN VOLUME 1, PAGE 96, PLAT RECORDS OF HAYS COUNTY,
TEXAS, OUT OF THE 181.41 ACRES SURVEY IN HAYS COUNTY, TEXAS, AS CONVEYED TO ME BY DEED DATED MARCH
22, 1986, AND RECORDED IN VOLUME 1234, PAGE 638, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND ALL
OF A RECORD 0.34 ACRE TRACT OF LAND CONVEYED TO ME BY DEED DATED NOVEMBER 4, 2008, AND RECORDED IN
VOLUME 3517, PAGE 477, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, SAVE AND EXCEPT A RECORD 0.32
ACRE TRACT OF LAND CONVEYED TO FRANCIS J. RICHARDS, JR. AND MARY A. RICHARDS BY DEED DATED
NOVEMBER 8, 2008, AND RECORDED IN VOLUME 3517, PAGE 481, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS,
DO HEREBY SUBDIVIDE 2.45 ACRES OF LAND TO BE KNOWN AS "BLANCO RIVER ESTATES REPLAT OF LOTS 50 AND 51"
IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT TO ANY AND ALL EASEMENTS AND
RESTRICTIONS HERETOFORE GRANTED AND DO HEREBY DEDICATE TO THE OWNERS OF THE PROPERTY THE USE OF THE
STREETS AND EASEMENTS SHOWN HEREON.

IN WITNESS WHEREOF, J. H. McLAURY
HAS CAUSED THESE PRESENTS TO BE EXECUTED, AND THERE UNTO DULY AUTHORIZED THIS _____ DAY OF
_____ A.D. 2008.

J. H. McLAURY
OWNER

DATE

STATE OF TEXAS
COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED
J. H. McLAURY, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO
THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE
SAME FOR THE PURPOSES AND CONSIDERATION THEREIN STATED.

NOTARY PUBLIC IN AND FOR _____
COUNTY, TEXAS
COMMISSION EXPIRES _____
PRINT NAME _____

ENVIRONMENTAL HEALTH NOTES

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO AN INDIVIDUAL WATER
SUPPLY OR A STATE APPROVED COMMUNITY WATER SYSTEM, OR TO A SCHEDULED WATER SUPPLY AND
WATER QUALITY, PROSPECTIVE PROPERTY OWNERS ARE CAUTIONED BY THE COUNTY TO ELABORATE THE COLOR
CHANGING GREEN WATER AVAILABILITY. SANITARY WATER COLLECTION IS DISCOURAGED AND IN SOME AREAS
MAY OFFER THE BEST AVAILABLE WATER SOURCE.

NO STRUCTURE IN THIS SUBDIVISION SHALL BE OCCUPIED UNTIL CONNECTED TO A PUBLIC SEWER
SYSTEM OR TO AN ON-SITE WASTEWATER SYSTEM WHICH HAS BEEN APPROVED AND PERMITTED BY
HAYS COUNTY ENVIRONMENTAL HEALTH.

NO CONSTRUCTION OR OTHER DEVELOPMENT WITHIN THIS SUBDIVISION MAY BEGIN UNTIL ALL HAYS
COUNTY DEVELOPMENT PERMIT REQUIREMENTS HAVE BEEN MET.

JERRY BONDREDA, DIRECTOR
RESOURCE, PROTECTION, TRANSPORTATION,
AND PLANNING
HAYS COUNTY ENVIRONMENTAL HEALTH

DATE

JOE POPE, A.S., G.P.M.
HAYS COUNTY RESOURCE PROTECTION,
TRANSPORTATION AND PLANNING
PROGRAMS MANAGER
FLOODPLAIN ADMINISTRATION

DATE

STATE OF TEXAS
COUNTY OF HAYS

I, LINDA FRITSCH, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT ON
THE _____ DAY OF _____ A.D. 2008, THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS,
PASSED AN ORDER AUTHORIZING THE FILING FOR RECORD OF THIS PLAT, AND SAID ORDER HAS BEEN
ENTERED IN THE MINUTES OF SAID COURT IN BOOK _____ PAGE _____
WITNESS MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____ A.D. 2008.

ELIZABETH SWINER
COUNTY JUDGE
HAYS COUNTY, TEXAS

LINDA FRITSCH
COUNTY CLERK
HAYS COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF HAYS

I, LINDA FRITSCH, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE
FOREGOING INSTRUMENT IN WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR
RECORD IN MY OFFICE ON THE _____ DAY OF _____ A.D. 2008, AT _____ O'CLOCK
_____ A.M. IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS, IN BOOK _____ PAGE(S) _____
WITNESS MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____ A.D. 2008.

LINDA FRITSCH
COUNTY CLERK
HAYS COUNTY, TEXAS

DRIVEWAY NOTES

IN ORDER TO PROMOTE SAFE USE OF ROADWAYS AND PRESERVE THE CONDITIONS OF PUBLIC ROADWAYS, NO
DRIVEWAY CONSTRUCTION ON ANY LOT WITHIN THIS SUBDIVISION SHALL BE PERMITTED ACCESS ONTO A
PUBLICLY DEDICATED ROADWAY UNLESS (a) A DRIVEWAY PERMIT HAS BEEN ISSUED BY THE ROAD
DEPARTMENT OF HAYS COUNTY AND (b) THE DRIVEWAY SATISFIES THE MINIMUM SPACING REQUIREMENTS FOR
DRIVEWAYS SET FORTH IN SECTIONS 7.4 AND 7.5 OF THE HAYS COUNTY SUBDIVISION REGULATIONS.

IN APPROVING THIS PLAT BY THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, IT IS UNDERSTOOD
THAT THE BUILDING OF ALL STREETS, ROADS, AND OTHER PUBLIC THOROUGHFARES DELINEATED AND
SHOWN ON THIS PLAT, AND ALL BRIDGES AND CULVERTS NECESSARY TO BE CONSTRUCTED OR PLACED IN
SUCH STREETS, ROADS, OR PUBLIC THOROUGHFARES, OR IN CONNECTION THEREWITH SHALL BE THE
RESPONSIBILITY OF THE OWNER AND/OR DEVELOPER OF THIS TRACT OF LAND COVERED BY THIS PLAT
IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS PRESCRIBED BY THE COMMISSIONERS COURT OF
HAYS COUNTY, TEXAS AND THE COMMISSIONERS COURT OF HAYS COUNTY, TEXAS, ASSUMES NO OBLIGATION
TO BUILD STREETS, ROADS, OR OTHER PUBLIC THOROUGHFARES SHOWN ON THIS PLAT OR OF CONSTRUCTION
AND BRIDGES OR CULVERTS IN CONNECTION THEREWITH.

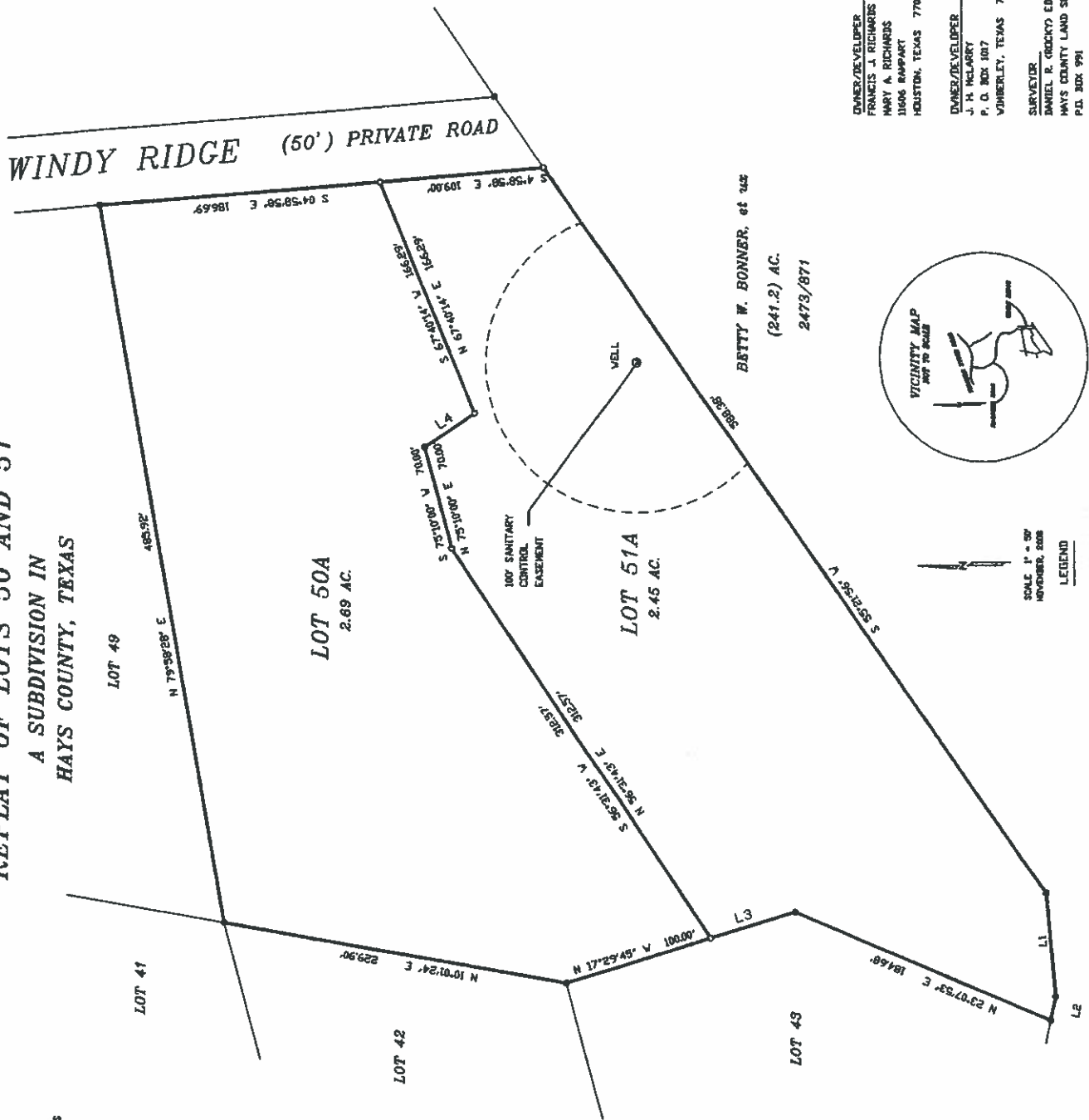
STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS, THAT I, THE UNDERSIGNED, A
REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS,
HEREBY CERTIFY THAT THIS PLAT COMPLIES WITH THE SURVEY RELATED
REQUIREMENTS OF THE HAYS COUNTY SUBDIVISION SPECIFICATIONS AND
FURTHER CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE AND
IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER
MY SUPERVISION ON THE GROUND AND THAT THE CORNER MONUMENTS WERE
PROPERLY PLACED UNDER MY SUPERVISION.

DANIEL R. GUCKY EDWARDS
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS NO. 5476
PO BOX 951
WIDENLEY, TEXAS 76676
325-647-2887

DATE

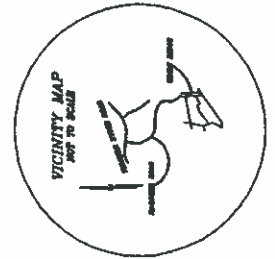
BLANCO RIVER ESTATES REPLAT OF LOTS 50 AND 51 A SUBDIVISION IN HAYS COUNTY, TEXAS



DRAWN/DEVELOPER
FRANCIS J. RICHARDS JR. AND
HARRY A. RICHARDS
11606 RAMPART
HOUSTON, TEXAS 77035

DRAWN/DEVELOPER
J. H. McCLARY
P. O. BOX 1017
VINNIELEY, TEXAS 76676

SURVEYOR
DANIEL R. GREGORY EDWARDS
HAYS COUNTY LAND SURVEYOR
P.O. BOX 991
VINNIELEY, TEXAS 76676
512-947-9827



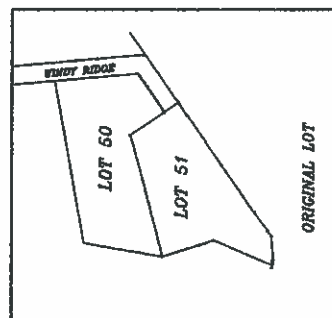
SCALE 1" = 50'
NOVEMBER 2008

LEGEND
C) RECORDED INFORMATION
S) 1/4" BOUNDARY LINE
D) 1/4" BOUNDARY LINE WITH CAP, SET

NOTES

- 1) THESE LOTS ARE NOT LOCATED IN THE EXTRAJURISDICTIONAL JURISDICTION OF ANY MUNICIPALITY.
- 2) ACCORDING TO THE NATIONAL FLOOD INSURANCE RATE MAP COMMUNITY PANEL NO. 4800000000, THE LOTS ARE LOCATED WITHIN THE FLOODPLAIN OF THE BLANCO RIVER AND SHALL BE CONTAINED WITHIN THE BOUNDARIES OF THE DRAINAGE CASSETTE SHOWN HEREON.
- 3) THIS SUBDIVISION IS NOT WITHIN THE BOUNDARIES OF THE EDWARDS AQUIFER RECHARGE ZONE.
- 4) THIS SUBDIVISION IS WITHIN THE BOUNDARIES OF THE CONTRIBUTING ZONE OF THE BLANCO CREEK SEGMENT OF THE EDWARDS AQUIFER.
- 5) THIS SUBDIVISION IS IN THE BOUNDARIES OF THE VINNIELEY INDEPENDENT SCHOOL DISTRICT.
- 6) ALL CULVERTS SHALL BE 18" MINIMUM DIAMETER.
- 7) THE FOLLOWING PUBLIC UTILITY EASEMENTS ARE HEREBY GRANTED:
a) 50' ALONG ALL ROAD RIGHT-OF-WAYS, AND
b) 10' ALONG ALL OTHER LOT LINES.
- 8) BOTH LOTS IN THIS SUBDIVISION ARE CURRENTLY SERVED BY EXISTING UTILITIES AND HAVE EXISTING PERMITTED, ON-SITE SEWAGE FACILITIES.

Line	Direction	Distance
L1	S 85°21'33" E	100.00'
L2	N 17°29'45" E	100.00'
L3	S 55°31'43" E	312.57'
L4	N 75°10'00" E	70.00'
L5	S 75°10'00" E	70.00'
L6	N 75°10'00" E	70.00'



TOTAL NO. LOTS	2
TOTAL AREA LOTS	5.14 ACRES
PROPOSED LAND USE	RESIDENTIAL
AVERAGE LOT AREA	2.57 ACRES
NO. LOTS BETWEEN 2 AC. AND 5 AC.	2
NO. LOTS LARGER THAN 5 AC. AND SMALLER THAN 10 AC.	0
ELECTRIC SERVICE	P. E. C.
TELEPHONE SERVICE	VERIZON
WATER SUPPLY	EXISTING WELL
WASTEWATER	INDIVIDUAL ON-SITE SEWAGE FACILITIES

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to approve the Takings Impact Assessment prepared by Grant Jackson/Naismith Engineering with regard to the proposed Development Regulations.

TYPE OF ITEM: CONSENT-ACTION-PROCLAMATION-EXECUTIVE SESSION-WORKSHOP

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Commissioner Ford

SPONSORED BY: Commissioner Ford

SUMMARY:

Attached is the TIA, which was first sent to court members on October 8, 2008. Statute calls for the TIA to be posted a minimum of 30-days before court takes action on the Development Regulations. We would like to get this posted before end of year.

TAKINGS IMPACT ASSESSMENT

Proposed Development Regulations - Hays County, Texas

PURPOSE AND INTENT

Hays County, Texas, acting through the Hays County Commissioners Court (hereafter "County") is proposing to amend certain existing development regulations and to adopt certain new development regulations (hereafter "Proposed Regulations"). The Proposed Regulations will include revisions to the following existing development regulations:

- An Ordinance Establishing Rules for Junkyards and Automotive Wrecking and Salvage Yards (Adopted June, 1988)
- The Hays County Subdivision and Development Regulations (Adopted June 1997, Amended June, 2003 and May, 2007)
- The Order Adopting Rules of Hays County, Texas for On-Site Sewage Facilities (Adopted August, 1997)
- The Hays County Flood Damage Prevention Ordinance (Adopted January, 1998)
- Hays County Infrastructure Regulations For Manufactured Home Rental Communities (Adopted October, 1999)
- Various Ordinances Regulation Utility Permits/Licenses for County Right-of-Way (Last Amended in 2003)

The Proposed Regulations will include new regulations in the following general subject areas:

- Standardized administrative procedures and applications processing
- Delegations of authority to County Staff
- Additional water availability demonstration requirements
- Additional land use restrictions authorized under Texas State Statutes, including the Texas Local Government Code, the Texas Water Code and the Texas Transportation Code
- Codification of procedures governing voluntary and incentive programs
- Conservation Developments
- Development Agreements

This Takings Impact Assessment (hereafter "TIA") is intended to satisfy the statutory requirements of the Texas Private Real Property Rights Preservation Act (the "Act" or PRPRPA) in regard to the Proposed Regulations.

REGULATORY BACKGROUND

Governmental Takings In General

A regulatory "taking" is a governmental action which regulates a private property interest to such a degree that it violates prohibitions on the taking of private property without just compensation, as outlined in either the United States Constitution¹ or the Texas Constitution²³. One form of a

¹ "Constitution of the United States", Adopted September 17, 1787, as Amended through the 27th Amendment, Ratified May 7, 1992.

² "Constitution of the State of Texas", Adopted February 15, 1876, as Amended through November, 2007.

taking is a “Physical Taking” where a governmental entity physically takes or occupies private property (e.g., a city condemning an easement to expand a roadway across private property).

A more difficult-to-define form of taking is a “Regulatory Taking” which is a governmental regulatory requirement which has the effect of reducing the economic usefulness and value of private property to such an extent that it constitutes a taking of private property. The Proposed Regulations do not propose any “physical taking” of any particular property, but certain actions included in the Proposed Regulations are evaluated to determine whether they may constitute a “regulatory taking”.

