



**NOTICE OF MEETING
GOVERNING BODY OF MARBLE FALLS, TEXAS
Tuesday, February 2, 2016 – 6:00 pm**

A quorum of the Marble Falls Economic Development Corporation
and the Planning & Zoning Commission may be present

Notice is hereby given that on the 2nd day of February, 2016 the Marble Falls City Council will meet in regular session at 6:00 pm in the City Hall Council Chambers located at 800 3rd Street, Marble Falls, Texas, at which time the following subjects will be discussed:

1. CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT

2. INVOCATION

3. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES AND TO THE TEXAS FLAG. *"Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."*

4. UPDATES, PRESENTATIONS AND RECOGNITIONS

- Update on the Western Regional Radio System. **Mark Whitacre, Chief of Police**
- Update from Northland Communications. **Larson Lloyd, General Manager**

5. CITIZEN COMMENTS. *This is an opportunity for citizens to address the City Council concerning an issue of community interest that is not on the agenda. Comments on a specific agenda item must be made when the agenda item comes before the Council. The Mayor may place a time limit on all comments. Any deliberation of an issue raised during Citizen Comments is limited to a proposal to place it on the agenda for a later meeting.*

6. CONSENT AGENDA. *The items listed are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Councilmember so requests, in which case the item will be removed from the Consent Agenda prior to a motion and vote. The item will be considered in its normal sequence on the Regular Agenda.*

(a) Approval of the [minutes](#) of the January 19, 2016 regular meeting and joint workshop. **Christina McDonald, City Secretary**

(b) Approval of [Ordinance 2015-O-02A](#) ordering a General Election on May 7, 2016 for the purpose of electing three Councilmembers. **Christina McDonald, City Secretary**

(c) Approval of [Ordinance 2016-O-02B](#) abandoning a portion of sidewalk on Avenue N. **Patty Akers, City Attorney and Mike Hodge, City Manager**

7. REGULAR AGENDA. Council will individually consider and possibly take action on any or all of the following items:

(a) Discussion and Action regarding a [Cost Participation Agreement](#) between the City of Marble Falls and Faith Academy of Marble Falls for the construction of a water line. **Eric Belaj, City Engineer**

8. CITY MANAGER’S REPORT

- Fire Chief Interviews
- Gregg Ranch Status

9. EXECUTIVE SESSION

- None

10. RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ITEMS DISCUSSED IN EXECUTIVE SESSION.

11. ANNOUNCEMENTS AND FUTURE AGENDA ITEMS.

12. ADJOURNMENT.

“The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any matters listed on the agenda, as authorized by the Texas Government Code, including, but not limited to, Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), 418.183 (Deliberations about Homeland Security Issues) and as authorized by the Texas Tax Code, including, but not limited to, Section 321.3022 (Sales Tax Information).”

In compliance with the Americans with Disabilities Act, the City of Marble Falls will provide for reasonable accommodations for persons attending City Council Meetings. To better serve you, requests should be received 24 hours prior to the meeting. Please contact Ms. Christina McDonald, City Secretary at (830) 693-3615.

Certificate of Posting

I, Christina McDonald, City Secretary for the City of Marble Falls, Texas, do certify that this Notice of Meeting was posted at City Hall, in a place readily accessible to the general public at all times, on the 28th day of January, 2016 at 4:00 pm and remained so posted for at least 72 continuous hours preceding the scheduled time of said meeting.

/s/ Christina McDonald

Christina McDonald, TRMC
City Secretary

The agenda is also posted on the City’s web site www.ci.marble-falls.tx.us.

February 2, 2016

6. CONSENT AGENDA

- (a) Approval of the minutes of the January 19, 2016 regular meeting and joint workshop. ***Christina McDonald, City Secretary***
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Background information is attached as follows:

[January 19, 2016 regular meeting minutes](#)

[January 19, 2016 joint workshop minutes](#)

STATE OF TEXAS
COUNTY OF BURNET
CITY OF MARBLE FALLS

On this the 19th day of January, 2016 the Council of the City of Marble Falls convened in regular session at 6:00 pm at the City Hall Council Chambers located at 800 Third Street, Marble Falls, Texas, with notice of meeting giving time, place, date, and subject having been posted as described in Chapter 551 of the Texas Government Code.

PRESENT: John Packer Mayor
Jane Marie Hurst Mayor Pro-Tem
Rachel Austin-Cook Councilmember
Richard Lewis Councilmember
Ryan Nash Councilmember
Reed Norman Councilmember

ABSENT: Richard Westerman Councilmember

STAFF: Mike Hodge City Manager
Patty Akers City Attorney
Christina McDonald City Secretary
Mark Whitacre Police Chief
Caleb Kraenzel Director of Development Services
Mike Ingalsbe Building Official
Elizabeth Jaimes City Planner
Robert Moss Parks and Recreation Director
Perry Malkemus Public Works Director
Eric Belaj City Engineer
Margie Cardenas Finance Director
Midge Dockery EDC Business Dev Coordinator
James Kennedy Asst. Public Works Director

VISITORS: Glynis Smith (The Highlander), Patti Zinsmeyer, Bill Rives and Erin Burks (Marble Falls/Lake LBJ Chamber of Commerce), Bill Bray, Tony Plumlee (Willis Environmental), Matt Bucchin (Halff Associates), Jeff Ford (Ford and Crew), Gene Dane (Gene Dane, LLC), Russ Roper, Mary Ann Raesener (Mayor City of Meadowlakes), Jim Kramer, Jessica and Ben Robertson (Backbone Valley Nursery), Steve Reitz (EDC and P&Z), Mark Hodges, Mark Mayfield and Lindsay Plante (EDC), Thomas Barr, Fred Zagst, Darlene Oostermeyer, and Jason Coleman (P&Z), Brian Shirley (Comprehensive Plan Steering Committee),

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT.** Mayor Packer called the meeting to order at 6:02 pm and announced the presence of a quorum.
2. **INVOCATION.** Councilmember Norman gave the invocation.