General Principles in the Law of Regulatory Takings

The U.S. Supreme Court and the Texas Supreme Court have struggled to formulate a standard for determining when a governmental regulation of private property goes so far as to become a taking. At present the U.S. Supreme Court and Texas Supreme Court have adopted the following basic legal principles concerning the law of regulatory takings:

- Possible remedies for a regulatory taking are to invalidate the offending regulation or to make the governmental entity liable for monetary damages.⁴
- In defending a challenge to a regulation, the governmental entity must show that the regulation actually substantially advances a legitimate state interest.⁵ A legitimate state interest has been liberally interpreted to include even such things as protecting residents from the “ill effects of urbanization” and the preservation of desirable aesthetic features.⁶
- A compensable regulatory taking occurs when a land use regulation either (1) denies the landowner all economically viable uses of the property, or (2) unreasonably interferes with the owner’s right to use and enjoy his property.⁷ The Texas Supreme Court has held that a land use regulation denies a landowner all economically viable uses of the property if the regulation renders the property valueless.⁸
- In determining whether a governmental regulation unreasonably interferes with an owner’s right to use and enjoy his property, a court must evaluate two factors: (1) the economic impact of the regulation (i.e., comparing the value that has been taken from the property with the value that remains), and (2) the extent to which the regulation interferes with “distinct investment backed expectations” of the landowner.⁹ A regulation that interferes with existing or already-permitted land uses is more likely to be considered a regulatory taking than a regulation which interferes with speculative uses or the landowner’s asserted entitlement to the highest and most valuable use of every piece of his property.

³ The 5th Amendment of the U.S. Constitution states that “private property [shall not] be taken for public use without just compensation.” Similarly, Article I, Section 17 of the Texas Constitution provides that no “person’s property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made...”

⁴ *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987).

⁵ *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

⁶ *Agins v. City of Tuburon*, 447 U.S. 255 (1980); *Penn Central Trans. Co. v. City of New York*, 438 U.S. 104 (1978).

⁷ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). In this case, the landowner was prohibited from using any part of his beachfront property for the construction of any structure and this was held to constitute a regulatory taking because of the extreme deprivation of the uses to which the property could be put.

⁸ *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 935 (Tex. 1998).

⁹ *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 936 (Tex. 1998).

- In the case of governmental exactions, the required dedication for public use or of public facilities must be roughly proportional to the actual need for those public facilities which is generated by the proposed development.¹⁰ For example, the amount of roadway required to be dedicated by the developer must be reasonably commensurate to the amount of traffic generated by the new development.

The Texas Real Property Rights Preservation Act

In response to widespread concerns about governmental intrusions on private real property rights in the mid-1990's (sometimes referred to as the "Take Back Texas" movement), the Legislature enacted the Act which is codified in Chapter 2007 of the Texas Government Code (TGC).¹¹ The overriding purpose of the Act was to ensure that governmental entities in Texas take a "hard look" at the effects on private real property rights of the regulations they adopt.

Definition of A Regulatory Taking

The following information is taken from the regulatory background on the issue of Regulatory Takings contained in a guidance document prepared by the State of Texas Office of the Attorney General (OAG).¹² The Act [specifically TGC §2007.002(5)] defines a "taking" as follows:

(a) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or

(b) a governmental action that:

(1) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and

(2) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The Act, in TGC §2007.002, thus sets forth a definition of "taking" that (i) incorporates current jurisprudence on "takings" under the United States and Texas Constitutions, and (ii) sets forth a new statutory definition of "taking." Essentially, if a governmental entity takes some "action" covered by the Act and that action results in a devaluation of a person's private real property of 25% or more, then the affected party may seek appropriate relief under the Act. Such an action

¹⁰ *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

¹¹ Texas Government Code, Title 10, "General Government", Chapter 2007, "Governmental Action Affecting Private Property Rights", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

¹² "Private Real Property Rights Preservation Act Guidelines", State of Texas, Office of the Attorney General, Internet Website, August 11, 2008. http://www.oag.state.tx.us/AG_Publications/txts/propertyguide2005.shtml

for relief would be predicated on the assumption that the affected real property was the subject of the governmental action.

TGC §2007.003(a) provides that the Act applies only to the following governmental actions:

- (1) the adoption or issuance of an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure;*
- (2) an action that imposes a physical invasion or requires a dedication or exaction of private real property;*
- (3) an action by a municipality that has effect in the extraterritorial jurisdiction of the municipality, excluding annexation, and that enacts or enforces an ordinance, rule, regulation, or plan that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction of the municipality; and*
- (4) enforcement of a governmental action listed in Subdivisions (1)-(3), whether the enforcement of the governmental action is accomplished through the use of permitting, citations, orders, judicial or quasi-judicial proceedings, or other similar means.*

The requirement to do a TIA only applies to §2007.003(a)(1)-(3).

Governmental Actions Exempted From the Act

There are certain governmental actions exempted by the Act. The following actions are exempted from coverage of the Act under §2007.003(b):

- (a) an action by a municipality except as provided by subsection (a)(3);*
- (b) a lawful forfeiture or seizure of contraband as defined by Article 59. 01, Code of Criminal Procedure;*
- (c) a lawful seizure of property as evidence of a crime or violation of law;*
- (d) an action, including an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by federal law or an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law;*
- (e) the discontinuance or modification of a program or regulation that provides a unilateral expectation that does not rise to the level of a recognized interest in private real property;*
- (f) an action taken to prohibit or restrict a condition or use of private real property if the governmental entity proves that the condition or use constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state;*
- (g) an action taken out of a reasonable good faith belief that the action is necessary to prevent a grave and immediate threat to life or property;*
- (h) a formal exercise of the power of eminent domain;*

(I) an action taken under a state mandate to prevent waste of oil and gas, protect correlative rights of owners of interests in oil or gas, or prevent pollution related to oil and gas activities;

(j) a rule or proclamation adopted for the purpose of regulating water safety, hunting, fishing, or control of nonindigenous or exotic aquatic resources;

(k) an action taken by a political subdivision:

(1) to regulate construction in an area designated under law as a floodplain;

(2) to regulate on-site sewage facilities;

(3) under the political subdivision's statutory authority to prevent waste or protect rights of owners of interest in groundwater; or

(4) to prevent subsidence;

(l) the appraisal of property for purposes of ad valorem taxation;

(m) an action that:

(1) is taken in response to a real and substantial threat to public health and safety ;

(2) is designed to significantly advance the health and safety purpose; and

(3) does not impose a greater burden than is necessary to achieve the health and safety purpose; or

(n) an action or rulemaking undertaken by the Public Utility Commission of Texas to order or require the location or placement of telecommunications equipment owned by another party on the premises of a certificated local exchange company.

Based on the types of actions anticipated under the Proposed Regulations, Hays County believes that while certain actions included in the Proposed Regulations are exempt, other actions may not be exempt and will require the County to prepare a TIA.

Lawsuit to Invalidate a Governmental Taking

The Act allows landowners whose property is significantly impaired by governmental regulations to sue the governmental entity to invalidate the regulation.¹³ As an alternative to invalidation of the governmental action, the governmental entity may elect to pay the landowner compensation for the loss in value of the property interest.¹⁴ The Act is generally applicable to any governmental action (e.g., adoption of an ordinance, regulatory requirement or policy, or a governmental exaction) that restricts or limits the landowner's rights in the real property and that causes a reduction of 25% or more in the market value of the property. Any lawsuit by an affected real property owner against the governmental entity must be filed within 180 days after

¹³ TGC §2007.021 - §2007.023

¹⁴ TGC §2007.024

the owner knew or should have known of the governmental action.¹⁵ The prevailing party in the lawsuit against the governmental entity is entitled to recover reasonable and necessary attorney's fees and court costs from the losing party.¹⁶

Requirement to Prepare A Takings Impact Assessment (TIA)

In addition to a lawsuit to invalidate a taking by a governmental entity, all governmental entities in Texas (including the County) are required to prepare a TIA evaluation of any proposed regulation that may impair private real property interests and to provide public notice of the takings impact assessment.¹⁷ If a governmental entity fails to prepare a required takings impact assessment, an affected real property owner may bring suit to invalidate the governmental action and recover attorney's fees and court costs.¹⁸

EVALUATION PROCESS

Based on those items from the Proposed Regulations determined to be subject to the preparation of a TIA, the County is evaluating these items using the guidelines prepared by the State of Texas Office of the Attorney General. These guidelines require each action be evaluated through a series of questions. These questions, with subsequent instructions, are:

Question 1: Is the Governmental Entity undertaking the proposed action a Governmental Entity covered by the Act, i.e., is it a "Covered Governmental Entity"? See the Act, §2007.002(1).

(1) If the answer to Question 1 is "No": No further compliance with the Act is necessary.

(2) If the answer to Question 1 is "Yes": Go to Question 2.

TGC §2007.002(1)(B) indicates that "a political subdivision of this state" is a covered governmental entity. Article IX of the Texas Constitution indicates that Counties are political subdivisions of the State. Therefore the County would be a covered governmental entity, subject to the requirement to prepare a TIA where it would otherwise be required.

Question 2. Is the proposed action to be undertaken by the Covered Governmental Entity an action covered by the Act, i.e., a "Covered Governmental Action"? See §2 of these Guidelines; and Governmental Entity-Specific TIA Procedures for "Categorical Determinations" as developed by the respective Covered Governmental Entities.

(1) If the answer to Question 2 is "No": No further compliance with the Act is necessary.

(2) If the answer to Question 2 is "Yes": Go to Question 3.

Based on the County's review of the Act, certain of the actions included in the Proposed Regulations qualify as Covered Governmental Actions while others do not. As outlined above, the Proposed Regulations do not propose any "physical taking" of any particular property, but certain actions are required to be evaluated as a "regulatory taking". Those actions determined to be Covered Governmental Actions will be further evaluated using subsequent questions.

¹⁵ TGC §2007.021(b)

¹⁶ TGC §2007.026

¹⁷ TGC §2007.041 - §2007.045

¹⁸ TGC §2007.044

Question 3. Does the Covered Governmental Action result in a burden on "Private Real Property" as that term is defined in the Act?

(1) If the answer to Question 3 is "No": A "No Private Real Property Impact" or NoPRPI Determination should be made. No further compliance with the Act is necessary if a NoPRPI Determination is made. Logically, the initial critical issue regarding any proposed governmental action is whether there is any burden on private real property. If a governmental entity has not resolved this issue by reference to its preexisting list of Categorical Determinations, it can do so by quickly and concisely making a NoPRPI Determination. (2) If the answer to Question 3 is "Yes": A TIA is required and the governmental entity must undertake evaluation of the proposed governmental action on private real property rights.

Based on the County's review of the Act, certain of the actions included in the Proposed Regulations may result in the imposition of a burden on "Private Real Property" as that term is defined in the Act. Those actions determined to impose a burden on "Private Real Property" will be further evaluated using subsequent questions and through the preparation of a TIA.

Question 4. What is the Specific Purpose of the Proposed Covered Governmental Action? The TIA must clearly show how the proposed governmental action furthers its stated purpose. Thus, it is important that a governmental entity clearly state the purpose of its proposed action in the first place, and whether and how the proposed action substantially advances its stated purpose.

Question 5. How Does the Proposed Covered Governmental Action Burden Private Real Property?

Question 6. How Does the Proposed Covered Governmental Action Benefit Society?

Question 7. Does the Proposed Covered Governmental Action result in a "taking"?

The actions determined to be Covered Governmental Actions which also impose a burden on "Private Real Property" as that term is defined in the Act have been proposed to accomplish several different purposes. Each of those actions determined to be both a Covered Governmental Action and which impose a burden on "Private Real Property" will be further evaluated using Questions 4 through 7 through in the TIA. The Office of Attorney General guidance also provides the following subquestions for items determined to be Covered Governmental Actions:

(1) Does the Proposed Covered Governmental Action Result Indirectly or Directly in a Permanent or Temporary Physical Occupation of Private Real Property?

(2) Does the Proposed Covered Governmental Action Require a Property Owner to Dedicate a Portion of Private Real Property or to Grant an Easement?

(3) Does the Proposed Covered Governmental Action Deprive the Owner of all Economically Viable Uses of the Property?

(4) Does the Proposed Covered Governmental Action have a Significant Impact on the Landowner's Economic Interest?

(5) Does the Covered Governmental Action Decrease the Market Value of the Affected Private Real Property by 25% or More? Is the Affected Private Real Property the subject of the Covered Governmental Action? See the Act, §2007.002(5)(B).

(6) Does the Proposed Covered Governmental Action Deny a Fundamental Attribute of Ownership?

In addition to these questions to be addressed for each proposed action, the Office of Attorney General guidance also recommends an alternatives evaluation:

Question 8. What are the Alternatives to the Proposed Covered Governmental Action?

For each of the Covered Governmental Actions which also impose a burden on “Private Real Property”, an alternatives evaluation will be provided.

SUMMARY OF THE PROPOSED REGULATIONS

The following items provide a summary of the major actions from the Proposed Regulations. Based on the regulatory background information and the nature of the proposed actions, each major proposed action has been assigned to one of three categories, depending on whether it was determined to be a “Covered Governmental Action” and whether it places a “burden” on property, as those terms are defined under the Act. An explanation of each action and the rationale for its inclusion in its selected category is provided below.

Actions in the Proposed Regulations Determined to Not Be “Covered Governmental Actions” (“No” to OAG Question 2)

Additional Water and Wastewater Availability Demonstration Requirements

The County’s existing subdivision regulations contain certain requirements for demonstrating water and wastewater availability. Under the County’s authority to regulate the subdivision of property provided in Texas Local Government Code (TLGC), Chapter 232¹⁹ and authority granted to the County under the Texas Water Code (TWC), Chapters 26²⁰ and 35²¹, the County is proposing additional requirements for demonstrating water and wastewater availability for certain developments. The proposed actions are outlined in Chapter 715 of the Proposed Regulations. Specifically the County is proposing:

- Additional technical requirements for demonstrating water and wastewater availability
- Additional methods of providing water and wastewater service to be considered in demonstrating availability
- Additional requirements for water availability demonstrations relying on groundwater in Priority Groundwater Management Areas (PGMAs), as those areas are defined by the Texas Commission on Environmental Quality (TCEQ)

¹⁹ Texas Local Government Code (TLGC), Title 7, “Regulation of Land Use, Structure, Businesses, and Related Activities” Chapter 232, “County Regulation of Subdivisions”, as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

²⁰ Texas Water Code (TWC), Title 2, “Water Administration”, Chapter 26, “Water Quality Control”, as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

²¹ TWC, Title 2, “Water Administration”, Chapter 35, “Groundwater Studies”, as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

The proposed actions were determined to be exempted from the Act in accordance with TGC §2007.003(b)(11)(C) due to the County's intent to protect the rights of the owners of interest in groundwater and in accordance with TGC §2007.003(b)(13) due to the County's intent to protect public health and safety by establishing minimum requirements for the provision of drinking water and the proper management of wastewater. Based on these exemptions, these proposed actions are not subject to the requirement to prepare a TIA.

Regulation of Certain Private Roadways

Under the County's authority to regulate the subdivision of property provided in TLGC Chapter 232, the County is proposing new requirements for regulating certain private roadways. The proposed actions are outlined in Chapter 721 of the Proposed Regulations specifically in Subchapter 4. The proposed actions are intended to ensure unrestricted access to all areas of new subdivisions by emergency vehicles. The County is proposing these actions specifically to address situations where width restrictions, obstructions, and roadway conditions may prevent timely emergency response activities. The County believes that delays in timely emergency response caused by impassable private roadways constitute a "grave and immediate threat" to life and property. Based on this belief the County further believes that the proposed actions were developed in "good faith" to prevent delays in timely emergency response. As such, the proposed actions were determined to be exempted from the Act in accordance with TGC §2007.003(b)(7) due to the County's intent to prevent grave and immediate threats to life or property. Based on this exemption, these proposed actions are not subject to the requirement to prepare a TIA.

Modification of Minimum Roadway Right-of-Way Widths

The County's existing subdivision regulations contain certain requirements for roadway right-of-way widths. Under the County's authority to regulate the subdivision of property provided in TLGC Chapter 232, the County is proposing to amend certain requirements for the provision of minimum right-of-way widths for new Public Roadways. The proposed actions are outlined in Chapter 721 of the Proposed Regulations, specifically in §721.5.03. The proposed actions are intended to ensure that new roadways provide adequate right-of-way to comply with the latest engineering design standards for safe travel over public roadways. The County believes that adequate roadway right-of-way widths may contribute to a real and substantial threat to public safety, and is proposing the changes to the right-of-way widths to improve public safety, but is limiting those changes to only those necessary to accomplish the public safety purpose. Based on this belief, the County further believes that the proposed actions do not impose a burden greater than that necessary to accomplish this purpose. As such, the proposed actions were determined to be exempted from the Act in accordance with TGC §2007.003(b)(13) due to the County's intent to address public safety concerns. Based on this exemption, these proposed actions are not subject to the requirement to prepare a TIA.

Modifications to the Flood Damage Prevention Standards

Under the County's authority under the Texas Water Code, Chapter 16²², the County is proposing additional requirements for regulating development in flood hazard areas. The proposed actions are outlined in Chapter 735 of the Proposed Regulations. The proposed actions were determined to be exempted from the Act in accordance with TGC §2007.003(b)(11)(A) due

²² TWC, Title 2, "Water Administration", Chapter 16, "Provisions Generally Applicable to Water Development", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

to their inclusion in the County's regulation of construction in floodplains. Based on this exemption, these proposed actions are not subject to the requirement to prepare a TIA.

Modifications to the On-Site Sewage Facility (OSSF) Standards

Under the County's authority under a cooperative delegation agreement under TWC Chapter 26 and the Texas Health and Safety Code (THSC), Chapter 366²³, the County is proposing additional requirements for regulating On-Site Sewage Facilities (OSSFs). The proposed actions are outlined in Chapter 741 of the Proposed Regulations. The proposed actions were determined to be exempted from the Act in accordance with TGC §2007.003(b)(11)(B) due to their inclusion in the County's regulation of On-Site Sewage Facilities. Based on this exemption, these proposed actions are not subject to the requirement to prepare a TIA.

Regulation of Gated Communities

Under the County's authority to regulate access controls to certain developments under TLGC Chapter 352,²⁴ the County is proposing new requirements for regulating vehicular and pedestrian gates to gated communities and multi-unit housing projects. The proposed actions are outlined in Chapter 755 of the Proposed Regulations specifically in Subchapter 6. The proposed actions mirror the requirements of the TLGC Chapter 352, Subchapter E, and are intended to ensure unrestricted access to these developments by emergency vehicles. The County is proposing this action specifically to address situations where a closed, locked gate may prevent timely emergency response activities. The County believes that delays in timely emergency response caused by impassable access control gates constitute a "grave and immediate threat" to life and property. Based on this belief the County further believes that the proposed actions were developed in "good faith" to prevent delays in timely emergency response. As such, the proposed actions were determined to be exempted from the Act in accordance with TGC §2007.003(b)(7) due to the County's intent to prevent grave and immediate threats to life or property. Based on this exemption, these proposed actions are not subject to the requirement to prepare a TIA.