3. **PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES AND TO THE TEXAS FLAG.** Mayor Pro-Tem Hurst led the pledges.

4. **UPDATES, PRESENTATIONS AND RECOGNITIONS.** There were no updates, presentations or recognitions.

5. **CITIZEN COMMENTS.** Patti Zinsmeyer (current Tourism and Marketing Director for the Marble Falls/Lake LBJ Chamber of Commerce) introduced Erin Burks, the Chamber's new Tourism Director. Ms. Zinsmeyer has been hired as the Chamber's Executive Director upon Bill Rives retirement in February.

Mr. Jeff Ford (Ford and Crew in Marble Falls) addressed Council regarding the Avenue N realignment project and the affect the current Avenue N road closure may have on his business.

6. **CONSENT AGENDA.**

(a) **Approval of the minutes of the January 5, 2016 regular meeting.**

(b) **Approval of a Park Concession Agreement between the City of Marble Falls and Jane Dean for the purpose of dance lessons at the Westside Park Community Hall.**

(c) **Approval of a Park Concession Agreement between the City of Marble Falls and Raymond Weeks for the purpose of karate lessons at the Westside Park Community Hall.**

Councilmember Norman made a motion to approve the Consent Agenda. The motion was seconded by Mayor Pro-Tem Hurst and carried by a unanimous vote (6-0).

7. **REGULAR AGENDA.**

(a) **Discussion and Action on the Second Reading of Ordinance 2016-O-01A amending the Code of Ordinances of the City of Marble Falls Chapter 15 (Parks and Recreation), Article IV (Lakeside Pavilion), Section 15-86 (Definitions), Section 15-90 (License Fees), Section 15-91 (City's right to refuse rent), proposed Section 15-93.5 (No Smoking), and Section 15-97 (Pavilion Basic Services).** Robert Moss, Parks and Recreation Director addressed Council. Mayor Packer read the Ordinance caption. Councilmember Norman made a motion to approve Ordinance 2016-O-01A. Mayor Pro-Tem Hurst seconded the motion. The motion carried by a vote of 6-0.

(b) **Discussion and Action regarding the contract award for the Avenue N Realignment Project.** Eric Belaj, City Engineer addressed Council. Developer Bill Bray also addressed Council regarding the project. After some discussion, Councilmember Lewis made a motion to award the contract for the Avenue N Realignment Project to Ross

January 19, 2016 Meeting

Page 2 of 3

Construction in the amount of \$662,516.53. The motion was seconded by Mayor Pro-Tem Hurst and carried by a vote of 6-0.

8. **CITY MANAGER'S REPORT.** City Manager Mike Hodge introduced the City's new website feature created by the Development Services Department titled Development Buzz. Mr. Hodge stated that the buzz will highlight new commercial development projects as well as subdivisions and the city's capital improvement projects.

9. **EXECUTIVE SESSION**

CLOSE OPEN SESSION AND CONVENE EXECUTIVE SESSION Pursuant to §551.071 (Private Consultation between the Council and its Attorney), Pursuant to §551.072 (Deliberation Regarding the Purchase, Exchange, Lease or Value of Real Property) and Pursuant to §551.087 (Deliberation Regarding Economic Development Negotiations) of the Open Meetings Act. Tex. Gov't Code, Council will meet in Executive Session to discuss the following:

- Discuss economic development projects associated with development of EDC owned and City owned property, including public right-of-way and easements.

6:35 pm Convened to Executive Session

6:56 pm Returned to Open Session

10. **RECONVENE INTO OPEN SESSION FOR POSSIBLE ACTION RESULTING FROM ITEMS DISCUSSED IN EXECUTIVE SESSION.** No action was taken.

11. **ANNOUNCEMENTS AND FUTURE AGENDA ITEMS.** Items for the February 2 regular agenda was reviewed.

12. **ADJOURNMENT.** There being no further business to discuss, Councilmember Lewis made a motion to adjourn. Councilmember Austin-Cook seconded the motion. The meeting was adjourned at 6:58 pm.

John Packer, Mayor

ATTEST:

Christina McDonald, TRMC
City Secretary

STATE OF TEXAS
COUNTY OF BURNET
CITY OF MARBLE FALLS

On this the 19th day of January, 2016 the Council of the City of Marble Falls convened in joint workshop session at 6:00 pm with the Marble Falls Economic Development Corporation and the Marble Falls Planning and Zoning Commission at the City Hall Council Chambers located at 800 Third Street, Marble Falls, Texas, with notice of meeting giving time, place, date, and subject having been posted as described in Chapter 551 of the Texas Government Code.