Incorporation by Reference of the Requirements of Other Jurisdictions

The County is proposing to incorporate by reference the current requirements of other governmental jurisdictions, including federal and state entities. This proposed action is outlined in several different locations within the Proposed Regulations. The purpose of the proposed action is to allow the County to notify the regulated community of the requirements of other jurisdictions, and where the County has information indicating that a particular action by a person may not be in compliance with the applicable requirements of another jurisdiction, to notify such other jurisdiction. The proposed action was determined to be exempted from the Act in accordance with TGC §2007.003(b)(4) due to the County's intent to include these items to comply with state and federal law. Based on these exemptions, the proposed action is not subject to the requirement to prepare a TIA.

²³ Texas Health and Safety Code (THSC), Title 5, "Sanitation and Environmental Quality", Chapter 366, "On-Site Sewage Disposal System", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

²⁴ TLGC, Title 11, "Public Safety", Chapter 352, "County Fire Protection", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

Actions in the Proposed Regulations Determined to Not Place a Burden on Property ("No" to OAG Question 3)

Standardization of Administrative Procedures, Applications Processing, Public Notice Procedures and Development Agreements

Under the County's authority to regulate various aspects of land development as authorized under various chapters of the Texas Local Government Code, the County is proposing significant changes and additions to the administrative procedures, applications processing procedures, public notice procedures, and procedures for the use of development agreements to be utilized by the County in the regulation of development within the County. While these proposed actions affect the information to be prepared and submitted to the County, and how the County will apply the Proposed Regulations, the administrative procedures themselves do not create a "burden" per se on "Private Real Property", as that term is defined in the Act, being regulated by the Proposed Regulations. As outlined in the guidance from the OAG:

TIA's must concentrate on the truly significant real property issues. No need exists to amass needless detail and meaningless data. The public is entitled to governmental conformance with legislative will, not a mass of unnecessary paperwork.

The proposed actions regarding the administrative procedures and applications processing were determined to not place a direct burden on "Private Real Property" and qualify for a "No Private Real Property Impact" Determination (hereafter "NoPRPI Determination") as provided in the OAG guidelines, and would not be subject to the requirement to prepare a TIA.

Addition of a Roadway Classification

The County's existing subdivision regulations contain certain roadway classifications. Under the County's authority to regulate the subdivision of property provided in TLGC Chapter 232, the County is proposing to add an additional roadway classification entitled "Urbanized Local Roadway". This proposed action is outlined in Chapter 721 of the Proposed Regulations, specifically in Table 721.02. The proposed action allows a narrower right-of-way width than any of the other existing roadway classifications. Where utilized as a part of a non-exempt subdivision, this additional roadway classification will require the dedication of less right-of-way. The addition of this classification was determined to not place a direct burden on "Private Real Property" and qualifies for a NoPRPI Determination as provided in the OAG guidelines, and would not be subject to the requirement to prepare a TIA.

Use of County Facilities

Under the County's general authority to own and use real property, the County is proposing significant changes and additions to the requirements for the use of County facilities. The proposed actions are outlined in Chapter 751 of the Proposed Regulations. While the proposed actions do place a burden on Real Property possessed by the County, they do not place a burden on "Private Real Property", and qualify for a NoPRPI Determination as provided in the OAG guidelines, and would not be subject to the requirement to prepare a TIA.

Incentive and Voluntary Programs

Under the County's authority to regulate various aspects of land development as authorized under various chapters of the Texas Local Government Code, and the County's authority to

engage in Economic Development activities under Texas Local Government Code, Chapter 381,²⁵ the County is proposing significant changes and additions to the economic incentives program and voluntary designation programs administered in conjunction with the County's development regulations, and is proposing to codify those programs in the Proposed Regulations. The proposed actions are outlined in Chapters 761 and 765 of the Proposed Regulations. Since these programs are inherently voluntary in nature, the proposed actions to implement these programs were determined to not place a direct burden on "Private Real Property", and qualify for a NoPRPI Determination, as provided in the OAG guidelines, and would not be subject to the requirement to prepare a TIA.

Actions in the Proposed Regulations Determined to Be "Covered Governmental Actions" and to Place a "Burden" on "Private Real Property"

Based on the evaluation conducted by the County the following list of proposed actions may qualify as "Covered Governmental Actions" and place a "burden" on Private Real Property. The further evaluation of these items is presented in the following section:

- Obtaining Approval Prior to Furnishing Utility Service
- Registration of Certain Exempt Subdivisions
- Parkland and Open Space Dedication
- Development Authorization Expiration
- Minimum Roadway Setbacks

TAKINGS IMPACT ASSESSMENT FOR THE QUALIFYING ACTIONS

Impacts of Development Regulation In General

In general, reasonable development restrictions will serve a basic public purpose but will not be of such an extreme character as would constitute a regulatory taking. First, the goals of protecting public health and safety and water quality clearly appear to qualify as a legitimate state interest since prior U.S. Supreme Court rulings have held that governmental regulations addressing the "ill effects of urbanization" and the preservation of desirable aesthetic features are legitimate state interests.²⁶ It has also been expressly held by the Supreme Court that governmental restrictions on the use of only limited portions of a parcel of land such as setback ordinances are not considered regulatory takings.²⁷

Moreover, in a recent U.S. Supreme Court case on regulatory takings, the Court was faced with the question of whether a temporary moratorium on all development around Lake Tahoe constituted a regulatory taking *per se*. The Supreme Court held that such a moratorium did not constitute a *per se* taking and that various factors must be analyzed to determine whether a moratorium constitutes a taking. In so ruling, the Court referred to a set of Lake Tahoe water quality protection ordinances enacted in 1972 which restricted impervious cover and established setback limits. These measures preceded the establishment of the development moratorium at issue in the case. Since the moratorium was held not to be a *per se* regulatory taking, **it is very doubtful that traditional development regulations would be considered a regulatory taking**

²⁵ TLGC, Title 12, "Planning and Development", Chapter 381, "County Development and Growth", as amended through the 80th Regular Legislative Session, Legislature of the State of Texas.

²⁶ See Footnote 6.

²⁷ *Gorieb v. Fox*, 274 U.S. 603 (1927).

if crafted to accomplish their stated purpose while still allowing the landowner to reasonably use and enjoy his property.

This conclusion is consistent with the guidelines adopted by the OAG. These guidelines provide as follows:

*"Accordingly, government may abate public nuisances, terminate illegal activity, and establish building codes, safety standards, or sanitary requirements generally without creating a compensatory 'taking.' Government may also limit the use of real property through land use planning, zoning ordinances, setback requirements, and environmental regulations."*²⁸

These guidelines further indicate that some types of development regulation may qualify for the exemption from the Texas Private Real Property Rights Preservation Act as regulatory actions which protect public health and safety.²⁹

Actions in the Proposed Regulations Determined to Be "Covered Governmental Actions" That Place a "Burden" on Private Real Property

The following proposed actions have been determined to be "Covered Governmental Actions" that may place a "burden" on Private Real Property. Each of these proposed actions has been evaluated using the additional questions in OAG guidelines (specifically Questions 4 through 8, and where necessary, the sub-questions).

Obtaining Approval Prior to Furnishing Utility Service

Under the County's authority to regulate the subdivision of property provided in Texas Local Government Code, Chapter 232 the County is proposing to implement requirements for utility providers to obtain written approval from the County prior to furnishing utility service to a regulated development (non-exempt subdivisions and Manufactured Home Rental Communities). Specifically the County is relying on TLGC §232.106 which authorizes Counties to regulate the connection of utilities in accordance with TLGC §232.0291. This provision of the TLGC authorizes counties to require a certification from the County before a "utility" extends service to "any subdivided land".³⁰ The TLGC defines a "utility" as a "person, including a legal entity or political subdivision", and is further defined to include electric, gas and water and sewer utilities.³¹ The County is also relying on TLGC §232.007(h) which authorizes counties to regulate the connection of utilities to a Manufactured Home Rental Community. These provisions of the TLGC authorize the County, upon the adoption of the Proposed Regulations, to require all utility providers, including other governmental utility providers, to obtain certification from the County prior to extending utility service to either a non-exempt subdivision or a Manufactured Home Rental Community, subject to the provisions of TLGC §232.0291.

These proposed actions are outlined in Chapters 705 and 745 of the Proposed Regulations, specifically in §705.1.04 and §745.1.04. The proposed actions may subject certain utility providers to new requirements to obtain written approval from the County prior to furnishing

²⁸ See § 1.32 of the OAG Private Real Property Rights Preservation Act Guidelines.

²⁹ See § 1.33 of the OAG Private Real Property Rights Preservation Act Guidelines.

³⁰ TLGC §232.0291(b) and (c)

³¹ TLGC §232.021(14)

utility service. These actions together have been determined to be a CGA that may place a burden on "Private Real Property".

OAG Question 4 - What is the Specific Purpose of the Proposed CGA?

The purpose of the proposed CGA is to prevent utility providers from furnishing utility service to developments that do not meet the County's requirements. Unscrupulous developers may attempt to circumvent the County's requirements by selling property to unsuspecting homeowners before ensuring that the County has issued approval for the development. By way of example, if a developer were to begin selling lots in a subdivision prior to filing the final plat and installing the necessary roadways and utilities, a utility provider would be required to obtain certification of approval from the County prior to connecting the utilities to a new home built in that subdivision. In this instance, the County would be notified of a violation of its regulations when the utility provider sought the certificate from the County to extend utility service to a development that had not yet been approved. This notice would allow the County to initiate enforcement activities against the offending party and institute any corrective measures at its disposal. While this might not prevent harm to the individual already victimized by the unscrupulous developer, it would allow the County to implement measures to control further harm to unsuspecting members of the public. The County believes that this is an important safeguard for the public and is intended to rectify a non-compliant situation. The County further believes that this proposed action will substantially advance the purpose of protecting the public interest.

OAG Question 5 - How Does the Proposed CGA Burden Private Real Property?

In instances where it is invoked, the proposed CGA may create a burden on Private Real Property by preventing a property owner from having utilities connected to new or existing construction and by preventing utility owners from extending their property (utilities) to non-compliant developments.

OAG Question 6 - How Does the Proposed CGA Benefit Society?

The proposed CGA benefits society in the following ways:

- Serving as a deterrent to unscrupulous developers by providing a third-party notification to the County for non-compliant activities.
- Increasing the likelihood that the County is notified as early as possible about requests to extend utilities to a non-compliant development, providing the best opportunity for the situation to be corrected before additional harm is propagated on the public.

OAG Question 7 - Does the Proposed CGA result in a "taking"?

OAG Sub-question 1 - Does the Proposed CGA Result Indirectly or Directly in a Permanent or Temporary Physical Occupation of Private Real Property?

No.

OAG Sub-question 2 - Does the Proposed CGA Require a Property Owner to Dedicate a Portion of Private Real Property or to Grant an Easement?

No.

OAG Sub-question 3 - Does the Proposed CGA Deprive the Owner of all Economically Viable Uses of the Property?

In an extreme case, the proposed CGA could result in a property owner being deprived of all economically viable use of the property in an instance where an unscrupulous developer sold that property owner certain real property from a non-compliant development. If the unscrupulous developer were to go bankrupt without having provided adequate financial assurance, the property owner might be unable to have utilities furnished to property intended for a home site. This would have the effect of depriving that owner of the ability to use that property for a home site, thus depriving him of an important economic use of the property as a home site. However, for a regulatory taking as defined under TLGC §2007.002(5)(B)(ii), to exist, the CGA would need to be the “producing cause”. In this instance, the producing cause of the property owner being deprived of the economically viable use of his property would be the actions of the unscrupulous developer and not the CGA of the County. Based on this definition, the proposed CGA would not constitute a regulatory taking.

OAG Sub-question 4 - Does the Proposed CGA have a Significant Impact on the Landowner's Economic Interest?

As outlined in the response to OAG Sub-question 3, the proposed CGA could result in a significant impact to a property owner's economic interest. However, the proposed CGA would not be the “producing cause”, and would therefore not constitute a regulatory taking.

OAG Sub-question 5 - Does the CGA Decrease the Market Value of the Affected Private Real Property by 25% or More? Is the Affected Private Real Property the subject of the Covered Governmental Action? See the Act, §2007.002(5)(B).

As outlined in the response to OAG Sub-question 3, the proposed CGA could result in a significant impact to a property owner's economic interest, including a reduction of 25% or more of the market value of the affected Private Real Property. However, the CGA would not be the “producing cause”, and would therefore not constitute a regulatory taking.

OAG Sub-question 6 - Does the Proposed Covered Governmental Action Deny a Fundamental Attribute of Ownership?

In an extreme case, the proposed CGA could result in a property owner being denied the right to have utilities extended to his property, which would be considered a fundamental attribute to ownership. However, as outlined in the response to OAG Sub-questions 3 through 5, the proposed CGA would not be the “producing cause”, and would therefore not constitute a regulatory taking.

OAG Question 8 - What are the Alternatives to the Proposed CGA?

The County's proposed CGA is based on optional authority granted to the County by the Texas Legislature. The only alternative to the proposed action is to not implement this optional authority. The County believes that the proposed action protects the public interest, and that failing to implement the proposed action is less protective of the public interest. The County further believes that there are no feasible alternatives to the proposed action.

Conclusion: The County's Proposed Action of Requiring Utility Providers to Obtain Approval Prior to Furnishing Utility Service to a Regulated Development does not constitute a Regulatory Taking.

Registration of Certain Exempt Subdivisions

Under the County's authority to regulate the subdivision of property provided in Texas Local Government Code, Chapter 232 the County is proposing to implement requirements for registering certain subdivisions that are exempt under State Law. Specifically the County is relying on TLGC §232.0015(a) which authorizes counties to classify divisions of property and exempt some of those from platting requirements. This proposed action is outlined in Chapter 705 of the Proposed Regulations, specifically in §705.3.02 and §705.3.02. The County is proposing to exempt from platting, but require the registration of property divisions made for financial severance purposes (hereafter "Financial Severance Subdivisions" or "FSS"). In general, Financial Severance Subdivisions are divisions of property made to allow a portion of a property to serve as collateral for a financial transaction, while the remaining portion of the property is not subject to the financial transaction. The proposed action may subject certain property owners to new requirements to file documents with the County. This action has been determined to be a CGA.

OAG Question 4 - What is the Specific Purpose of the Proposed CGA?

In the past, the County is aware of instances where a property owner has carved out a portion of a tract of land to identify that separated property for financial severance purposes (an FSS). Most often this separated property is used as collateral for funding to construct of a home on the remaining portion of the property. While subdivision *per se* is not made when the FSS is identified, a subdivision would occur if that FSS is used as the basis for the transfer of the property to a person that does not qualify for an exempt transfer of property under State Law³². If the property owner defaults on the financial obligation, the financial institution may take possession of the separated portion of the property. If the financial lender is not a natural person properly related to the defaulting property owner, when this separate ownership is perfected, a *de facto* subdivision occurs that would be regulated under both state law and County ordinances. If the original FSS was not configured to include access to a public road, this *de facto* subdivision would create a separate tract with no public access, in violation of state law and County ordinances. The purpose of the proposed CGA is to prevent the adverse affects of these types of subdivisions of property that make no provision for public access to a portion of a property divided through financial severance.

OAG Question 5 - How Does the Proposed CGA Burden Private Real Property?

The proposed CGA may create a burden on Private Real Property by requiring the property owner to file paperwork with the County when establishing an FSS. The proposed CGA may further burden Private Real Property by requiring a property owner to utilize a configuration for the FSS to allow access to a public roadway or to grant an access easement across the portion of their property not included within the FSS.

³² Under TLGC §232.0015(e), real property resulting from exempt subdivisions may be transferred to individuals related to the owner within the third degrees of consanguinity or affinity of the property owner without invalidating the exemption.

OAG Question 6 - How Does the Proposed CGA Benefit Society?

The proposed CGA benefits society in the following ways:

- Serving as a deterrent to the improper configuration of an FSS that does not have access to a public roadway.
- Increasing the likelihood that the County is aware of an FSS as early as possible, providing the best opportunity for the situation to be corrected before additional the improper configuration is made.

OAG Question 7 - Does the Proposed CGA result in a "taking"?

OAG Sub-question 1 - Does the Proposed CGA Result Indirectly or Directly in a Permanent or Temporary Physical Occupation of Private Real Property?

No.

OAG Sub-question 2 - Does the Proposed CGA Require a Property Owner to Dedicate a Portion of Private Real Property or to Grant an Easement?

While the property owner could configure the FSS to provide access to a public roadway, as an alternative, the property owner could also grant an access easement to the FSS through the portion of their property that is not included in the FSS.

OAG Sub-question 3 - Does the Proposed CGA Deprive the Owner of all Economically Viable Uses of the Property?

No. Even in an instance where the property owner might elect to grant an easement, this easement would only require the property owner to provide ingress/egress across the portion of their property that is not included in the FSS.

OAG Sub-question 4 - Does the Proposed CGA have a Significant Impact on the Landowner's Economic Interest?

A determination as to whether the proposed CGA has a significant impact on the landowner's economic interest must be made on a case-by-case basis. However, the property owner is given the option of configuring the FSS to allow public access or granting an easement across the property that is not included in the FSS. The Proposed Regulations further make provision for the granting of variances in the event the proposed CGA may result in a regulatory taking in a particular case. Given these allowances, the proposed action will not generally have a significant impact on the landowner's economic interest.

OAG Sub-question 5 - Does the CGA Decrease the Market Value of the Affected Private Real Property by 25% or More? Is the Affected Private Real Property the subject of the Covered Governmental Action? See the Act, §2007.002(5)(B).

As outlined in the previous response, determinations as to whether the proposed action decreased the market value of affected Private Real Property must be made on a case-by-case basis. However, the property owner is given the option of configuring the FSS to allow public access or granting an easement across the property that is not included in the FSS. The Proposed Regulations further make provision for the granting of variances in the event the proposed CGA

may result in a regulatory taking in a particular case. Given these allowances, the proposed action will not generally result in a decrease in market value of twenty five percent or more.

OAG Sub-question 6 - Does the Proposed Covered Governmental Action Deny a Fundamental Attribute of Ownership?

No.

OAG Question 8 - What are the Alternatives to the Proposed CGA?

The County's proposed CGA is based on authority granted to the County by the Texas Legislature to regulate the subdivision of property. The only alternative to the proposed CGA is to not implement this authority. The County believes that the proposed CGA protects the public interest, and that failing to implement the proposed CGA is less protective of the public interest. The County further believes that there are not feasible alternatives to the proposed CGA.

Conclusion: The County's Proposed Action of Requiring the Registration of Certain Exempt Subdivisions does not constitute a Regulatory Taking.

Parkland and Open Space Dedication

Under the County's authority to regulate the subdivision of property provided in TLGC Chapter 232 the County is proposing to implement requirements for the provision of parkland and open space for non-exempt subdivisions of property through the platting process. Specifically, TLGC Chapter 232 authorizes counties to adopt rules to "promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county."³³ This proposed action is outlined in Chapter 705 of the Proposed Regulations, specifically in §705.5.06. The proposed action subjects property owners making non-exempt subdivisions to new requirements to make a physical dedication of parkland or open space within the proposed new non-exempt subdivision or to make a financial contribution to the County for use in the County's parkland and open space program. Subject to certain conditions, parkland and open space may be maintained privately. This action has been determined to be a CGA.

OAG Question 4 - What is the Specific Purpose of the Proposed CGA?

The County is proposing to implement requirements for the provision of Parkland and Open Space through the platting process for non-exempt subdivisions of property based on optional authority granted to certain urban counties through TLGC. The purpose of the proposed CGA is to provide additional parkland and open space for the benefit of the citizens of Hays County and our visitors.

OAG Question 5 - How Does the Proposed CGA Burden Private Real Property?

The proposed CGA may create a burden on Private Real Property by requiring the property owner to physically dedicate to the public a portion of the property being subdivided or to make a financial contribution to the County's designated parks and open space funds in lieu of a physical dedication.

OAG Question 6 - How Does the Proposed CGA Benefit Society?

³³ TLGC §232.101(a)

The County believes that providing parkland and open space benefits society in the following ways:

- Providing opportunities for exercise and recreational activities for the citizens of the County and visitors;
- Providing “greenspace” amenities to benefit all property owners in the area;
- Protecting critical habitat areas in coordination with the County’s efforts to protect protected species under Federal and State threatened and endangered species protection statutes;
- Maintaining the aesthetics of rural character for the County; and,
- Improving water and air quality throughout the County.

OAG Question 7 - Does the Proposed CGA result in a "taking"?

OAG Sub-question 1 - Does the Proposed CGA Result Indirectly or Directly in a Permanent or Temporary Physical Occupation of Private Real Property?

No.

OAG Sub-question 2 - Does the Proposed CGA Require a Property Owner to Dedicate a Portion of Private Real Property or to Grant an Easement?

Unless a financial contribution is made into the County’s park and open space funds, a property owner making a non-exempt subdivision would be required to dedicate a portion of the private real property included in the subdivision (the “Subject Property”).

OAG Sub-question 3 - Does the Proposed CGA Deprive the Owner of all Economically Viable Uses of the Property?

No. The parkland/open space provision requirements are based on setting aside approximately two percent (2%) of the Subject Property. The balance of the property could be developed subject to the other applicable requirements of the existing and Proposed Regulations.

OAG Sub-question 4 - Does the Proposed CGA have a Significant Impact on the Landowner's Economic Interest?

A determination as to whether the proposed CGA has a significant impact on the landowner’s economic interest must be made on a case-by-case basis. However, the provision of parkland and open space is generally considered an amenity rather than an impairment. While economic interests vary with market conditions, over time and from property to property, in general, studies from other areas of the country indicate that property with open space amenities are generally of more value than equivalent properties without open space amenities. Due to the small percentage of the property affected, and the potential for an increase in property value due to the provision of open space, the proposed CGA will not generally have a significant impact on the landowner’s economic interest.

OAG Sub-question 5 - Does the CGA Decrease the Market Value of the Affected Private Real Property by 25% or More? Is the Affected Private Real Property the subject of the Covered Governmental Action? See the Act, §2007.002(5)(B).

As outlined in the previous response, determinations as to whether the proposed CGA decrease the market value of affected Private Real Property must be made on a case-by-case basis. However, given the small percentage of the property affected, and the potential for an increase in property value due to the provision of open space, the proposed CGA will not generally result in a decrease in market value of twenty five percent or more.

OAG Sub-question 6 - Does the Proposed Covered Governmental Action Deny a Fundamental Attribute of Ownership?

No.

OAG Question 8 - What are the Alternatives to the Proposed CGA?

The County's proposed CGA is based on authority granted to the County by the Texas Legislature to regulate the subdivision of property. The only alternative to the proposed CGA is to not implement this authority. The County believes that the proposed CGA provides significant public benefits at relatively small cost to property owners that choose to make non-exempt subdivisions of their property.

Conclusion: The County's Proposed Action of Requiring the Provision of Parkland and Open Space for Non- Exempt Subdivisions does not constitute a Regulatory Taking.

Development Authorization Expiration

The County's existing development regulations contain certain requirements for the expiration and in some cases, renewal, of various permits and approvals. Under the County's authority to regulate the expiration of various permits and approvals provided in TLGC, Chapter 245, the County is proposing to establish expiration periods for some and modify the expiration period for other various permits and approvals (referred to as "Development Authorizations") included within the Proposed Regulations. Specifically the County is relying on TLGC Chapter 245 which authorizes a "regulatory agency" to establish expiration periods for various permits and approvals.³⁴ In this context, a "regulatory agency" includes a "political subdivision,"³⁵ and "political subdivision" includes a county.³⁶ This provision of the TLGC authorizes the County, upon the adoption of the Proposed Regulations, to establish expiration periods for a broad range of permits, which is defined to include an "approval" or "other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought."³⁷ The County has construed this provision to cover all types of Development Authorizations approved following the effective date of the Proposed Regulations.

These proposed actions are outlined in Chapters 701, 705, 711, 735, 741, 751, 755 and 771. The following specific sections of the Proposed Regulations address the Expiration of Development Authorizations:

- §701.7.10 – Expiration of Application and Suspension by Agreement
- §701.11.06 – Effective Dates and Expiration

³⁴ TLGC §245.005

³⁵ TLGC §245.001(4)

³⁶ TLGC §245.001(2)

³⁷ TLGC §245.001(1)

- §705.7.04 – Expiration
- §705.9.03 – Expiration
- §711.5.02 – Expiration
- §735.4.05 – Expiration of Flood Hazard Area Permits
- §741.8.19 – Miscellaneous [8.19(B)]
- §751.5.03 – Contents of Minor Permit [5.03(B)]
- §755.5.07 – Issuance of Permit [5.07(A) and (D)]
- §771.3.07 – Expiration

The proposed action subjects property owners and developers (referred to as the “Permittee” in the Proposed Regulations) obtaining Development Authorizations from the County to a timeframe for making progress on their project. These actions, taken together, have been determined to be a CGA.

OAG Question 4 - What is the Specific Purpose of the Proposed CGA?

The purpose of the proposed CGA is to minimize the number of projects that are constructed under older, and generally less protective standards, to the extent allowed by law.

OAG Question 5 - How Does the Proposed CGA Burden Private Real Property?

The proposed CGA may create a burden on Private Real Property by requiring the Permittee to continue to make progress on a project within a specific timeframe, regardless of the market or other timing factors. This burden can be removed by the Permittee initiating the actions authorized in the Development Authorization within the expiration period.

OAG Question 6 - How Does the Proposed CGA Benefit Society?

In general, the County believes that these older standards are generally not as protective of the public as newer standards. By implementing the proposed expiration periods, the County intends to minimize the number of projects constructed under the older, generally less protective standards. The proposed CGA will benefit society by minimizing the number of project using old or outdated standards.

OAG Question 7 - Does the Proposed CGA result in a "taking"?

OAG Sub-question 1 - Does the Proposed CGA Result Indirectly or Directly in a Permanent or Temporary Physical Occupation of Private Real Property?

No.

OAG Sub-question 2 - Does the Proposed CGA Require a Property Owner to Dedicate a Portion of Private Real Property or to Grant an Easement?

No.

OAG Sub-question 3 - Does the Proposed CGA Deprive the Owner of all Economically Viable Uses of the Property?

In the event that a Development Authorization expired, the Permittee might be deprived of the specific use(s) authorized in the Development Authorization. However, there would likely be other uses available or the Permittee could apply again for a new Development Authorization for the same use(s). Given these conditions, the proposed CGA will not deprive an owner of all economically viable use of the property.

OAG Sub-question 4 - Does the Proposed CGA have a Significant Impact on the Landowner's Economic Interest?

A determination as to whether the proposed CGA has a significant impact on the landowner's economic interest must be made on a case-by-case basis. As outlined in the response to OAG Sub-question 3, in the event that a Development Authorization expired, the proposed CGA could result in the loss of a particular use. However, the "producing cause" of this loss would be the Permittee's failure to act under the terms of the Development Authorization and not the expiration of the Development Authorization. Since the CGA would not be the "producing cause", it would therefore not constitute a regulatory taking.

OAG Sub-question 5 - Does the CGA Decrease the Market Value of the Affected Private Real Property by 25% or More? Is the Affected Private Real Property the subject of the Covered Governmental Action? See the Act, §2007.002(5)(B).

As outlined in the previous response, determinations as to whether the proposed CGA decreases the market value of affected Private Real Property must be made on a case-by-case basis. However, given the considerations outlined in the responses to OAG Sub-questions 3 and 4, if an instance occurred where the expiration of a particular Development Authorization resulted in the decrease of the market value of the Private Real Property by 25% or more, the "producing cause" of this loss would be the Permittee's failure to act under the terms of the Development Authorization and not the expiration of the Development Authorization. Since the CGA would not be the "producing cause", it would therefore not constitute a regulatory taking.

OAG Sub-question 6 - Does the Proposed Covered Governmental Action Deny a Fundamental Attribute of Ownership?

No.

OAG Question 8 - What are the Alternatives to the Proposed CGA?

The County's proposed CGA is based on authority granted to counties by the Texas Legislature. The only alternative to the proposed CGA is to not implement this authority. The County believes that the proposed CGA provides significant public benefits at relatively small risk of adverse impact to property owners.

Conclusion: The County's Proposed Action of Establishing and Modifying Development Authorization Expiration Periods does not constitute a Regulatory Taking.

Minimum Roadway Setbacks

Under the County's authority to regulate certain aspects of building construction as provided in TLGC Chapter 233, the County is proposing to implement minimum setbacks from Public Roadways. Specifically, TLGC Chapter 233 authorizes counties to "(1) establish by order

building or set-back lines on the public roads, including major highways and roads, in the county; and (2) prohibit the location of a new building within those building or set-back lines.”³⁸ TLGC Chapter 232 further authorizes counties to adopt these setback lines without a limitation period.³⁹ These setbacks would extend a specified distance from the public roadway right-of-way line onto private property. This proposed action is outlined in Chapters 721 and 755 of the Proposed Regulations, specifically in §721.5.03 and §755.4.04. The proposed action may subject certain property owners to the requirement to conduct a review of their proposed construction plans and may restrict the placement of certain types of structures within the specified setbacks. This action has been determined to be a CGA.

This evaluation is intended only to address the impacts of the initial establishment of the setback lines and does not address subsequent right-of-way purchases or condemnation that may take place within these setbacks or elsewhere.

OAG Question 4 - What is the Specific Purpose of the Proposed CGA?

The purpose of the proposed CGA is to minimize the future cost to the County (including the taxpaying public) for expanding County roadways and to provide a public safety component by providing additional separation between the traveled roadway and an above-grade structure made of non-collapsible material.

OAG Question 5 - How Does the Proposed CGA Burden Private Real Property?

The proposed CGA may create a burden on Private Real Property by requiring a *de facto* easement across the designated portion of the property adjacent to the public roadway. While this portion of the property could be occupied by a yard, driveways, parking lots, or vegetation, it could not be occupied by above-grade structures.

OAG Question 6 - How Does the Proposed CGA Benefit Society?

The County believes that implementing the proposed roadway setbacks benefits society in the following ways:

- Reducing the cost of obtaining future right-of-way for public roadway expansion projects by ensuring that the area most likely to be required for expansion is not occupied by above-grade construction. In addition to the purchase price of the land, any above-grade structures present would increase the amount of compensation required for securing the expanded right-of-way.
- Providing an additional safety zone for traveling vehicles that may leave the roadway. This additional safety zone will reduce potential damage and harm to the vehicle and its occupants as well as to the property, fixtures and occupants adjacent to the roadway.

OAG Question 7 - Does the Proposed CGA result in a "taking"?

OAG Sub-question 1 - Does the Proposed CGA Result Indirectly or Directly in a Permanent or Temporary Physical Occupation of Private Real Property?

No.

³⁸ TLGC §233.032(a)

³⁹ TLGC §233.032(a)

OAG Sub-question 2 - Does the Proposed CGA Require a Property Owner to Dedicate a Portion of Private Real Property or to Grant an Easement?

For Private Real Property located adjacent to a public roadway, the proposed CGA would create a *de facto* easement across the designated portion of the property within the setback distance from the right-of-way line of the public roadway.

OAG Sub-question 3 - Does the Proposed CGA Deprive the Owner of all Economically Viable Uses of the Property?

In an extreme case, the proposed CGA could result in a property owner being deprived of all economically viable use of the property in an instance where substantially all of the affected property was restricted by the setback. This would have the effect of depriving that owner of the ability to use that property for a building site, thus depriving him of an important economic use of the property as a building site. Based on the past experience of the County staff, there are very few properties in the unincorporated areas of the County that would be subject to the Proposed Regulations that extend less than fifty (50) feet back from a public roadway.⁴⁰ The Proposed Regulations make provision for the granting of variances in the event the proposed CGA may result in a regulatory taking in a particular case. In the rare instances where the proposed setbacks might otherwise deprive a property owner of all economically viable uses of their property, the Commissioners Court could grant a variance to remedy any rare set of circumstances that might result in a regulatory taking. Given these allowances, the proposed CGA will not generally deprive an owner of all economically viable use of the property.

OAG Sub-question 4 - Does the Proposed CGA have a Significant Impact on the Landowner's Economic Interest?

A determination as to whether the proposed CGA has a significant impact on the landowner's economic interest must be made on a case-by-case basis. As outlined in the response to OAG Sub-question 3, in an extreme case, the proposed CGA could result in a significant impact to the landowner's economic interest in an instance where substantially all of the affected property was restricted by the setback. However, in the vast majority of instances, only a portion of the property will be affected by the setback. For instance, a previously platted one-quarter (1/4) acre (10,890 square foot) lot, with a public roadway frontage of seventy five (75) feet, the length of the lot off the public roadway would be approximately one-hundred forty five (145) feet. Assuming a fifty (50) foot setback applied to the lot, the setback would restrict above-grade construction over the front 3,750 square feet, leaving the remaining 7,140 square feet available for above-grade construction. In addition, customary residential and commercial construction practices in Hays County generally result in the placement of driveways, parking areas, yards and other associated features between the right-of-way line and any above-grade structures. The setback area could also be occupied by an OSSF effluent discharge system. Since these features are customarily located in the area that would be occupied by the proposed setbacks, the setback requirement would not be expected to have a significant adverse impact on the landowner's economic interest. In the rare instances where the proposed setbacks might otherwise have a significant impact on the landowner's economic interests, the Commissioners Court could grant a variance to remedy any rare set of circumstances that might result in a regulatory taking.

⁴⁰ As outlined in §721.5.03 and §755.4.04 of the Proposed Regulations, fifty (50) feet is the largest setback applicable to any public roadway.

Given these allowances, the proposed CGA will not generally have a significant impact on the landowner's economic interest.

OAG Sub-question 5 - Does the CGA Decrease the Market Value of the Affected Private Real Property by 25% or More? Is the Affected Private Real Property the subject of the Covered Governmental Action? See the Act, §2007.002(5)(B).

As outlined in the previous response, determinations as to whether the proposed CGA decreases the market value of affected Private Real Property must be made on a case-by-case basis. However, given the considerations outlined in the responses to OAG Sub-questions 3 and 4, the circumstances where the proposed setbacks would have a significant adverse impact would be relatively rare. In the rare instances where the proposed setbacks might otherwise decrease the market value of the Private Real Property by 25% or more, the Commissioners Court could grant a variance to remedy any rare set of circumstances that might result in a regulatory taking. Given these allowances, the proposed CGA will not generally result in the decrease in market value of any specific Private Real Property by 25% or more.

OAG Sub-question 6 - Does the Proposed Covered Governmental Action Deny a Fundamental Attribute of Ownership?

No.

OAG Question 8 - What are the Alternatives to the Proposed CGA?

The County's proposed CGA is based on optional authority granted to the counties by the Texas Legislature. The only alternative to the proposed CGA is to not implement this authority. The County believes that the proposed CGA provides significant public benefits at relatively small cost to property owners, and in most instances will require very few, if any changes, to a property owner's site development plans. In return, the County can save significant costs in the acquisition of future right-of-way.

Conclusion: The County's Proposed Action of Establishing Setbacks Along Public Roadways does not constitute a Regulatory Taking.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than 2:00 p.m. on WEDNESDAY.

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to approve funds for construction of JP bench for new Pct. Office.

TYPE OF ITEM: CONSENT-ACTION-PROCLAMATION-EXECUTIVE SESSION-WORKSHOP

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED: \$2,500

LINE ITEM NUMBER OF FUNDS REQUIRED: 01-414-5741

REQUESTED BY: Judge Terry Kyle

SPONSORED BY: Commissioner Karen Ford

SUMMARY: The bench in the courtroom at the current location is not moveable. A bench will be built by the Building and Maintenance Department on site to meet ADA specifications. Ron Knott provided the \$2500 estimate for material costs.

Agenda Item Routing Form

DESCRIPTION OF Item: Approve funds for construction of JP bench for new Pct. Office. The bench in the courtroom at the current location is not moveable. A bench will be built by the Building and Maintenance Department on site to meet ADA specifications. Ron Knott provided the \$2500 estimate for material costs.

PREFERRED MEETING DATE REQUESTED: December 23, 2008

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER \$2,500.00 01-414-5741

COUNTY PURCHASING GUIDELINES FOLLOWED: ___ N/A ___

PAYMENT TERMS ACCEPTABLE: ___ N/A ___

COMMENTS:

Bill Herzog

SPECIAL COUNSEL

Typically Requires 9 Business Day Review

CONTRACT TERMS ACCEPTABLE: _____

COMMENTS:

COMMISSIONERS' COURT

APPROVED/DISAPPROVED AND DATE: _____

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: _____

Agenda Item Request Form

Hays County Commissioners Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action regarding disability benefits and conditions for county employees and general county policies regarding medical disability, disability benefits, and disability retirement.

CHECK ONE:	CONSENT	<input checked="" type="checkbox"/> ACTION	EXECUTIVE SESSION
	WORKSHOP	PROCLAMATION	PRESENTATION

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: BARTON

SPONSORED BY: BARTON

SUMMARY:

The pending retirement of a county employee with a disability has brought into focus questions about the intent and fairness of the county's disability retirement plan.