PRESENT: John Packer Mayor
Jane Marie Hurst Mayor Pro-Tem
Rachel Austin-Cook Councilmember
Richard Lewis Councilmember
Ryan Nash Councilmember
Reed Norman Councilmember

ABSENT: Richard Westerman Councilmember

EDC

PRESENT: Steve Reitz President
Mark Hodges Vice President
Mark Mayfield Director
John Packer Director
Jane Marie Hurst Director
Lindsay Plante Director

ABSENT: Judy Miller Director

P&Z

PRESENT: Steve Reitz Chairman
Fred Zagst Vice Chair
Darlene Oostermeyer Commissioner
Jason Coleman Commissioner
Greg Mills Commissioner
Thomas Barr Commissioner

ABSENT: William Haddock Commissioner

STAFF:

Mike Hodge City Manager
Patty Akers City Attorney
Christina McDonald City Secretary
Mark Whitacre Police Chief
Eric Belaj City Engineer

Elizabeth Jaimes
Caleb Kraenzel
Christian Fletcher
Robert Moss
Margie Cardenas
Midge Dockery

City Planner
Director of Development Services
EDC Executive Director
Parks and Recreation Director
Finance Director
EDC Business Dev Coordinator

VISITORS: Glynis Smith (The Highlander), Russ Roper, Gene Dane, Patti Zinsmeyer and Erin Burks (Marble Falls/Lake LBJ Chamber of Commerce), Brian Shirley (CPAC Chair), Jessica and Ben Robertson (Backbone Valley Nursery)

1. **CALL TO ORDER.** Mayor Packer called the workshop to order at 6:58 pm.
2. **WORKSHOP – Joint with Planning and Zoning Commission and the Marble Falls Economic Development Corporation.** Matt Bucchin, Project Manager, Halff Associates, Inc. gave a progress report and reviewed the 2015-2016 Comprehensive Plan Update.
3. **ADJOURNMENT.** Councilmember Lewis made a motion to adjourn the workshop. The motion was seconded by Councilmember Austin-Cook and was adjourned at 8:25 pm.

John Packer, Mayor

ATTEST:

**Christina McDonald, TRMC
City Secretary**

February 2, 2016

6. CONSENT AGENDA

- (b) Approval of Ordinance 2015-O-02A ordering a General Election on May 7, 2016 for the purpose of electing three Councilmembers for the purpose of serving two year terms. ***Christina McDonald, City Secretary***

Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



Council Agenda Item Cover Memo
February 2, 2016

Agenda Item No.: 6(b)
Presenter: Christina McDonald, City Secretary
Department: Administration
Legal Review: N/A

AGENDA CAPTION

Approval of Ordinance 2016-O-02A ordering a General Election on May 7, 2016 for the purpose of electing three councilmembers to serve for a term of two (2) years.

BACKGROUND INFORMATION

The attached ordinance orders the May 7, 2016 General Election for Places 1, 3 and 5, designates the polling place and appoints the election officials.

The City still contracts with Burnet County to conduct our elections.

Early voting will be held at the Marble Falls Courthouse Annex and the Burnet County Courthouse between the hours of 8am and 5pm on April 25 through May 3. There will be two (April 28 and May 2) 12-hour days (7am-7pm).

On Election Day (May 7, 2016) voting will be at the Marble Falls Courthouse Annex. Polls will be open 7am -7pm.

ORDINANCE NO. 2016-O-02A

AN ORDINANCE CALLING AND ORDERING A GENERAL ELECTION TO BE HELD ON MAY 7, 2016 FOR THE PURPOSE OF ELECTING THREE (3) COUNCILMEMBERS TO SERVE FOR A TERM OF TWO (2) YEARS, DESIGNATING THE POLLING PLACE AND APPOINTING ELECTION OFFICIALS; PROVIDING FOR ELECTION SERVICES CONTRACT AND JOINT ELECTION AGREEMENT; PROVIDING THE FORM OF THE BALLOT; DIRECTING THE GIVING OF NOTICE; AND CONTAINING OTHER PROVISIONS RELATING TO THE GENERAL ELECTION.

WHEREAS, the City Council of the City of Marble Falls ("CITY") has the authority to call a General Election on May 7, 2016, for three city Councilmembers to serve in at-large place positions, each term consisting of two years; and,

WHEREAS, the City Council also has the authority pursuant to Chapter 271, Texas Election Code, to enter into joint election agreements with the other political subdivisions also holding a general election and/or special election on the same date; and,

WHEREAS, the City Council also has the authority pursuant to Chapter 31, Texas Election Code, to enter into a contract for election services with the County of Burnet, Texas.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARBLE FALLS, TEXAS:

Section 1. Conduct of Election: Date: Eligible Electors: and Hours. In accordance with laws of the State of Texas and Constitution of the State of Texas, a General Election is hereby called and ordered to be held on Saturday, May 7, 2016, which is sixty-two (62) or more days from the date of the adoption of this ordinance (the "Ordinance") within the entire territory of the City of Marble Falls for three (3) Councilmembers (for a Term of Two (2) Years ending May 2018), at which General Election all resident, qualified voters of the City may vote for the positions at issue. The City Council hereby finds that holding the Election on such date, which is a uniform election date, is in the public interest. The hours during which the polling places are to be open at the Election shall be from 7 am to 7 pm.

Pursuant to Chapter 31 of the Texas Election Code and Chapter 791, Texas Government Code, the Council orders that the Election be held under an Election Services Contract with Burnet County.

Pursuant to Chapter 271 of the Texas Election Code, the Council orders that this Election be conducted under the terms and conditions of an Agreement to Conduct Joint Elections with other political subdivisions holding an election on the same date.

Section 2. Application for Place on the Ballot. No person's name shall be placed upon the ballot as a candidate for Councilmember unless such person has filed his or her sworn application, as provided by Section 141.03 of the TEXAS ELECTION CODE, with the City Secretary of the City at the City offices, located at 800 Third Street, Marble Falls, Texas 78654, not later than five o'clock (5:00) pm on the 27th day of February, 2015, being the 71st day before the date of such general election. The City Secretary shall note on the face of each such application the date and time of its filing. Such application shall include the office the candidate is seeking.

Section 3. Voting Precincts. Except as otherwise provided herein, the presently existing boundaries and territory of the respective Burnet County Election Precincts, that are wholly or partially within the territorial boundaries of the City are hereby designated as the voting precincts of the City for the Election. That said election shall be held in each of the heretofore established election precincts and polling places within the City and the location of said precincts shall be as follows:

Election Precincts 19 and 20

Polling Place:

Marble Falls Courthouse Annex
810 Steve Hawkins Pkwy.
Marble Falls, TX 78654

Section 4. Appointment of Election Officials. Appointments of the Election Day Presiding Judge and Alternate Presiding Judge will be made by approval of the City Council subsequent to adoption of this ordinance.

Section 5. Early Voting. Ms. Christina McDonald, City Secretary, is hereby appointed as the Regular Early Voting Clerk for the City. Ms. Barbara Agnew, Burnet County Elections Administrator is hereby appointed Joint Early Voting Clerk for early voting. Ms. Agnew is authorized to make appointments of deputy clerks for early voting in accordance with Section 83.031 *et seq.*, of the TEXAS ELECTION CODE and the following locations are hereby designated as places for early voting for said election:

MAIN EARLY VOTING Burnet County Courthouse
220 South Pierce
Burnet, Texas 78611

BRANCH EARLY VOTING Marble Falls Courthouse Annex
810 Steve Hawkins Pkwy.
Marble Falls, Texas 78654

Said clerks shall keep said office open for at least eight (8) hours, that is from nine o'clock (9:00) am until five o'clock (5:00) pm, on each day for early voting which is not a Saturday, a Sunday, or an official state holiday, beginning on the twelfth (12th) day and continuing through the fourth

(4th) day preceding the date of said election. The office shall also be open for twelve (12) hours on two (2) days during the early voting period. Early voting by personal appearance shall be conducted at the Main Early Voting Polling Place at the dates and times set forth on the attached *Exhibit A* which is incorporated herein by reference. The Main Early Voting Polling Place shall also remain open on the day of the Election during the hours the polls are required to be open for voting by the Texas Election Code.

Said clerks shall not permit anyone to vote early by personal appearance on any day which is not a regular working day for the clerk's office, and under no circumstances shall they permit anyone to vote early by personal appearance at any time when such office is not open to the public. The early voting clerk's mailing address to which ballot applications and ballots voted by mail may be sent to is 220 South Pierce, Burnet, TX 78611. The early voting clerk, in accordance with the provisions of the TEXAS ELECTION CODE, shall maintain a roster listing each person who votes early by personal appearance and each person to whom an early voting ballot to be voted by mail is sent. The roster shall be maintained in a form approved by the Secretary of State.

Section 6. Conduct of Election The Election shall be conducted by election officers, in accordance with the Texas Election Code and the Constitution and laws of the State of Texas and the United States of America. The City Secretary is hereby authorized and directed to furnish all necessary election supplies to conduct such election. The voting at such election shall be by DRE electronic voting device. Early voting at such election shall also be DRE electronic voting device. Early Voting by Mail will be paper ballots.

Section 7. Ballot. The order in which the names of the candidates are to be printed on the ballot for such General Election shall be determined by a drawing by the City Secretary as provided by Section 52.094 of the TEXAS ELECTION CODE. The City Secretary shall post a notice in her office, at least seventy-two (72) hours prior to the date on which the drawing is to be held, of the time and place of the drawing, and shall also give personal notice to any candidate who makes written request for such notice and furnished to the City Secretary a self-addressed, stamped envelope. Each candidate involved in the drawing, or a designated representative, shall have a right to be present and observe the drawing.

Section 8. Canvassing of Returns: Declaring Results. The Election Officer shall make a written return of the Election results to the City Council in accordance with the Election Code. The Council shall canvass the returns and declare the results of the Election. The candidate receiving a majority of votes for such position to be filled at such General Election shall be declared elected.

Section 9. Notice of Election. Notice of this election shall be given in accordance with the provisions of the TEXAS ELECTION CODE and returns of such notice shall be made as provided for in said Code. The Mayor shall issue all necessary orders and writs for such election, and returns of such election shall be made to the City Secretary immediately after the closing of the polls.

Section 10. Election Information to be provided in Spanish. Ms. Christina McDonald, City Secretary, is hereby appointed as the Custodian of Records. The Custodian of

Records shall be responsible for the preparation of notices, instructions, orders, ballots and other written material pertaining to the Election shall cause each such document to be translated into and furnished to voters in both the English language and the Spanish language in order to aid and assist voters speaking Spanish as a primary or an alternative language to properly participate in the election process. In addition, the Custodian is hereby authorized and directed to make available to the voters having the need of an individual capable of acting as a translator and speaking both English and Spanish languages who will assist Spanish speaking voters in understanding and participating in the election process.

Section 11. Training of Election Officials. Pursuant to the Election Code, a public school of instruction for all election officers shall be held as arranged or contracted by the Joint Election Officer.

Section 12. Authorization to Execute. The Mayor of the City Council is authorized to execute and the City Secretary is authorized to attest this Ordinance on behalf of the City Council; and the Mayor is authorized to do all other things legal and necessary in connection with the holding and consummation of the Election.

Section 13. Effective Date. This Ordinance is effective immediately upon its passage and approval.

PASSED, AND APPROVED this 2nd day of February, 2016.