After consultation with the employee involved, as well as the treasurer's office and human resources, I believe we should ask the insurance committee to review our disability practices, and that the Court should give some consideration to how this fits with our overall benefits package for recruitment and retention.

I don't think that can happen in a deliberate and thoughtful fashion before the end of the year – when the employee in question plans to retire. The Insurance Committee is scheduled to meet in late spring or summer and I think we ought to give the committee plenty of time to work this through on its regular schedule.

Meanwhile, we have an employee who has helped raise the issue, and whose life would be affected by the outcome if we forced the issue but who cannot benefit retroactively from a solution next year.

Employees who retire from Hays County have the opportunity to continue insurance coverage through the county's group plan at their own cost (\$644.20 for 2008-2009).

For qualifying retirees, Hays County may fund all but \$150 of medical insurance coverage contingent on the following provisions:

- 1) Have at least 15 years of continuous service to the county.
- 2) Be a full-time employee
- 3) Meet the "rule of 75".

The treasurer and HR tell me the county has rarely had to deal with this issue, and that the details have not been discussed in recent years. Our written policy addresses the question not directly, leaving room for misinterpretation and ambiguity.

There seem to be several problems, or at least potential problems. We make insurance available to people who work 30 hours or more, which is also the threshold for many jobs in the private sector to be considered full-time, yet we don't allow retirement except for jobs working more than 35 hours. Then there is the issue with working 15 years or more and meeting the rule of 75 – a good standard for typical retirees, but somewhat counter-intuitive as a standard for someone who is retiring due to a disability that, by definition, is beyond their control.

Employee was hired in January of 1996 and has worked for Hays County more than 12 years. Employee is taking disability retirement at the end of this year – employee has already qualified for disability retirement through the Treasurer's office (our district retirement system), and meets the stringent social security disability standard.

Employee wants insurance from the county upon retirement. Employee doesn't have enough years to qualify for the \$150 retiree insurance through regular retirement – but employee does qualify to be on the county's insurance policy via disability retirement, provided employee is willing to pay \$644.20 a month.

A possible solution: Texas A&M allows employees with disability to receive one month credit toward discounted insurance for every year worked. In this case that would mean allowing employee to be eligible for the "\$150-a-month" insurance for one year, giving employee time to transition and/or work out an alternative solution. Employee could then either find own insurance or move to the county's higher cost insurance. It is not a long-term solution but employee could take solace knowing employee helped spark a broader discussion next spring and summer about our benefits.

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to authorize the County Judge to execute Change Order #1 to the contract with Westar Construction for a water service connection, in the amount of \$5,700.00.

CHECK ONE: ☐ **CONSENT** ☒ **ACTION** ☐ **EXECUTIVE SESSION**
☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED: \$5700.00

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Hauff

SPONSORED BY: Ingalsbe

SUMMARY:

Westar Construction, Inc. has been contracted to complete Phase I construction at Five Mile Dam Park. The amount of this contract is \$1,587,000. The proposed change order is needed for a connection to an existing water line in the Blanco Vista Subdivision to run water service to the Park for irrigation and public use. The point of connection was mislocated on the original plans due to discrepancies between plans on file with the subdivision and the actual termination point as verified by field investigations. This was not discovered until construction activities (trenching) revealed that the connection point was actually more than 30 feet from the suspected location. Funding is available through existing amounts already allocated to the Park project.

Agenda Item Routing Form

DESCRIPTION OF Item: Authorize the County Judge to execute Change Order #1 to the contract with Westar Construction for a water service connection, in the amount of \$5,700.00.

PREFERRED MEETING DATE REQUESTED: December 23, 2008

COUNTY AUDITOR

Typically Requires 1 Business Day Review

AMOUNT AND FUND LINE ITEM NUMBER \$ 5700.00 45-499-5623

COUNTY PURCHASING GUIDELINES FOLLOWED: ____ N/A ____

PAYMENT TERMS ACCEPTABLE: ____ N/A ____

COMMENTS: Funds will be reallocated from the boat ramp matching funds within the five mile dam park project budget.

Bill Herzog

SPECIAL COUNSEL

Typically Requires 9 Business Day Review

CONTRACT TERMS ACCEPTABLE: ____

COMMENTS:

COMMISSIONERS' COURT

APPROVED/DISAPPROVED AND DATE: ____

COUNTY JUDGE

Signature Required if Approved

DATE CONTRACT SIGNED: ____

Change Order

Project: 5 Mile Dam Park

Owner: Hays County, TX

Contractor: Westar Construction Inc.

Architect/ Engineer: Land Design Partners

Change Order #: 1

Make the following Additional changes to the work described in the contract documents:

-Addition of 8" water connection and all appurtenances as depicted in attached plan sheet and detail completed by Dennis C. Lucas originally dated 06/16/2008 and updated 10/28/2008.

The original contract sum was:	\$1,587,000.00
Net amount of previous change orders:	\$0.00
Total original contract amount plus or minus net change orders:	\$1,587,000.00
Total amount of this change order:	\$5,700.00
The new contract amount including this change order will be:	\$1,592,700.00
The contract time will be changed by the following number of days:	(14) Days
The date of completion as of the date of this change order is:	July 8, 2008

Contractor:

Signature

Date

Owner:

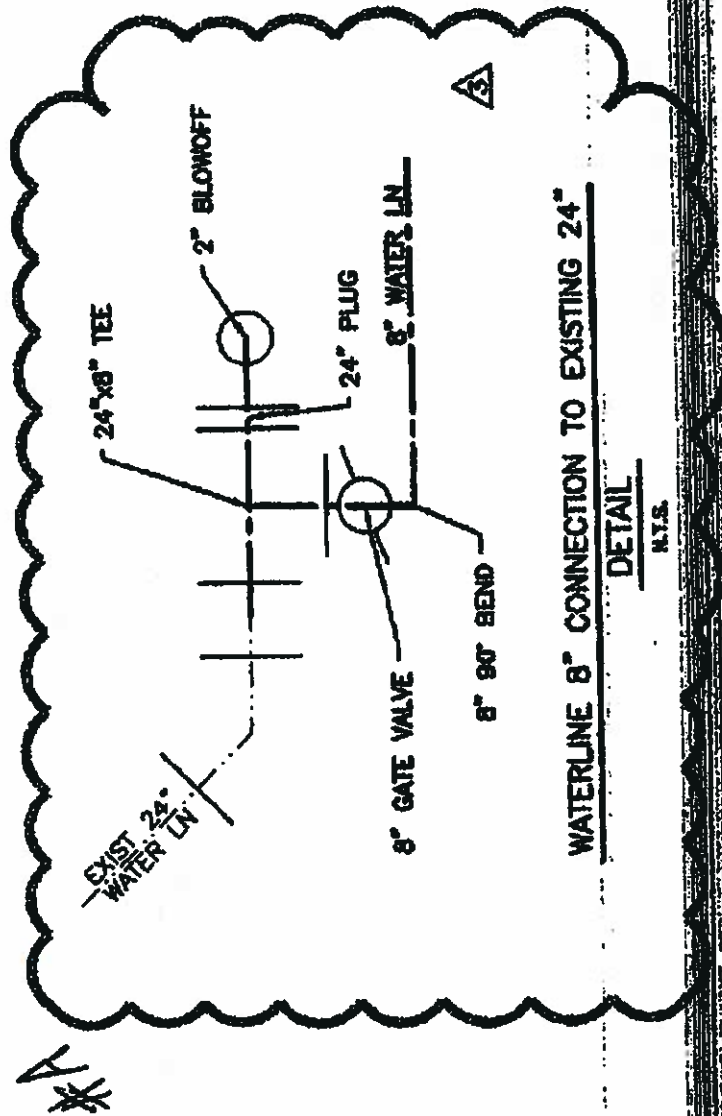
Signature

Date

Architect/ Engineer:

Signature

Date



Agenda Item Request Form

Hays County Commissioners Court

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no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM:

Discussion and possible action to appoint 10 members to a citizen committee to look at different locations within the county to house a shooting sports complex.

CHECK ONE:	CONSENT	X ACTION	EXECUTIVE SESSION
	WORKSHOP	PROCLAMATION	PRESENTATION

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED: N/A

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: BARTON

SPONSORED BY: BARTON

SUMMARY:

On September 16th, Commissioners Court unanimously passed a motion to form a citizen committee charged with finding a location to house the Hays County Shooting Sports Complex, a multi-discipline educational and safety training facility in Hays County.

Stephen Marlow has largely led the effort thus far and created a non-profit group, the Texas Shooting Sports Complex, to aid in the search for a location.

I am suggesting that each member of the court appoint one person to sit on the task force, and that the additional members of the committee be comprised of active participants in the current non-profit. Their names are listed below.

- Stephen Marlow – San Marcos
- J.B. Kolodzey – Buda
- Herman Waters – Dripping Springs
- Willy T. Ribbs – Dripping Springs
- Tomas Mijares – San Marcos

See back up for further details, including resumes of the proposed committee members.

Mr. Marlow and members of the Texas Shooting Sports Complex will be in attendance to present their progress and answer questions.

Herman Waters

In response to your request for information concerning my background, I wish to submit the following:

I graduated from the University of Denver in 1960 with a BSBA in residential construction and real estate. Following my graduation from college, I returned to Austin to start a 41 year career in various areas of the Real Estate business. I spent six years building homes in the early Sixties following which I spent some time working on commercial construction projects for J. C. Evans Construction Company. I opened a commercial real estate office which I operated until my retirement in 2001. My career led me to activities in construction of office buildings and apartment houses, land and apartment syndication, development land sales, commercial sales and leasing, retail leasing, and industrial leasing.

I have built most of the homes that my wonderful wife of 50 years and I have lived in, including our current home here in Dripping Springs Ranch. My two sons are both in the construction business. I have a brother-in-law who is a land development consultant, and another brother-in-law who owns and operates a major site development construction company. I seem to be surrounded by the construction and development industry.

I currently serve the Austin Rifle Club as Director of Business Management and have been a member of the Austin Rifle Club for ten years. Late in October of this year, I was privileged to be able to attend a four-day defensive handgun course at Front Sight in Pahrump, Nevada – near Las Vegas. Front Sight is probably the premier defensive gun skills training facility in the United States and I was able to get a good look at their setup and facilities. Their training curriculum with major emphases on safety in handling guns is very impressive and I humbly came away with a realization of how woefully inadequate my defensive gun handling skills were prior to attending the course. The experience greatly increased my confidence in my own abilities and gave me the knowledge of how to practice to improve my skills and to impart that information on to others. It also impressed upon me the tremendous need for training in our region of people of all ages in safe handling of guns in all situations.

I very much look forward to working with you and the task force to acquire a site and participate in its' development for the Texas Shooting Sports Complex.

Yours truly,

Herman F. Waters, Jr.

JB Kolodzey

JB Kolodzey brings 40 years of business and construction experience in land development, single family, commercial and multi family projects. He has worked with and supervised Federal, State and County government funded projects that range in size from \$10,000 to \$20 million. His goal in being on this task force is to bring to Hays County parkland that will generate revenue through education and safety training in the shooting sports.

JB Kolodzey
Maps of Texas
www.mapsoftexas.com
512-971-4443

Tomas Carl Mijares

Academic/Professional Background

Educational Background

1988: Ph.D. in Philosophy from the University of Michigan
1976: M.A. in Criminal Justice from the University of Detroit
1967: B.A. in Political Science from the University of Michigan
1965: A.A. from Grand Rapids Junior College

University Experience

2003 – Present: Full Professor at Texas State University
1990 – 2003: Associate Professor at Southwest Texas State University, tenured in 1996
1977 – 1990: Adjunct Professor at the University of Detroit
1990: Adjunct Professor at Oakland County Community College
1978 – 1985: Adjunct Professor at Washtenaw County Community College
1976: Adjunct Professor at Wayne County Community College

Relevant Professional Experience

1971 – 1991: Patrol Officer Supervisor Detroit Police Department
Security Officer
Undercover Private Investigator
1967 – 1970: Pinkerton's Incorporated

Courses Taught:

Undergraduate:

Research Methods in Criminal Justice
Special Problems in Law Enforcement
Organized Crime
Comparative Criminal Justice
Internship
National and International Crime Problems
Mid-Level Management in Criminal Justice
Occupational Crime
Criminal Investigation
Police Systems and Practices
Advanced Criminal Justice Management

Graduate:

Management Principles in Criminal Justice
Personnel Administration in Criminal Justice
Current Issues in Criminal Justice

Other

I have also lectured at Wayne State University, the University of Michigan, Oakland Police Academy and Scottsdale Community College. In addition, I have taught physical fitness, stress coping techniques, hostage negotiation techniques, personnel management and barricaded gunman procedures at the following police academies: Detroit Police, Dallas Police, Austin Police, Houston Police, San Antonio Police, and Texas Department of Public Safety. I have also conducted extensive training programs for professional criminal justice personnel in the area of tactical operations through the Texas Tactical Police Officers Association and Texas Association of Chiefs of Police.

Willy T. Ribbs

Willy T. Ribbs is an auto-racing pioneer who made sports history by becoming the first African American to qualify and race in the Indianapolis 500. A true motor sports icon, Ribbs' vivacious personality, charismatic presence and penchant for entertaining interviews has made him one of the most sought after individuals in the sport. It's no wonder with a 25-year career that had him at the top of his field racing for such winning teams as Dan Gurney, Jack Roush and Derek Walker not to mention winning over 40 races in such series as SCCA Trans-Am, CART/Indy Car, NASCAR and Formula Ford in Europe. One of Ribbs' most notable sponsors was entertainer Bill Cosby and his career has crossed interesting paths with such notables as Muhammed Ali, Vice President Dan Quayle, Paul Newman, Clint Eastwood, Colin Powell and many others.

Recently, Ribbs served as color commentator of NewsCorp's Speed Channel auto racing coverage. An autobiography is in the works on his life story and Columbia Pictures and actor Michael Douglas purchased the rights to Ribbs' life story for a future movie. Ribbs has appeared on several television programs including the Tonight Show with Jay Leno, HBO special with Bryant Gumbel and the recent ESPN special, "A Forgotten Race". Ribbs' acting debut was opposite David Caradine and Muriel Hemmingway in the major motion picture, American Reel.

Today, Ribbs and his son, Theo, are pioneering new trails in the fast-growing arena of shotgun sports. Ribbs has hosted events in California and as a member of the Bass Pro Shops' Redhead professional team, he travels the country giving seminars on shooting techniques. Through Ribbs mentoring and coaching, Theo has become the #1 Junior FITASC shooter in the U.S.

Stephen Marlow

I've made a commitment to promoting youth shooting sports and along the way have become an NRA Training Counselor and Chief Range Safety Officer. So, I'm working to produce more local adult firearms instructors in youth organizations to support of youth programs in our community. I am in my seventh year as an instructor with NRA and 4-H certifications. I've taught pistol, rifle, shotgun, muzzleloader, reloading, Range Safety Officers, supervised range construction, and served as Chief Range Safety Officer at several venues.

My education includes a BS in Physics, an MS in Industrial Technology, and doctoral course work in education. Other background as a teacher includes instructing university courses and/or laboratories in physics, statistics, power production, welding, and computer drafting; primary and secondary school substitute teaching for two years; instructing merit badges for Boy Scouts, Girl Scouts, Venturing; BSA adult leader training; and 4-H shooting sports for youth and adults. I have been a Girl Scout Camping Consultant, Cub Scout leader, Scoutmaster, Venture Advisor, Order of the Arrow Advisor, University Staff Council Chair, chair of many volunteer and job related committees, have owned a construction company, and currently employed by the University as a Construction Contract Administrator. On the fun side - we've raised cows, chickens, and five children. We've taken up Cowboy Action Shooting, we shoot twice a month, and occasionally I meet with a trap shooting group.

Best Regards,

Stephen Marlow, President
Texas Shooting Sports Complex
620 Marlow Lane
San Marcos, Texas 78666
s.l.marlow@centurytel.net

C: 512-393-1298

H: 512-353-8884

NRA Training Counselor, Chief Range Safety Officer, 4-H Shooting Sports Instructor, Boy Scout Shooting Sports Instructor

TEXAS SHOOTING SPORTS COMPLEX

An Educational and Safety Training Facility

Learn – Practice - Compete

This is a proposal to establish the TEXAS SHOOTING SPORTS COMPLEX - A Multi-discipline Educational and Safety Training Facility (TXSSC) in Hays County. Requested is establishment of a long term lease arrangement of County land for the facility. The construction, maintenance, and operation of the Complex would be “budget neutral” to the County. While not a line item on the County budget the Complex would provide new or additional economic benefits to the County through the hosting of local, regional, state, and perhaps national shooting sporting competitions, as well as, corporate and fund raising events. The facility would be managed by our non-profit organization with support from associated shooting sports clubs and instructors, and would employ on site managers and grounds keepers for public access.

Our primary mission is to provide youth and adults with:

- Learning - defined as a change in knowledge, skills, and attitudes
- A safe location to receive shooting sports instruction and safety training,
- A central location to practice shooting sports safely,
- Opportunities to compete in shooting sports matches and special events,
- Youth and family activities Emphasize.

Inherent in the creation of this multi-use facility is also the goal of reducing the need or desire to shoot on private property with ill-prepared or non-existent target backstops and dedicated zones of safety.

Shooting sports encompass a whole range of activities as seen in Olympic competitions. Desirable program features should include facilities and ranges designed specifically for:

- Archery,
- Air rifle and pistol,
- Benchrest,
- Shotgun clay games
 - Skeet,
 - Trap,
 - 5 Stand,
 - Sporting clays;
- Target and silhouette,
 - Handgun,
 - Rifle,
 - Small bore
- Muzzleloaders, both antique and modern.

Classrooms may be reserved for regular club meetings and training, and the ranges for practice, and special events. Regular public range times will be set aside for general shooting sports practice and preparing for hunting seasons. While learning a shooting sports discipline one would expect to receive training, practice, and perhaps even compete

Educational programs and events would include:

- Range orientation and introductory courses,
- Public access to training on select ranges,
- New shooter basic courses,
- Specialty club ranges for training activities and events,
- Texas Hunter Education and Safety;
- Texas Parks & Wildlife meetings and training in various disciplines,
- Specific 4-H, Boy Scout, K-12 and Collegiate training and activities,
- Instructor and Range Safety Officer certification training,
- Starting of new clubs and shooting sports disciplines,
- Sanctioned matches and competitions in a variety of shooting sports,
- Youth scholarships for excellent discipline in shooting sports, and
- Supplemental training facilities for area law enforcement groups.