John Packer, Mayor

ATTEST:

Christina McDonald, TRMC
City Secretary

APPROVED AS TO FORM:

Patty Akers
City Attorney

Exhibit A

**May 7, 2016 Burnet County Local Elections
Early Voting Locations and Hours**

Polling Place		Address			City	
Burnet County Courthouse		220 S. Pierce			Burnet, TX 78611	
Marble Falls Courthouse Annex		810 Steve Hawkins Pkwy.			Marble Falls, TX 78654	
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	<i>April 25</i>	<i>April 26</i>	<i>April 27</i>	<i>April 28</i>	<i>April 29</i>	<i>April 30</i>
	8am-5pm	8am-5pm	8am-5pm	7am-7pm	8am-5pm	
<i>May 1</i>	<i>May 2</i>	<i>May 3</i>	<i>May 4</i>	<i>May 5</i>	<i>May 6</i>	<i>May 7</i>
	7am-7pm	8am-5pm				Election Day Polls Open 7am-7pm

February 2, 2016

6. CONSENT AGENDA

(c) Approval of Ordinance 2016-O-02B abandoning a portion of sidewalk on Avenue N. ***Patty Akers, City Attorney and Mike Hodge, City Manager***

Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



Council Agenda Item Cover Memo
February 2, 2016

Agenda Item No.: 6(c)
Presenter: Patty Akers and Mike Hodge
Department: Legal and Administration
Legal Review:

AGENDA CAPTION

Approval of Ordinance 2016-O-02B abandoning a portion of sidewalk on Avenue N.

BACKGROUND INFORMATION

The property owner in negotiating a commercial lease for the now larger three acre tract of property has run into some issues in getting clear title due to Ordinance #2005-O-3A ([see attached](#)) which was filed and recorded on April 15, 2005.

In order to establish a clear title the City Attorney has drafted a partial repeal of the above referenced ordinance.

Ordinance 2016-O-02B repeals a portion of Ordinance 2005-O-03A and will clear the title for the property owner.

ORDINANCE NO. 2016-O-02B

AN ORDINANCE OF THE CITY OF MARBLE FALLS, TEXAS, ABANDONING CERTAIN RIGHTS TO PROPERTY DESCRIBED IN ORDINANCE NO. 2005-O-03B AND ASSOCIATED IMPROVEMENTS CONSISTING OF A SIDE WALK; SAID PROPERTY BEING A .03 ACRE PORTION OF LOT 9, A RESUBDIVISION OF SECTION B, NORTHWOOD TERRACE SUBDIVISION IN THE CITY OF MARBLE FALLS, BURNET COUNTY, TEXAS AND MORE PARTICULARLY DESCRIBED WITHIN EXHIBIT "A", ATTACHED HERETO; PROVIDING FOR AN EFFECTIVE DATE; SEVERABILITY CLAUSE; REPEALER CLAUSE; AND PROPER NOTICE AND OPEN MEETING.

WHEREAS, the City of Marble Falls in Ordinance No. 2005-O-3B was authorized to accept a 0.03 acre tract (the "Property") within the eastern portion of Lot 9, a Resubdivision of Section B, Northwood Terrace Subdivision as recorded in Volume 2, Page 60, of the Plat Records of Burnet County, Texas, which Property is described in Exhibit "A", attached hereto; and

WHEREAS, the City Council of Marble Falls has determined that the Property was never conveyed to the City of Marble Falls as authorized by Ordinance No. 2005-O-3B; and

WHEREAS, the City has determined that it does not need the Property for use as a side walk or for any other use and therefore desires to abandon any right, title or interest that the City may have in and to the Property described in Exhibit "A" including any sidewalk improvements that may be located thereon; and

WHEREAS, the City has determined that the abandonment of the City's right, if any, to the Property is in the best interest of the citizens of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARBLE FALLS, TEXAS, that:

Section 1. Findings of Fact. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Marble Falls and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 2. Abandonment.

A. Any and all rights, title or interest that the City may have in and to the Property described in Exhibit "A", attached hereto and including the sidewalk improvements located on the Property, are hereby waived, abandoned and released to the adjoining property owner of Lot 9, a Resubdivision of Section B, Northwood Terrace Subdivision as recorded in Volume 2, Page 60, of the Plat Records of Burnet County, Texas.

B. The Mayor of the City is hereby authorized to execute any other documents that may be required to effectuate the purposes of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect upon approval.

Section 4. Severability. It is hereby declared to be the intention of the Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

Section 5. Repealer. The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent.

Section 6. Proper Notice and Meeting. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code and as required by Chapter 52 of the Texas Local Government Code.

READ, PASSED AND APPROVED ON THIS THE _____ DAY OF _____
_____, 2015.

APPROVED:

John Packer
Mayor, City of Marble Falls

ATTEST:

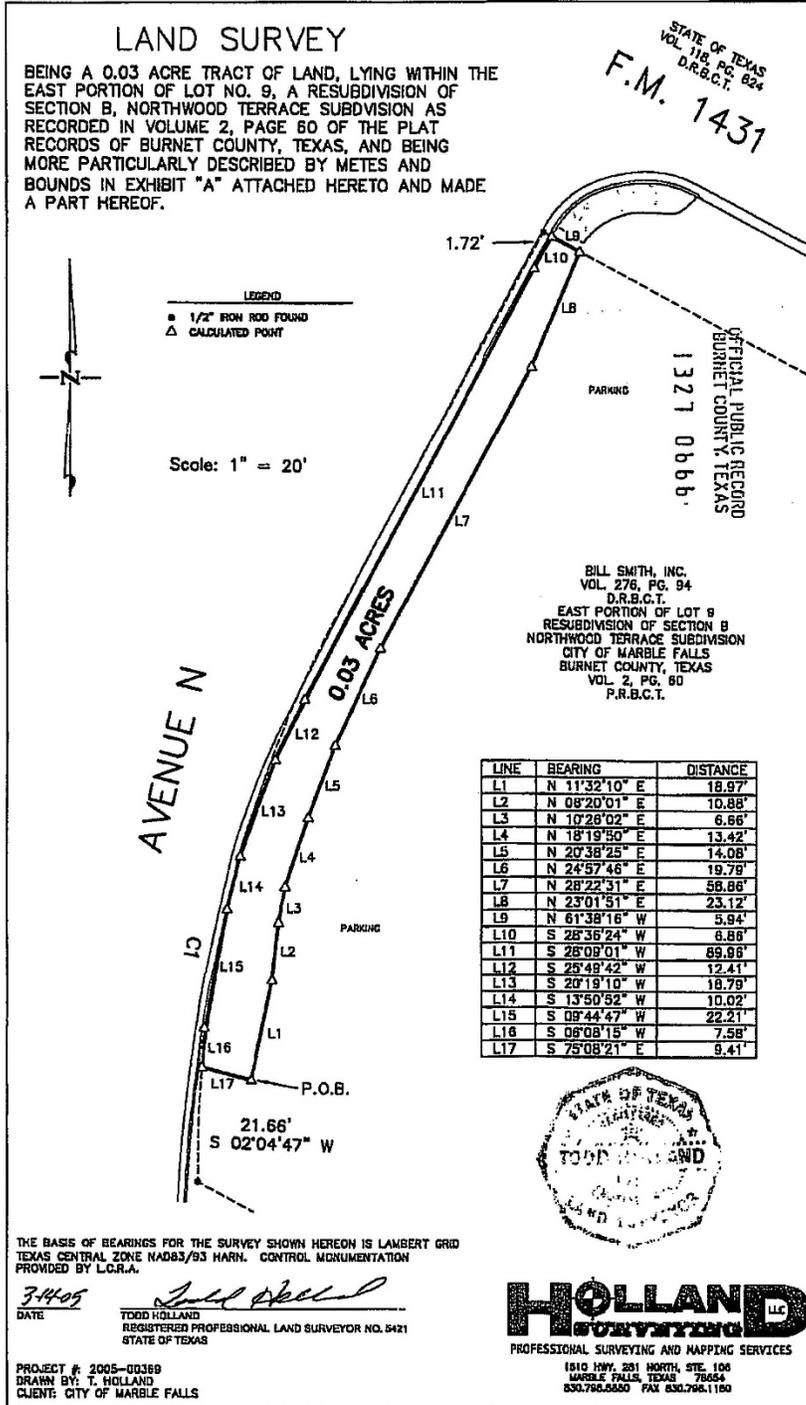
Christina McDonald, City Secretary
City of Marble Falls

(Seal)

APPROVED AS TO FORM:

Patty L. Akers, City Attorney
City of Marble Falls

EXHIBIT "A"
Eastern Portion of Lot 9: 0.03 acre tract



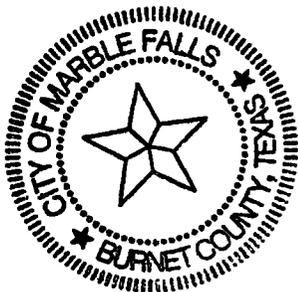
004816



STATE OF TEXAS §
COUNTY OF BURNET §
CITY OF MARBLE FALLS §

I, Christina Laine, the undersigned, City Secretary of the City of Marble Falls, Texas, a municipal corporation, in the functions of my office, do hereby certify that the attached document is a true and correct copy of the same document entered into the official records of the City of Marble Falls, Texas, and that I am the lawful possessor and have legal custody of the City records.

Witness my hand and seal of office at my office in Marble Falls, Texas, this the 15th day of April, 2005.



Christina Laine
Christina Laine, TRMC
City Secretary
City of Marble Falls, Texas

OFFICIAL PUBLIC RECORD
BURNET COUNTY, TEXAS

1327 0661

ORDINANCE 2005-O-3B

AN ORDINANCE OF THE CITY OF MARBLE FALLS, TEXAS ACCEPTING A TRACT OF LAND FOR THE CONSTRUCTION OF A SIDEWALK FROM BILL C. SMITH, INC. IN EXCHANGE FOR THE WAIVER OF DEVELOPMENT FEES FOR TACO CASA AND STORMS DRIVE IN, APPROVAL OF AN ADDITIONAL ENTRANCE/EXIT TO LOT 9, SECTION B, TANGLEWOOD TERRACE ADDITION, ESTABLISHMENT OF SETBACK LINES TO LOT 9, PROVIDING FOR SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Marble Falls, Texas (the "City") seeks to acquire a portion Lot 9, Section B, Tanglewood Terrace Addition, adjacent to Avenue N from Bill C. Smith, Inc. for purposes of constructing a sidewalk; and

WHEREAS, the owner of Lot 9 has agreed to convey a portion of Lot 9 for construction of a sidewalk in exchange for a waiver of development fees for Taco Casa and Storms Drive In, allow Bill C. Smith, Inc. authorization for construction of an additional entrance/exit to said Lot 9, an agreement that the set back distances for said Lot 9 will be measured from the property boundaries as they existed prior to this exchange agreement; and