Operation of the educational Complex and ranges shall, at a minimum, require:

- Certified Shooting Sports Instructors and Range Safety Officers,
- Written Safety Operating Procedures and Range Rules,
- Posted boundaries, fencing with warnings signs; and,
- Sign-in liability waivers with affidavits of legal possession and use of a firearm,
- Mandatory range safety and orientation course.

Other rules, procedures and event guidelines shall be determined by the TXSSC Board of Directors with concurrence from the appropriate County officials.

Professional planning and design shall include protective shooting backstop berms, safety zones behind berms, covered firing lines, and classroom and meeting facilities with utilities, rest rooms, potable drinking water, picnic areas, walkways, parking, and storage. Facility design shall provide adequate access including ADA accommodation. The plan shall also address flexibility and the ease of conversion for dedicated ranges to be used by other disciplines when special events are planned, such as, training and competitions.

Construction, operation, and maintenance costs shall be born by TXSSC and the associated clubs through use fees, range and course fees, special events, and grants thereby relieving the County those burdens. Construction shall be to applicable codes and standards. A facility use survey shall be used to determine elements of the master plan and initial priorities and phases. Space will be reserved for various shooting sports disciplines and future build-out to the limits of the master plan. The expectation is that applications for range improvement grants by TXSSC and associated clubs will fund construction and

improvements, with perhaps matching funds, as many of these resources have been identified which are available for this purpose.

Land usage and environmental considerations are important to the placement of the Complex. An EPA "Best Practices for Range Management Plan" shall be part of the initial planning. Record keeping, periodic lead recovery, and the eventual clean up of the site are key components of this plan.

The potential locations that might be utilized for this purpose include gravel pits, land fills, or other remote properties that do not constitute a down range hazard. For longevity of operation this location must be out of obvious corridors of current and future planned development. The location must be large enough to ensure a safe down range beyond the berm and provide enough distance from other development to negate a noise nuisance.

This is a work in progress and subject to revision. Please fill out the [online survey](#) if you would like to use the Complex. And pass it on!

We support the SHOOT SAFE - HAYS COUNTY program.

Stephen Marlow, President
Texas Shooting Sports Complex
620 Marlow Lane
San Marcos, Texas 78666
s.l.marlow@centurytel.net
C: 512-393-1298
H: 512-353-8884

NRA Training Counselor, Chief Range Safety Officer, 4-H Shooting Sports Instructor, Boy Scout Shooting Sports Instructor

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and Possible action to authorize the County Judge to execute a 381 Economic Development agreement between Hays County and HEB Grocery Company "Project Munch"

CHECK ONE: ☐ **CONSENT** ☒ **ACTION** ☐ **EXECUTIVE SESSION**
☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Ingalsbe

SPONSORED BY: Ingalsbe

SUMMARY: This item was presented to the court last week in executive session. Special Counsel continues to work on the final agreement and will present in court. A copy has been provided which contains the same substantial and pertinent information the final agreement will have

***The City of San Marcos unanimously approved the agreement last Tuesday.**

***Amy Madison will present a very short PowerPoint Presentation.**

Recap:

- **HEB is requesting a 20-year Chapter 381 Economic Development Agreement that is performance-based**
- **The agreement provides 100% rebate of Real Property Tax for each of six planned expansions**
- **The project adds an additional 750,000 sq. ft., doubling the current size of their facility**
- **The project adds 320 new full-time jobs and retains 534 jobs for a total of 854 jobs**
- **Total taxable investment by HEB \$90.8 million**
- **Negotiations are ongoing to purchase 47 acres adjacent to the existing facility**
- **Although the City of SM has approve their agreement, HEB will wait on the County's decision to make a final determination.**

CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT

By and Between

CITY OF SAN MARCOS, TEXAS

and

HEB GROCERY COMPANY, L.P.

Effective as of _____, 2008

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (this "**Agreement**") is entered into to be effective as of the ____ day of _____, 2008 (the "**Effective Date**"), by and between **CITY OF SAN MARCOS, TEXAS** (the "**City**") and **HEB GROCERY COMPANY, L.P.**, a Texas limited partnership (the "**Developer**").

RECITALS

WHEREAS, the Developer currently owns and operates a distribution warehouse on an approximately 75.91-acre tract of land located at 2301 Hunter Road, San Marcos, Texas (the "**Existing Tract**"); and

WHEREAS, the Developer currently intends to acquire an additional approximately 47.50 acres of land located in San Marcos, Texas, adjacent to the Existing Tract (the "**New Tract**") (as more particularly described or depicted on Exhibit "A" hereto)

WHEREAS, the Developer currently intends to develop on the New Tract and the Existing Tract (the New Tract and the Existing Tract hereinafter collectively referred to as the "**Land**") up to an additional total of 750,000 square feet of distribution warehouse space in phases in one or more buildings during the Term (as "**Term**" is defined below) of this Agreement (each such additional warehouse building on the Land, a "**New Building**"); and

WHEREAS, operation of each New Building that is also a Qualified Improvement (as defined below) will retain and create new jobs and tax value, and will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the Developer has advised the City that a contributing factor that would induce the Developer to construct each New Building would be the making of an economic development grant to defray a portion of the overall costs to be incurred by the Developer as a consequence of constructing and operating the New Buildings during the Term of this Agreement; and

WHEREAS, under Chapter 380 of the Texas Local Government Code, the City has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the City; and

WHEREAS, the City and the Developer desire to set forth in this Agreement the terms and conditions of the grant to Developer of certain City funds as an incentive for Developer's operation of each Qualified Improvement on the Land (the "**Grant**"); and

WHEREAS, the parties recognize that all agreements of the parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules,

regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I PURPOSE AND INTERPRETATION

The Developer wants to develop the New Buildings in the City to supplement its existing warehouse distribution center operations in the City. Subject to the terms and conditions of this Agreement, Developer intends to create at least 320 new "**Jobs**" (as defined below) in the aggregate at the Land during the term of this Agreement. The City wants to grant to the Developer an amount equal to the taxes due and paid on the increased ad valorem tax value of each Qualified Improvement (as defined below) for a 10-year period per building during the Term of this Agreement as an incentive for the Developer's location of the New Buildings and the Jobs in the City.

ARTICLE II DEFINITIONS

SECTION 2.1. The City's payments of Real Property Taxes (as defined below) from the Tax Fund (as defined below) to the Developer during the Term of this Agreement are herein referred to as "**Grant Payments**".

SECTION 2.2. "**Job**" means a permanent, full-time employment position resulting from the addition of a New Building, hired directly or contracted through another entity, that provides health benefits and has provided or will result in employment of at least 1,820 hours in the position in a year. Any position providing less than the specified number of hours a year, regardless of the employer's designation of such position, does not qualify as a "**Job**" for purposes of this Agreement.

SECTION 2.3. "**Base Tax Year Value**" means the ad valorem tax value of the Land as established by the Hays County Tax Assessor-Collector's Office for calendar year 2009.

SECTION 2.4. "**Qualified Improvement**" means a New Building containing at least 50,000 square feet and costing at least \$2,000,000.00 to construct. Furthermore, a Qualified Improvement must continue operating, whether as a distribution warehouse or otherwise, during its 10-year payout period and for an additional five years thereafter, and if such operations do not continue during that 15-year period (subject, however, to any interruption for remodeling, repair, or an event of force majeure, which interruption shall

not count against this operation obligation), then 50 percent of the Grant Payments that have been made by the City to the Developer for that Qualified Improvement shall be returned by the Developer within sixty (60) days after the City's written demand for that return accompanied by reasonably satisfactory evidence that operations have ceased at the Qualified Improvement. The square footage of a New Building, and the Jobs created with regard to such New Building, that is not a Qualified Improvement will nevertheless be counted toward the overall square footage and Jobs goals of this Agreement.

SECTION 2.5. The City levies ad valorem taxes on real property, which taxes are billed and collected by the Hays County Tax Office (the "**Tax Office**"). The "**Real Property Taxes**" hereunder for any Qualified Improvement in any given year during the Term of this Agreement are the City's share of the ad valorem taxes received from the Tax Office on the value of that Qualified Improvement in excess of the ad valorem taxes received for the Land (or relevant portion thereof on which the Qualified Improvement is located) based on the Base Tax Year Value. Following their receipt by the City, and after appropriation by the City as provided in Section 4.2, an amount equal to the Real Property Taxes received for a Qualified Improvement during the 10-year period of the Grant Payment applicable to such Qualified Improvement (as further described below) shall be deposited into the Tax Fund (as defined below), with each Qualified Improvement having its own subaccount in that Tax Fund.

SECTION 2.6. The "**Term**" of this Agreement (hereinafter so called) shall commence on the Effective Date and extend until December 31, 2029, provided that to the extent that Real Property Taxes for 2029 are assessed and timely paid and received, the Term of this Agreement shall extend beyond December 31, 2029 for the purpose of completing the Grant Payments due under this Agreement for prior years. For each Qualified Improvement, the payout period of the Grant for that Qualified Improvement shall be the 10-year period beginning with the first full calendar year after the year in which the Qualified Improvement is completed and put into operation. If the Term of the Agreement ends before the 10-year payout period for any particular Qualified Improvement has expired, then the Grant Payments for that Qualified Improvement will end with the Term, provided, however, that if the Developer has developed at least 750,000 additional square feet of distribution warehouse space on the Land by the end of the Term, then the Developer may ask the City for an extension of the Term in order to receive the full amount of the Grant for any Qualified Improvement for which the 10-year payout period has not then expired, which extension of time may or may not be granted by the City, in its sole discretion.

ARTICLE III DEVELOPER'S OBLIGATIONS

SECTION 3.1. JOB CREATION. Developer shall create at least 320 Jobs, hire persons to fill such Jobs and keep such Jobs filled during the Term in substantial accordance with the schedule attached hereto as Exhibit "B". Developer will be deemed to have complied with this section if, at the end of any applicable phase as indicated in Exhibit "B", 80 percent of the Jobs for that phase and all preceding phases are filled.

SECTION 3.2. NEW BUILDING CONSTRUCTION. Developer shall pursue construction of all New Buildings and Qualified Building Improvements with commercially reasonable diligence and in substantial compliance with the schedule set forth in Exhibit "B". The square footage amounts for each phase stated in Exhibit "B" are projections. The Parties recognize that this is a long term agreement and that it may be necessary for Developer to vary the sequence and/or volume of construction of New Buildings from the projections stated in Exhibit "B" due to changes in market conditions. Developer, therefore, may construct more square footage of New Buildings during any phase than is stated in Exhibit "B", in which event such excess square footage shall be credited or applied to the square footage amounts stated for any subsequent phase. Moreover, given the uncertainty of estimating the exact square footage needs for New Buildings due to the long term nature of this Agreement, the City grants to Developer an allowance for reasonable deviation from the projected square footage amounts such that Developer will be deemed by the City to be in compliance with this section if, at the end of any applicable phase as indicated in Exhibit "B", 80 percent of the projected square footage of New Buildings and the taxable improvement value attributed to such New Buildings for that period and all preceding periods has been built and assessed.

ARTICLE IV PAYMENT OF GRANT

SECTION 4.1. CITY TO MAKE GRANT PAYMENTS. The City agrees to make Grant Payments to the Developer as provided below. The City's obligation to make Grant Payments to the Developer is limited in its entirety by the provisions of this Agreement, and the City has no obligation to make Grant Payments to Developer except as set forth in this Agreement.

SECTION 4.2. TAX FUND. Subject to the limitations set forth in Section 7.2 below, during the Term, the City will establish and/or maintain a separate fund at the City, including subaccounts if necessary, or a subaccount of any existing fund or account in the City treasury, into which an amount equivalent to the Real Property Taxes for the applicable year shall be deposited (the "*Tax Fund*"). Funds will be deposited into the Tax Fund only after both: (i) the Real Property Taxes are received by the City from the Tax Office for the applicable year and (ii) funds equivalent in value to the Real Property Taxes are appropriated therefor as part of the City's ordinary budget and appropriations approval process for the applicable year. The Tax Fund shall be maintained as a separate fund, shall not be part of the City's general revenue, and shall be used only for Grant Payments during the Term of this Agreement. The City may maintain or abolish the Tax Fund, in its sole discretion, after the Term of this Agreement has ended. Developer shall have no recourse against the City for failing to appropriate funds during any fiscal year to meet the purposes and obligations under this Agreement.

SECTION 4.3. TIME FOR MAKING PAYMENTS. During the Term (including any extension of the Term as described in Section 2.6), the City shall make Grant Payments to the Developer from the Tax Fund annually within ninety (90) calendar days after the

appropriation and subsequent deposit of funds equivalent in value to the Real Property Taxes into the Tax Fund for the applicable year as provided in Section 4.2.

SECTION 4.4. OFFSET. The City covenants and agrees that it will make all such payments without counterclaim or offset except to the extent, if any, that Developer has failed to pay ad valorem, sales or other taxes assessed and owed to or for the benefit of the City, or is in default of any provision of this Agreement (following notice and opportunity to cure as set forth herein).

ARTICLE V COVENANTS

SECTION 5.1. COVENANTS OF DEVELOPER. Developer shall comply with the following covenants.

SECTION 5.1.1. OPERATION OF FACILITY. During the Term of this Agreement, each Qualified Improvement shall be operated, maintained and managed by the Developer or any successor in a first class manner, consistent with the operation and management for other similar facilities, and in compliance with all applicable laws, including by obtaining and keeping in effect at all times all permits and licenses as may be necessary to meet the standard of operation described in this sentence. The foregoing shall not be construed to create an obligation of continuous operations during the term of this Agreement, subject, however, to the conditional 15-year operation obligation for Qualified Improvements as set forth in Section 2.4 of this Agreement.

SECTION 5.1.2. BUSINESS OF THE DEVELOPER. The Developer shall conduct all operations within each New Building in compliance with all federal and state laws, and City ordinances.

SECTION 5.1.3 COMPLIANCE WITH AGREEMENT; DEFAULT. At any time during the term of this Agreement that Developer is not in substantial compliance with this Agreement, the City may send Developer notice of such non-compliance. If such non-compliance is not either cured within sixty (60) days after Developer's receipt of such notice or, if non-compliance is not reasonably susceptible to cure within 60 days, a cure begun within such 60-day period and thereafter continuously and diligently pursued to completion (in either event, a "*Cure*"), then the City may, as its sole remedies hereunder, (i) cease making Grant Payments until such Cure occurs, and (ii) with regard to a Qualified Improvement that is not operated for 15 years as described in Section 2.4, demand return by the Developer of a portion of the Grant Payments made in connection with that Qualified Improvement as described in Section 2.4 of this Agreement. Upon a Cure by Developer, the Grant Payments shall automatically and immediately resume except any recapture amount shall be retained by the City and may be transferred by the City to any other account in the City treasury. Neither the Term nor the 10 year Grant Payment period applicable to any Qualified Improvement shall be extended

as a result of any cure period under this section.

SECTION 5.2. COVENANTS OF THE CITY. From the Effective Date of this Agreement until the end of the Term and subject to the annual appropriation of funds therefor as provided in Sections 4.2 and 7.2, the Tax Fund shall remain a separate, unencumbered fund or account containing only a sum of money equivalent to the Real Property Taxes for the payment of the Grant Payments for the applicable period.

SECTION 5.3 FURTHER ACTIONS. The City and the Developer will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions, provided that the City shall not be required to spend any money or have further obligations other than to reimburse the Developer pursuant to the terms of this Agreement.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

SECTION 6.1. REPRESENTATIONS AND WARRANTIES OF DEVELOPER. The Developer represents and warrants to the City, as of the Effective Date, as follows:

SECTION 6.1.1. ORGANIZATION. The Developer is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Texas and authorized to do business in the State of Texas. The business that Developer proposes to carry on at each New Building may lawfully be conducted by the Developer.

SECTION 6.1.2. AUTHORITY. The execution, delivery and performance by the Developer of this Agreement are within the Developer's powers and have been duly authorized by all necessary action of the Developer.

SECTION 6.1.3. NO CONFLICTS. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof will contravene the organizational documents of the Developer or, to Developer's actual knowledge, any provision of law, statute, rule or regulation to which the Developer is subject or any judgment, decree, license, order or permit applicable to the Developer, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the Developer pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the Developer is a party or, to the knowledge of the Developer, by which the Developer is bound, or to which the Developer is subject.

SECTION 6.1.4. NO CONSENTS. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution, delivery and performance by the delivery of this Agreement or the consummation of the transactions contemplated hereby or thereby.

SECTION 6.1.5. VALID AND BINDING OBLIGATION. This Agreement is the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

SECTION 6.1.6. NO PENDING LITIGATION. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of the Developer, threatened against or affecting the Developer or any subsidiaries of the Developer, questioning the validity or any action taken or to be taken by the Developer in connection with the execution, delivery and performance by the Developer of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the Developer hereof, wherein an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of the Developer to perform, its obligations under this Agreement or (ii) would have an adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of each New Building).

SECTION 6.1.7. NO DEFAULTS. The Developer is current in its obligation to pay taxes to the City, and is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which the Developer is a party or by which the Developer or any of its property is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement.

SECTION 6.1.8. FULL DISCLOSURE. Neither this Agreement nor any schedule or exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

SECTION 6.1.9. CITY OBLIGATION LIMITED. The Developer acknowledges that the City is not committed or obligated to pay any expenditure incurred with respect to the operation of any New Building, and is only obligated to make Grant Payments as set forth in this Agreement.

SECTION 6.2. REPRESENTATION AND WARRANTIES OF THE CITY. The City represents and warrants to the Developer as of the Effective Date as follows:

SECTION 6.2.1. AUTHORITY. The execution, delivery and performance by the City of this Agreement are within its powers and have been duly authorized by all necessary action.

SECTION 6.2.2. NO CONFLICTS. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated nor compliance with the terms and provisions hereof will, to the City's actual knowledge, contravene any applicable provision of law, statute, ordinance, rule or regulation to which the City is subject or any judgment, decree, license, order or permit applicable to the City.

SECTION 6.2.3. VALID AND BINDING OBLIGATION. This Agreement is the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, or other state laws, as in effect from time to time.

SECTION 6.2.4. NO PENDING LITIGATION. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of the City, threatened against or affecting the City, threatened against or affecting the City, questioning the validity of any proceedings taken or to be taken by the City in connection with the execution, delivery and performance by the City of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the City hereof, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of, or the authority or ability of the City to perform its obligations under this Agreement.

ARTICLE VII PERSONAL LIABILITY OF PUBLIC OFFICIALS; LIMITATIONS ON CITY OBLIGATIONS

SECTION 7.1. PERSONAL LIABILITY OF PUBLIC OFFICIALS. No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.

SECTION 7.2. LIMITATIONS ON CITY OBLIGATIONS. The Grant Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been appropriated each year during the Term by the City as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or

statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant Payments or other payments unless the City appropriates funds to make such payments during the City's fiscal year in which such Grant Payment(s) or other payments are payable and upon timely compliance by the Developer with the terms of this Agreement. If the City fails to appropriate funds for Grant Payments under this Agreement during any fiscal year of the City during the term of this Agreement, the Developer, at its option, may terminate this Agreement by providing written notice thereof to the City. If the Developer elects to terminate the Agreement under this section, Developer and the City shall each be released of all further obligations under this Agreement, except that the City shall pay to the Developer any outstanding and unpaid Grant Payments properly due to the Developer prior to the date of termination for which the City has appropriated funds during any previous fiscal year.

ARTICLE VIII INFORMATION

The Developer shall, at such times and in such form as City may request from the Developer, provide information concerning the status of the performance of the Developer's obligations under this Agreement, including as follows:

SECTION 8.1. ANNUAL REPORTS RELATED TO CONSTRUCTION, JOBS, AND COMPLIANCE WITH AGREEMENT. During the term of this Agreement, the Developer shall submit annual reports in substantially the form attached as exhibit "C", signed by an officer or appointed agent of the Developer, to the City that state, as of a date certain, the total number of square feet of New Buildings (including, separately, Qualified Improvements) constructed in the prior year and cumulatively since the Effective Date and the tax assessed value and Real Estate Taxes attributable thereto, the total number of Jobs created at the Land in the prior year and cumulatively since the Effective Date, and certifying as to full compliance with Developer's obligations hereunder, including with respect to compliance with applicable laws. Upon receipt of any such certificate, the City shall have sixty (60) calendar days to notify the Developer in writing of any questions that the City may have with any of the information provided by the Developer, and the Developer shall diligently work in good faith to respond to such questions to the City's reasonable satisfaction. The Developer and the City Manager may agree in writing to variations in the form attached as Exhibit "C" provided the information in this section required to be reported is reported and certified by the Developer in writing to the City.

SECTION 8.2. REVIEW OF DEVELOPER RECORDS. The Developer agrees that the City will have the right to review the business records of the Developer that relate solely and specifically to the square footage of New Buildings, Jobs, and Developer's compliance with the terms of this Agreement at any reasonable time and upon at least three (3) days' prior notice to the Developer in order to determine compliance with this Agreement. To the extent reasonably possible, the Developer shall make all such records

available in electronic form or otherwise available to be accessed through the internet (provided that such internet access may be secured with password access made available to the City).

ARTICLE IX MISCELLANEOUS

SECTION 9.1. ENTIRE AGREEMENT. This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

SECTION 9.2. AMENDMENT. This Agreement may only be amended, altered, or terminated by written instrument signed by all parties.

SECTION 9.3. SUCCESSORS AND ASSIGNS. In this Agreement, unless a clear contrary intention appears, reference to any party includes such party's successors and assigns, and reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. Developer may assign this Agreement to any Affiliate (as defined herein) of Developer. For purposes of this Agreement, "*Affiliate*" means any person, entity or group of persons or entities that controls the Developer, which the Developer controls or which is under common control with the Developer. Except as just stated, this Agreement is not assignable without the prior written permission of the other parties thereto.

SECTION 9.4. WAIVER. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

SECTION 9.5. REMEDIES. Upon breach of any obligation under this Agreement, including any of the requirements of Article III or the covenants contained in Article V or the representations and warranties contained in Article VI, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages. Notwithstanding the foregoing, the City, in entering this Agreement does not waive its immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas.

SECTION 9.6. NOTICES. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the addresses of the

parties set forth below, or at such other address furnished in writing to the other parties thereto:

DEVELOPER:

HEB Grocery Company, L.P.
6464 South Main
San Antonio, Texas 78204
Attn: Vice President of Real Estate
Telephone: (210) 938-8000
Facsimile: (210) 938-7633

With a copy to:

HEB Grocery Company, L.P.
6464 South Main
San Antonio, Texas 78204
Attn: Legal Department
Telephone: (210) 938-8000
Facsimile: (210) 938-7816

CITY:

City of San Marcos
630 E. Hopkins, San Marcos
Texas 78666
Attn: City Manager
Telephone: (512) 393-8101
Facsimile: (512) 396-4656

SECTION 9.7. APPLICABLE LAW. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue shall lie in State courts located in Hays County, Texas.

SECTION 9.8. SEVERABILITY. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

SECTION 9.9. NO THIRD-PARTY BENEFICIARIES. The City and the Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and the Developer or permitted assignees of the City and Developer, except that the indemnification and hold harmless obligations by the Developer provided for in Section 9.13 of this Agreement shall inure to the benefit of the indemnitees named therein.

SECTION 9.10. NO JOINT VENTURE. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any

implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION 9.11. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

SECTION 9.12. FORCE MAJEURE. Means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

SECTION 9.13. INDEMNIFICATION. The payment of all indebtedness and obligations incurred by the Developer in connection with the development, construction and operation of each New Building shall be solely the obligation of the Developer. The City shall not be obligated to pay any indebtedness or obligations of the Developer. Developer hereby agrees to indemnify and hold the City, and the City's elected officials and employees, harmless from and against (i) any indebtedness or obligations of the Developer regarding each New Building or its location, including the operation of each New Building, or any other obligation of Developer other than the City's obligation to make Grant Payments as expressly provided herein, and (ii) breach of any representation, warranty, covenant or agreement of the Developer contained in this Agreement, without regard to any notice or cure provisions. The Developer's indemnification obligation hereunder shall include payment of the City's attorneys' fees, costs and expenses with respect thereto.

EXECUTED to be effective as of the Effective Date.

SIGNATURES APPEAR ON FOLLOWING PAGE


CITY OF SAN MARCOS, TEXAS

By: Rick Menchaca, City Manager

ATTEST:

Sherry Mashburn, City Clerk

HEB GROCERY COMPANY, L.P.

By: 
Todd A. Piland, Executive Vice President

M. Nims

Exhibit "A"
Land Legal Description and Map
(Following Pages)

**Exhibit A:
Legal Description**

Existing Property – 75.91 acres:

All that certain tract or parcel of land, lying and being situated in Hays County, Texas, and being Lot One (1), San Marcos Distribution Center, according to the map or plat thereof of record in Volume 2, page 272, Plat Records of Hays County, Texas.

**Planned Acquisition 2 – 47.5 acres:
Located on Hunter Road.**

Approximate 47.5 acres; legal description is being prepared by the Seller

EXHIBIT A-1:
Map of Project



EXHIBIT "B"
Schedule of New Building Construction and Job Creation
(Following Page)

New Building Construction and Jobs by Phase

New Building Square Footage and Job Position Titles by Phase	Jobs by Position	Avg. Rate	Annual Wages	Wages + Benefits (@ +35%)	Wage + Benefits, hourly	Total Payroll	Total Jobs, Running Total	Total Payroll, Running Total
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CURRENT	(reflects employees w/ various years of service)							
Management	8	\$31.25	\$65,000	\$87,750	\$42.19	\$702,000		
Supervisor	17	\$23.27	\$48,400	\$65,340	\$31.41	\$1,110,780		
Administrative	4	\$14.53	\$30,212	\$40,786	\$19.61	\$163,145		
Distribution Partner III	8	\$14.53	\$30,212	\$40,786	\$19.61	\$326,290		
Distribution Partner II	476	\$13.95	\$29,016	\$39,172	\$18.83	\$18,645,682		
Distribution Partner I	21	\$11.75	\$24,440	\$32,994	\$15.86	\$692,874		
Totals:	534					\$21,640,770	534	\$21,640,770

PHASE I 125,000 sq ft (2010)	(all new Phases reflect new employees w/ no years of service)							
Management	1	\$35.56	\$73,965	\$99,852	\$48.01	\$99,852		
Supervisor	1	\$28.34	\$58,947	\$79,579	\$38.26	\$79,579		
Administrative	1	\$11.95	\$24,856	\$33,556	\$16.13	\$33,556		
Distribution Partner III	1	\$14.60	\$30,368	\$40,997	\$19.71	\$40,997		
Distribution Partner II	29	\$13.85	\$28,808	\$38,891	\$18.70	\$1,127,833		
Distribution Partner I	4	\$11.95	\$24,856	\$33,556	\$16.13	\$134,222		
Totals: 125,000 sf	37					\$1,516,039	571	\$23,156,809

PHASE II 80,000 sq ft (2011)								
Management	1	\$36.96	\$76,877	\$103,784	\$49.90	\$103,784		
Supervisor	1	\$29.74	\$61,859	\$83,510	\$40.15	\$83,510		
Administrative	1	\$13.35	\$27,768	\$37,487	\$18.02	\$37,487		
Distribution Partner III	1	\$16.00	\$33,280	\$44,928	\$21.60	\$44,928		
Distribution Partner II	28	\$15.25	\$31,720	\$42,822	\$20.59	\$1,199,016		
Distribution Partner I	4	\$13.35	\$27,768	\$37,487	\$18.02	\$149,947		
Totals: 80,000 sf	36					\$1,618,672	607	\$24,775,481

PHASE III 90,000 sq ft (2013)								
Management	1	\$38.36	\$79,789	\$107,715	\$51.79	\$107,715		
Supervisor	1	\$31.14	\$64,771	\$87,441	\$42.04	\$87,441		
Administrative	1	\$14.75	\$30,680	\$41,418	\$19.91	\$41,418		
Distribution Partner III	1	\$17.40	\$36,192	\$48,859	\$23.49	\$48,859		
Distribution Partner II	32	\$16.65	\$34,632	\$46,753	\$22.48	\$1,496,102		
Distribution Partner I	5	\$14.75	\$30,680	\$41,418	\$19.91	\$207,090		
Totals: 90,000 sf	41					\$1,988,626	648	\$26,764,106

PHASE IV 95,000 sq ft (2013)								
Management	1	\$39.41	\$81,973	\$110,663	\$53.20	\$110,663		
Supervisor	1	\$32.19	\$66,955	\$90,390	\$43.46	\$90,390		
Administrative	1	\$15.80	\$32,864	\$44,366	\$21.33	\$44,366		
Distribution Partner III	1	\$18.45	\$38,376	\$51,808	\$24.91	\$51,808		
Distribution Partner II	34	\$17.70	\$36,816	\$49,702	\$23.90	\$1,689,854		
Distribution Partner I	5	\$15.80	\$32,864	\$44,366	\$21.33	\$221,832		
Totals: 95,000 sf	43					\$2,208,913	691	\$28,973,020

PHASE V 175,000 sq ft (2021)								
Management	1	\$40.46	\$84,157	\$113,612	\$54.62	\$113,612		
Supervisor	1	\$33.24	\$69,139	\$93,338	\$44.87	\$93,338		
Administrative	1	\$16.85	\$35,048	\$47,315	\$22.75	\$47,315		
Distribution Partner III	1	\$19.50	\$40,560	\$54,756	\$26.33	\$54,756		
Distribution Partner II	70	\$18.75	\$39,000	\$52,650	\$25.31	\$3,685,500		
Distribution Partner I	17	\$16.85	\$35,048	\$47,315	\$22.75	\$804,352		
Totals: 175,000 sf	91					\$4,798,872	782	\$33,771,892

PHASE VI 185,000 sq ft (2028)								
Management	1	\$41.86	\$87,069	\$117,543	\$56.51	\$117,543		
Supervisor	1	\$34.64	\$72,051	\$97,269	\$46.76	\$97,269		
Administrative	1	\$18.25	\$37,960	\$51,246	\$24.64	\$51,246		
Distribution Partner III	1	\$20.90	\$43,472	\$58,687	\$28.22	\$58,687		
Distribution Partner II	60	\$20.15	\$41,912	\$56,581	\$27.20	\$3,394,872		
Distribution Partner I	8	\$18.25	\$37,960	\$51,246	\$24.64	\$409,968		
Totals: 185,000 sf	72					\$4,129,585	854	\$37,901,477

Overall increase in jobs & payroll from project:							320	\$16,260,707
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EXHIBIT "C"
Form of Annual Report to be Submitted by Developer
(Following Page)

ANNUAL COMPLIANCE REPORT OF CONSTRUCTION, JOBS AND TAXES

From: HEB Grocery Company, L.P.
646 South Main
San Antonio, Texas 78204

To: City of San Marcos
630 E. Hopkins
San Marcos Texas 78666
Attn: City Manager

Report to be completed and returned by March 1st of each reporting year.

REPORT DATE: _____

Reporting period _____ to _____

AMOUNT OF TAXES TO BE GRANTED BACK TO HEB (per attached calculation page):



Real Property Improvements		Area (sq ft)	Assessment	Taxes
1	Current Year Reporting Totals			
	New impts ¹			
	Qualified impts ²			
2	Prior years Reporting Totals			
3	Totals (add 1 + 2)			

Jobs Created ³		Job Creation
<u>Current Year</u>		
4	New Impts ¹	
5	Qualified Impts ²	
6	Jobs created this Period (4 + 5)	
<u>Prior Years</u>		
7	Jobs created in Prior Years	
8	Total Jobs from Agreement to current year	

I, _____ certify the information provided on this form is correct and that the Company has complied with all terms and conditions of the Economic Development Agreement.

Signed	_____	Date	_____
Title	_____	Telephone	_____
Email	_____	Fax	_____

¹ New impts: taxable real property constructed during the reporting period but below Qualified Impt minimum requirements

² Qualified impts: taxable real property constructed during the year, minimum area of 50,000sf and \$2,000,000 cost

³ Jobs: full-time employment positions (section 2.2)

ANNUAL COMPLIANCE REPORT CALCULATION

REPORT DATE: _____

TAX YEAR: _____

New Building Square Footage and Job Position Titles by Phase	PROJECTED	Compliance Rate	Compliance Value (B * C)	ACTUAL	Compliant "Yes" or "No"	Remarks
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PHASE #:						
Hays CAD Account #						
Building Area		80%	0			
Jobs Projection		80%	0			
Assessed Value		80%	\$0			
City Taxes Paid Per Phase				\$0		

PHASE #:						
Hays CAD Account #						
Building Area		80%	0			
Jobs Projection		80%	0			
Assessed Value		80%	\$0			
City Taxes Paid Per Phase				\$0		

PHASE #:						
Hays CAD Account #						
Building Area		80%	0			
Jobs Projection		80%	0			
Assessed Value		80%	\$0			
City Taxes Paid Per Phase				\$0		

PHASE #:						
Hays CAD Account #						
Building Area		80%	0			
Jobs Projection		80%	0			
Assessed Value		80%	\$0			
City Taxes Paid Per Phase				\$0		

Total Grant Payment	\$0
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SUMMARY OF HEB 380 AGREEMENT

▪ HEB Obligations

- HEB to build 750,000 square feet of new building space from 2010 through 2029
- HEB to create 320 new jobs over the term. Jobs must be:
 - Full-time (1,820 hours per year) with periodic escalation in wage rates
 - Permanent
 - With health benefits
- Compliance requires that 80% of new positions be filled or new buildings built as of the end of any applicable period

▪ City Obligation

- 100% refund to HEB of increased tax revenues over 2009 base year attributed to new buildings over 50,000 square feet and costing at least \$2,000,000 (“Qualified Improvements”)
 - Refund continues as to each Qualified Improvement for 10 years from completion or the end of calendar year 2029, whichever is sooner
 - Refund period may be extended beyond 2029 for Qualified Improvements built with less than 10 years remaining in the term with the consent of City

▪ Termination

- City may terminate agreement for failure to build new buildings or create new jobs in substantial compliance with proposed schedule after providing 60 day notice to cure
- HEB to refund 50% of any incentives paid for a Qualified Improvement that does not continue its warehouse operations for 15 years

▪ Subject to Annual Appropriations

- Annual obligation to pay incentive is subject to appropriation of funds each fiscal year
- If future councils fail to approve such a budget and appropriate in any fiscal year, the City is not obligated to pay any sums to HEB
- *HEB shall have no recourse against the City for non-appropriation of funds*

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Discussion and possible action to authorize County Judge and Special Counsel to execute interlocal agreement with Texas Parks and Wildlife for karst study grant and to negotiate a service contract with Zara Environmental LLC to fulfill the scope of services set forth in the Interlocal Agreement.

TYPE OF ITEM: CONSENT-ACTION-PROCLAMATION-EXECUTIVE SESSION-WORKSHOP

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED:

LINE ITEM NUMBER OF FUNDS REQUIRED:

REQUESTED BY: Ford/Hauff

SPONSORED BY: Ford

SUMMARY:

While the Court accepted the Texas Parks and Wildlife Department grant on 12/16/08, we did not clearly and directly authorize approval of the Interlocal (please refer to backup in 12/16 packet). You will note that Attachment A to the Interlocal states that Zara Environmental will be our project partner and will actually provide the team to do the work. We are hoping to move forward with Zara so that the interlocal agreement does not have to be amended. Also important to note that, in the region, Zara Environmental has superior qualifications for this type of work and is a Hays County business as well (Buda).

Agenda Item Request Form

Hays County Commissioners' Court

9:00 a.m. Every Tuesday

Request forms are due in the County Judge's Office

no later than **2:00 p.m.** on **WEDNESDAY.**

Phone (512) 393-2205 Fax (512) 393-2282

AGENDA ITEM: Presentation with Discussion and Possible action to partner with the City of San Marcos on a Comprehensive Economic Development Plan

CHECK ONE: ☐ **CONSENT** ☒ **ACTION** ☐ **EXECUTIVE SESSION**
☐ **WORKSHOP** ☐ **PROCLAMATION** ☐ **PRESENTATION**

PREFERRED MEETING DATE REQUESTED: December 23, 2008

AMOUNT REQUIRED: \$25,000

LINE ITEM NUMBER OF FUNDS REQUIRED: 01-414-5399 contingencies

REQUESTED BY: Ingalsbe/Conley

SPONSORED BY: Ingalsbe/Conley

SUMMARY: For some time now, the county has been considering a plan such as this. Although ideally we have talked about a county-wide plan, we have an opportunity to partner, not only with the City of San Marcos, but with CTMC, Texas State, the Economic Development San Marcos Board, the SM Chamber of Commerce and others on a Greater San Marcos E. D. Plan, where we have steadily seen a significant amount of development occur and many more being proposed.

Amy Madison, Economic Developer Director, will be in court to make this presentation.

MEMORANDUM

TO: DEBBIE INGALSBE, COMMISSIONER PLACE 1, HAYS COUNTY COMMISSIONERS COURT
FROM: AMY MADISON, DIRECTOR, ECONOMIC DEVELOPMENT SAN MARCOS (EDSM)
SUBJECT: COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIC PLAN
DATE: 12/3/2008
CC: PHYLLIS SNODGRASS, SAN MARCOS CHAMBER OF COMMERCE PRESIDENT

REQUEST FOR APPROVAL

The Economic Development Board of San Marcos (EDSM) is coordinating an effort to create the first comprehensive strategic plan for economic development in the greater San Marcos area. The plan is estimated to cost between \$125,000 and \$150,000 over a six month period beginning in January and ending in late summer. Our plan will meet or exceed the minimum standards for an Economic Development Administration (EDA) Regional Comprehensive Economic Development Strategy (CEDS). Attached please find the request for proposal specifications that are being circulated nationally among economic development professional consultants.

The City of San Marcos has agreed to fund this effort, but we are actively seeking stakeholders to participate financially in the plan. Our desire is to fund the entire plan – as equal stakeholders – to insure maximum involvement in developing the best coordinated plan possible. We are asking for a \$25,000 commitment from each stakeholder. Please note that the City of San Marcos will fund the plan in January, but stakeholders are afforded up to 12-months to provide their contribution. Stakeholders targeted by EDSM and their current involvement are as follows:

PARTNERS FOR PROGRESS

EDSM Board	\$24,000 – Paid in full
City of San Marcos	\$25,000 – Paid in full
San Marcos Chamber of Commerce	\$24,000 – In-kind staffing to support the plan
Central Texas Medical Center	\$25,000 – two payments Dec / Feb
Gary Job Corps	Pending – meeting scheduled in Dec
Texas State University	Pending – meeting scheduled in Nov
San Marcos Independent School District	Pending
Hays County	Pending

Proposal Specifications

Community Assessment: Analyze strengths, weaknesses, opportunities and constraints of the local and regional economy. The review will include social, demographic, economic and physical factors, including, but not limited to, the following:

- a) Existing and planned infrastructure;
- b) Residential housing growth and development;
- c) Existing economic base and competitive advantages;
- d) Local land and building availability;
- e) Locations for commercial and industrial growth;
- f) Regional competition and competitive assets;
- g) Special initiatives for economic growth; and
- h) Comparative analysis of benchmark communities.

Workforce and Educational Institution Analysis: The Proponent will provide a workforce and educational institution analysis to include:

- a) Evaluation of local and regional labor characteristics, market trends, employment development resources, and workforce training opportunities;
- b) Assessment of the fit between resources, business attraction targets and existing employment base;
- c) Identification of general training needed to improve the skills of the local workforce to meet existing and potential employment needs;
- d) Research of growth plans for regional educational institutions and vocational programs and the provision of strategies for ways to include graduates and non-graduates in the local workforce;
- e) Recommendation of actions to strengthen linkages to employment development providers; and
- f) Exploration of opportunities for leveraging local resources including school, community college, technical school and state university programs.

Cluster, Location Quotient, and Target Industry Analysis: The Proponent will provide a Cluster, Location Quotient, and Target Industry Analysis to include identification of:

- a) Specific industries and business types that consider Strength, Weakness, Opportunities and Threats ("SWOT") constraints;
- b) Needed improvements and actions that will accelerate attraction of such development; and
- c) State and federal programs or other programs that will be developed or implemented including, but not limited to, entrepreneurial development, business incubation and strategies for any special new industries (i.e. Nano-tech, biotech, clean energy).

Incentive Program: The Proponent will provide an Incentive Program to include:

- a) Identification incentives currently used in targeting preferred industries and businesses and make recommendations for policy changes; and
- b) Review of current incentives policy with regional competitors and suggestions for policy changes.

Business and Industrial Park Strategies: The Proponent will provide Business and Industrial Park Strategies to include:

- a) Identification of strategies for marketing existing and planned industrial parks;
- b) Identification of potential future needs for business and industrial park locations; and
- c) Review of the San Marcos Municipal Airport and contiguous properties for development.

Existing Business Development: The Proponent will provide Existing Business Development to include:

- a) Analysis of existing business retention and expansion activities;
- b) Identification of programs and services to assist and retain existing business; and
- c) Review of downtown master plan and for coordination into the Plan.

Tourism Strategies: The Proponent will provide Tourism Strategies to include:

- a) Analysis of existing tourism-related events and attractions; and
- b) Provision of strategies to promote San Marcos as a convention and tourism destination.

Marketing Strategies: The Proponent will provide Marketing Strategies to include:

- a) Review of current marketing efforts with regional partners and suggested recommendations;
- b) Provision of promotional themes and marketing activities to attract targeted industries and tourism; and
- c) Review of the City's webpage and suggested improvements.

Operational Strategy: The Proponent will provide Operational Strategy to include:

- a) Analysis of existing economic development organizations locally, regionally and statewide;
- b) Review of existing organizational structure for economic development in San Marcos;
- c) Identification of strategies for funding economic development in San Marcos; and
- d) Identification of related staffing and funding to support the following implementation plan.

Implementation Plan: The Proponent will provide an Implementation Plan to include:

- a) Incorporation of strategies into a 4-year economic development implementation plan;
- b) Provision of immediate course of action and a quarterly plan for year one that includes benchmarks, needed resources and timelines;
- c) Provision of short-term and long-term goals and achievable milestones to facilitate program creation; and
- d) Provision of budget and implementation schedule for programs.

Community Involvement: A well thought-out community involvement process, facilitated by the successful proponent, is an essential part of the Plan. The successful proponent will conduct focus groups and interview interviews with the following:

- a) City staff, government elected/appointed officials;
- b) Ad hoc committees;
- c) Stakeholder groups;

- d) Citizens and landowners;
- e) Current business owners including developers and realtors;
- f) Chamber of commerce members;
- g) Education leaders (K-12, higher education).

Meetings: The Proponent will conduct meetings as follows:

- a) Initial staff meetings for organizational, technical and substantive issues;
- b) Initial meetings with community representatives to discuss issues of concern;
- c) Ongoing review and discussion of drafts with City staff;
- d) Workshop meetings with Strategic Plan Steering Committee to review issues and obtain general direction;
- e) Present draft plan components to Strategic Plan Steering Committee; and
- f) Present draft plan at public meetings.

Request for Proposal

COMPREHENSIVE ECONOMIC DEVELOPMENT PLAN

SAN MARCOS, TEXAS

Project: Comprehensive Economic Development Plan

Submit Proposal To: Purchasing Office
Attention: Cheryl Pantermuehl
City of San Marcos
630 E. Hopkins
San Marcos, TX 78666

Communications: 512.393.8175

Proposals Due: 11 A.M. Friday, December 4, 2008

Proposal Information

The City of San Marcos, along with support from the Economic Development San Marcos Board, is requesting proposals from qualified firms and individuals for a Comprehensive Economic Development Plan. The City of San Marcos desires professional assistance to draft and formulate a modernized plan to guide the City in business and industry attraction and to help guide growth that will enhance our quality of life. The effort includes, but is not limited to, meetings, presentations and community events with various officials and citizens; identifying strengths, weaknesses, opportunities and challenges; identifying target industries and potential development areas; reviewing existing research, city and stakeholder master plans, regional strategic plans, and existing relevant programs; preparing and presenting the final report to include recommendations to attract targeted industries through collaboration and marketing; and to identify the best way to organize, fund and operate a superior city-wide economic development program.

City of San Marcos Background Information

The City of San Marcos is centrally located 26 miles south of Austin and 45 miles north of San Antonio in Hays County, Texas on Interstate 35 and is the oldest continuously inhabited area in the United States due to the natural resource of the San Marcos Springs and River. San Marcos is both the county seat and the largest city in the county with 29 square miles in city, and 160 miles in ETJ that extends into three additional counties: Caldwell, Comal, and Guadalupe. The city is home to over 50,000 residents or 35 percent of the county's total population, but the San Marcos 50-mile metro area expands workforce opportunities to over 3 million people. San Marcos aggregate unemployment rate for 2007 was 3.4%, indicating strong job growth from existing and expanding private and public entities.

Regionally, San Marcos companies employ nearly 100% of the turbine and power transmission equipment manufacturing, 2/3rds of the aerospace product and parts manufacturing, and more than 1/3rd of the warehousing and storage industry. Emerging industries include logistics and information technology, which grew by over 60% between 2002 and 2007. The largest private employer, Texas State University-

San Marcos, is the sixth largest public university in the state and offers 114 undergraduate degrees, 81 master's programs, and 5 doctoral degrees. Texas State graduates nearly 5,000 annually, including more than 400 graduates in the fields of science, technology, engineering, and math. Texas State University and industry research in advanced manufacturing, life sciences and information technology resulted in 57 patents registered with the federal government since 1996.

Tourism and retail growth are also major components in the local economy. In 2007, total gross sales in the retail industry exceeded \$1.2 billion. The city is home to 462 retail businesses and the industry employs approximately 4,500 to serve the 11+ million tourists that shop at the San Marcos Outlet Mall. With over 1.5 million square feet of retail space, the outlet mall is the largest in the country, and the third most visited tourist destination in Texas. In October, the city opened a new 77,300 square foot conference center, flanked by a 281-unit Embassy Suite Hotel.

Natural resources provide eco-tourism opportunities. San Marcos has 11,091 acres of parkland, giving it the distinction of the most parkland per capita in the region. Spring Lake Preserve, a collaborative purchase by the City of San Marcos, Hays County, Texas State University, and the Nature Conservancy set aside 251 acres above Spring Lake for green space and wildlife habitat. Rio Vista Falls, a newly renovated 100-year-old dam at Rio Vista Park, offers tubing or kayaking, and Aquarena Center showcases unique plant and animal species, historical sites, and wetlands walkways that attract residents and tourists.

SCOPE OF SERVICE

The expected deliverable of this Comprehensive Economic Development Plan is a document that includes, at a minimum, all of the terms listed below, along with any accompanying data, maps, drawings, materials or other useful supplemental documentation in all media formats. The plan should meet or exceed the minimum standards for an Economic Development Administration (EDA) funded Comprehensive Economic Development Strategy (CEDS). Due to our location between two major metropolitan areas, all references to "Regional" denote both Austin and San Antonio MSAs.

Community Assessment

Analyze strengths, weaknesses, opportunities and constraints as they relate to the local and regional economy. The review should include social, demographic, economic and physical factors, including, but not limited to, the following:

- Existing and planned infrastructure
- Residential housing growth and development
- Existing economic base and competitive advantages
- Local land and building availability
- Locations for commercial and industrial growth
- Regional competition and competitive assets
- Special initiatives for economic growth
- Comparative analysis of benchmark communities

Workforce and Educational Institution Analysis

- Evaluate local and regional labor characteristics, market trends, employment development resources, and workforce training opportunities
- Assess fit between resources, business attraction targets and existing employment base

- Identify general training needed to improve the skills of the local workforce to meet existing and potential employment needs
- Research growth plans of regional educational institutions and vocational programs and provide strategies for ways to incorporate graduates and dropouts in the local workforce.
- Recommend actions to strengthen linkages to employment development providers.
- Explore opportunities to leverage other local resources including school, community college, technical school and state university programs.

Cluster, Location Quotient, and Target Industry Analysis

- Identify specific industries and business types that consider SWOT constraints
- Identify needed improvements and actions that accelerate attraction of such development
- Include all state and federal programs or other programs that should be developed or implemented including, but not limited to, entrepreneurial development, business incubation and strategies for any special new industries (i.e. Nano-tech, biotech, clean energy)

Incentive Program

- Identify incentives currently used to assist in targeting preferred industries and businesses and make recommendations for policy changes
- Review current incentives policy with regional competitors and suggest policy changes

Business and Industrial Park Strategies

- Identify strategies for marketing existing and planned industrial parks
- Identify potential future needs for business and industrial park locations
- Review San Marcos Municipal Airport and contiguous properties for development

Existing Business Development

- Analyze existing business retention and expansion activities
- Identify programs and services to assist and retain existing business
- Review downtown master plan and coordinate into economic development plan

Tourism Strategies

- Analyze existing tourism-related events and attractions
- Provide strategies to promote the City of San Marcos as a convention and tourism destination

Marketing Strategies

- Review current marketing efforts with regional partners and make recommendations
- Provide promotional themes and marketing activities to attract targeted industries and tourism
- Review Webpage and suggest needed improvements

Operational Strategy

- Analyze existing economic development organizations locally, regionally and statewide
- Review existing organizational structure for economic development in San Marcos

- Identify strategies for funding economic development in the City of San Marcos
- Identify related staffing and funding to support implementation plan

Implementation Plan

- Incorporate all strategies into a 4-year economic development implementation plan
- Provide immediate course of action and a quarterly plan for year one that includes benchmarks, needed resources and timelines
- Provide short-term and long-term goals and achievable milestones to facilitate program creation
- Provide budget and implementation schedule for programs

Process and Product Delivery

Meetings, Hearings and Community Involvement

A participatory and multi-disciplinary approach is required. A well thought-out citizen involvement process, facilitated by the Consultant, is an essential part of this project. Focus groups, interviews and meetings should include, but not be limited to, the following:

- Staff, elected/appointed officials
- Ad hoc committees
- Stakeholder groups
- Citizens and other interested persons
- Current business owners
- Chamber of commerce members
- Developers, realtors and landowners
- Education leaders (K-12, higher education)

The consultant shall hold meetings relating to staff and public participation to include the following:

- Initial staff meetings for organizational, technical and substantive issues
- Initial meetings with community representatives to discuss issues of concern
- Ongoing review and discussion of drafts with City staff
- Workshop meetings with Strategic Plan Steering Committee to review issues and obtain general direction
- Present draft plan components to Strategic Plan Steering Committee
- Present draft plan at public hearings

Document Format

The Comprehensive Economic development Plan is to be provided in electronic format acceptable to the City (i.e. .DOC, .PDF). The draft and final documents shall be delivered in both hard copy and electronic formats that are web-ready. All maps shall be created in GIS, and all maps and supporting documentation must be maintainable using current San Marcos software programs. All final map files shall be presented in digital format on a CD.

Submittal Requirements

Proposals must contain a concise presentation of sufficient length to be complete. Brevity is appreciated when possible. The City of San Marcos welcomes the use of partnerships and

subcontracting for this project. All documents and attachments should be contained in a presentation folder or binder no larger than 8-1/2" by 11". No submittals via email or fax will be accepted.

- I. Cover Letter – A cover letter with company name, address, phone number, project contact and principal signature is required, expressing interest in the project and certifying that sufficient resources in personnel, equipment, and time are available and can be committed to this project.
- II. Work Plan – Explain the work plan with detailed specific tasks as noted in Scope of Service and Products of this RFP. Note all tasks and the responsible parties including the City of San Marcos and sub-consultants.
- III. Project Schedule – Provide a project schedule showing key task target dates (including community meetings, steering Committee meetings and staff team meetings) and estimated task duration.
- IV. Products – All products as noted in the Scope of Services and Products are to be submitted to the City in all formats requested.
- V. Project Team – Provide a resume for the Principle of the Firm along with a resume for the Project Manager. Provide primary contact, names and titles of employees and all sub-consultant team members who will participate and a brief background on professional work and areas of expertise.
- VI. Relevant Experience – List projects of similar nature with which the lead consultant and the sub-consultants have had DIRECT experience. Be specific on why the reference project is similar to this project.
- VII. Quality Control – Describe how the consultant team will handle quality control to monitor and resolve issues and check and cross-reference documents.
- VIII. Fees – Provide list of fees for the entire scope of services to includes consulting services and products with a total "not to exceed" amount listed for each item. Provide a listing of "Additional Services" and accompanying fees for any work noted by the consultant as part of their proposal beyond that requested specifically in this RFP.

Selection Criteria and Process

Projects will be evaluated based on professional staff qualifications, previous related experience, familiarity with statutory and judicial requirements of the State of Texas and federal requirements, commitment to meeting project agendas, time frames and budgets, references from previous clients, and knowledge and demonstrated success in integrating the concerns of local citizens, the business community, quality of life issues, state transportation issues, target industries and other such issues. The selected consultant will have demonstrated expertise in developing Comprehensive Economic Development plans for similar sized communities. Proposals for 'boilerplate' plans will not be acceptable. The Strategic Plan Steering Committee will evaluate the received submittals and forward a recommendation to San Marcos City Council. The Council shall extend an invitation to enter into contract negotiations to the firm determined to be qualified and best able to perform the described task.

Project Time Frame

The project is expected to commence upon final execution of a contract for services within 30 days from the selection of a successful proposal. A project time frame of six months from contract initiation to ordinance completion is desired.

Project Schedule:

RFPs Available	8 a.m. Monday, November 10, 2008
Proposals Due	11 a.m. Friday, December 4, 2008
Interviews Anticipated	Mid-December
Contract Issued	Mid-January

Pre-Proposal Questions

Any pre-proposal questions regarding project requirements should be forwarded to Cheryl Pantermuehl, Purchasing Manager, by phone at (512) 393-8175 or by email at cpantermuehl@ci.san-marcos.tx.us. A pre-bid meeting is scheduled for interested participants:

10 a.m., Monday, November 24
City of San Marcos
City Council Chambers
630 Hopkins
San Marcos, Texas 78666

Submittal Procedures

To ensure consideration, five copies of submittals should be received by the City of San Marcos by 11:00 a.m. Friday, December 4, 2008. Submittals may be mailed or hand delivered to:

Purchasing Office
Attention: Cheryl Pantermuehl
City of San Marcos
630 E. Hopkins
San Marcos, TX 78666

Submittals should be sealed in a package with the following information noted on the front:

- I. Proposer Name
- II. RFP – City of San Marcos Comprehensive Economic Development Plan
- III. Due Date: 11 a.m. Friday, December 4, 2008

Administrative Disclaimers

Late proposals will not be accepted. The review of proposals will not exceed sixty calendar days after the closing date for receipt of Proposals. Upon selection, the City will issue a letter of intent. A contract must be compiled and signed by all parties within ten days of issuance of the letter of intent and award to the next most successful Proposer. The city reserves the right to reject any or all Proposals if deemed in the best interest of the City. Any restrictions regarding data provided in the Proposal must be clearly stated in the Proposal. All materials submitted regarding the RFP become the property of the City of San Marcos

and will only be returned at the City's option. Budget must be included in your proposal. The Contract will be awarded to that proposer who best conforms to the RFP, and will be the most advantageous to the City, price and other factors considered. All items produced in response to the Contract will be the sole property of the City of San Marcos. The City shall, at any time, have the right to terminate the Contract for Convenience upon giving fourteen days written notice to the awarded Firm. In this event, the awarded firm shall be entitled to the full amount of the approved estimate of services satisfactorily completed. Proposer shall make no news releases pertaining to the RFP without the express written approval of the Chairman of the Economic Development San Marcos Board.