WHEREAS, in exchange for the conveyance, the City will waive development fees for Taco Casa and Storms Drive In,, allow Bill C. Smith, Inc. to build an additional entrance/exit to said Lot 9, and agree that the set back distances for said Lot 9 will be measured from the location as they existed prior to this Ordinance;

WHEREAS, the City of Marble Falls has also agreed to abandon a 40 foot (along the east side of Avenue N) by 80 foot (along the south boundary of Lot 9, Section B, Tanglewood Terrace Addition) portion of Ninth Street east of Avenue N and convey that portion of Ninth Street to Bill C. Smith, Inc., owner of Lot 9 which street is not used and is not required by the City for use as a street; and

WHEREAS, the City adopted an Ordinance regarding the vacation of the portion of the road affected by this Ordinance on March 14, 2005 which was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL
CITY OF MARBLE FALLS, TEXAS:**

**SECTION I.
PREAMBLE.**

OFFICIAL PUBLIC RECORD
BURNET COUNTY, TEXAS
1 17 06 62

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Marble Falls and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

**SECTION II.
ACCEPTANCE OF CONVEYANCE**

1. The City of Marble Falls hereby agrees to accept the conveyance of an tract of land from Bill C. Smith, Inc. for construction of a sidewalk upon the property described in Exhibit A attached hereto.
2. The City authorizes construction of an additional entrance/exit for Lot 9, Section B Tanglewood Terrace Addition, adjacent to Avenue N allowing for one additional driveway approach along Avenue N.
3. The City hereby waives development fees for Taco Casa and Storms Drive In.
4. The City agrees that the set back distances for Lot 9, Section B, Tanglewood Terrace Addition shall be measured from the original lot lines as they existed prior to the date of this Ordinance.

**SECTION III.
PROVIDING FOR A SAVINGS CLAUSE.**

The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

**SECTION IV.
SEVERABILITY CLAUSE.**

If any provision, section, sentence, clause or phrase of this ordinance, or the application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Marble Falls in adopting, and of the Mayor in approving this ordinance, that no portion thereof or provision or regulation contained herein shall be rendered inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

**SECTION V.
REPEALER CLAUSE.**

OFFICIAL PUBLIC RECORD
BURNET COUNTY, TEXAS
327 0663

The provisions of this ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinance or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

**SECTION VI.
EFFECTIVE DATE.**

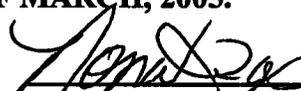
This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

**SECTION VII.
NOTICE AND MEETING CLAUSE.**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

It is hereby officially found and determined that a second reading of this ordinance may be waived; and it is hereby waived.

READ, PASSED, AND ADOPTED THIS 14th DAY OF MARCH, 2005.



Nona Fox, Mayor

ATTEST:



Christina Laine, TRMC
City Secretary

APPROVED AS TO FORM:



Patty Akers, City Attorney

1327 0664
OFFICIAL PUBLIC RECORD
BURNET COUNTY, TEXAS

Exhibit 'A'

STATE OF TEXAS:
COUNTY OF BURNET:
CITY OF MARBLE FALLS:

FIELD NOTES to accompany a Land Survey of a 0.03 acre tract of land, lying within the east portion of Lot 9, A Resubdivision of Section B, Northwood Terrace Subdivision, a Burnet County subdivision according to plat recorded in Volume 2, Page 60 of the Plat Records of Burnet County, Texas, and being a portion of that same tract of land, described in a deed to Bill Smith, Inc., as recorded in Volume 276, Page 94 of the Deed Records of Burnet County, Texas; said 0.03 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a calculated point, lying within said Lot 9 and being the southeast corner of a concrete sidewalk, for the southeast corner hereof;

THENCE, crossing through said Lot 9, with the east side of said concrete sidewalk and the west back of curb of a parking lot of Taco Casa restaurant, the following eight (8) calls:

1. N 11°32'10" E, a distance of 18.97 feet, to a calculated point, for an angle point hereof,
2. N 06°20'01" E, a distance of 10.88 feet, to a calculated point, for an angle point hereof,
3. N 10°26'02" E, a distance of 6.66 feet, to a calculated point, for an angle point hereof,
4. N 18°19'50" E, a distance of 13.42 feet, to a calculated point, for an angle point hereof,
5. N 20°38'25" E, a distance of 14.08 feet, to a calculated point, for an angle point hereof,
6. N 24°57'46" E, a distance of 19.79 feet, to a calculated point, for an angle point hereof,
7. N 28°22'31" E, a distance of 58.86 feet, to a calculated point, for an angle point hereof, and
8. N 23°01'51" E, a distance of 23.12 feet, to a calculated point, for the northeast corner hereof, lying in the north line of said Lot 9 and lying in the south line of F.M. Highway No. 1431, as described in a deed to the State of Texas, as recorded in Volume 118, Page 624 of the Deed Records of Burnet County, Texas;

1327
9665
OFFICIAL PUBLIC RECORD
BURNET COUNTY, TEXAS

THENCE N 61°38'16" W, crossing said concrete sidewalk, with the north line of said Lot 9 and the south line of said F.M. Highway No. 1431, a distance of 5.94 feet, to a calculated point, lying in the west line of said concrete sidewalk and the east back of curb of Avenue N, for the northeast corner hereof, from which a ½-inch iron rod found bears N 61°38'16" W, a distance of 1.72 feet;

THENCE, crossing through said Lot 9, with the west side of said concrete sidewalk and the east back of curb of said Avenue N, the following seven (7) calls:

1. S 28°36'24" W, a distance of 6.86 feet, to a calculated point, for an angle point hereof,
2. S 28°09'01" W, a distance of 89.96 feet, to a calculated point, for an angle point hereof,
3. S 25°49'42" W, a distance of 12.41 feet, to a calculated point, for an angle point hereof,
4. S 20°19'10" W, a distance of 18.79 feet, to a calculated point, for an angle point hereof,
5. S 13°50'52" W, a distance of 10.02 feet, to a calculated point, for an angle point hereof,
6. S 09°44'47" W, a distance of 22.21 feet, to a calculated point, for an angle point hereof, and
7. S 06°08'15" W, a distance of 7.58 feet, to a calculated point, for southwest corner hereof, from which a ½-inch iron rod found, bears S 02°04'47" W, a distance of 21.66 feet;

THENCE S 75°08'21" E, a distance of 9.41 feet, the Point of Beginning, and containing 0.03 acre of land, more or less.



Todd Holland
Registered Professional Land Surveyor No. 5421
March 14, 2005



LAND SURVEY

BEING A 0.03 ACRE TRACT OF LAND, LYING WITHIN THE EAST PORTION OF LOT NO. 9, A RESUBDIVISION OF SECTION B, NORTHWOOD TERRACE SUBDIVISION AS RECORDED IN VOLUME 2, PAGE 60 OF THE PLAT RECORDS OF BURNET COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

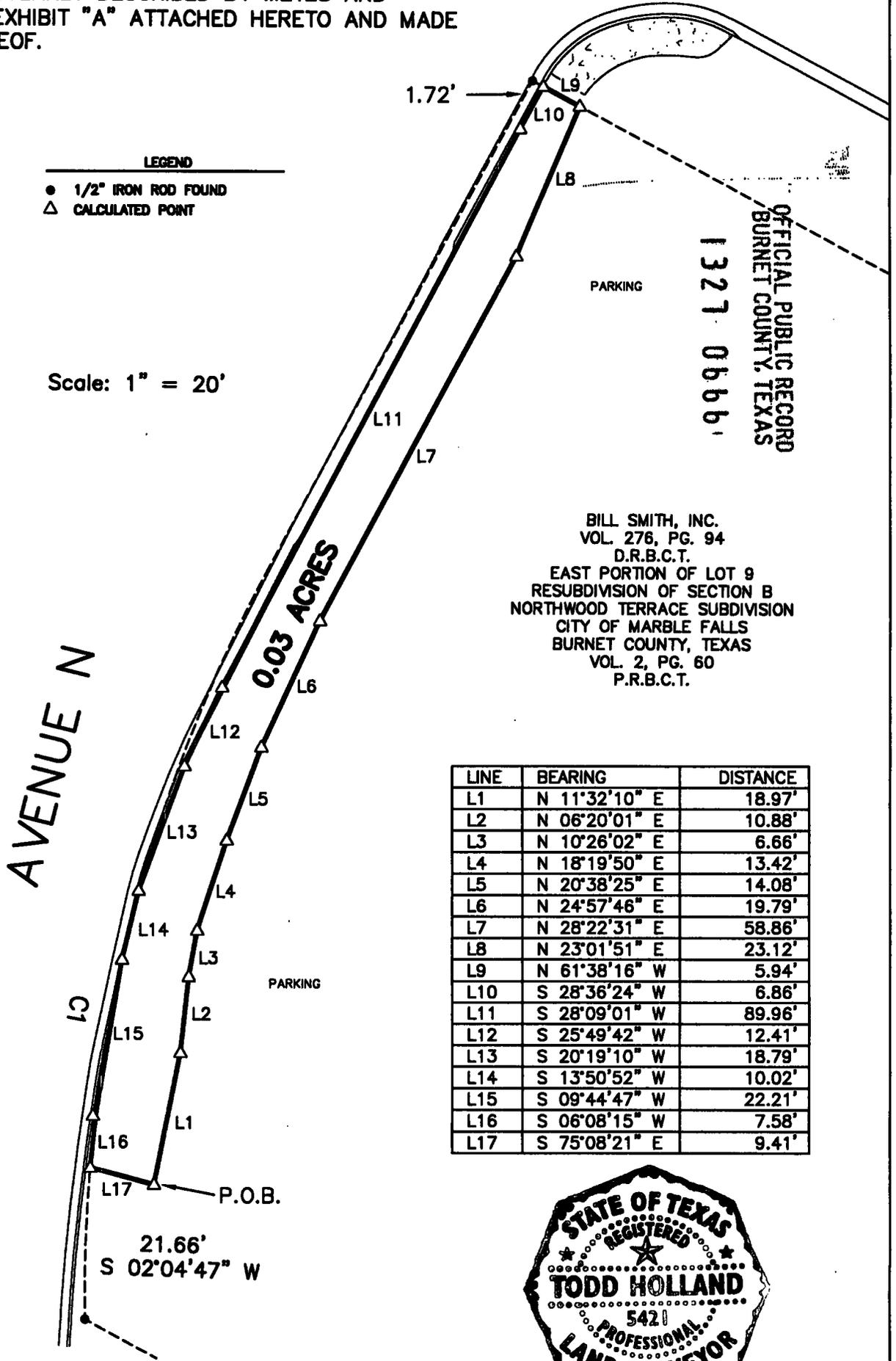
STATE OF TEXAS
VOL. 118, PG. 624
D.R.B.C.T.

F.M. 1431



LEGEND
● 1/2" IRON ROD FOUND
△ CALCULATED POINT

Scale: 1" = 20'



BILL SMITH, INC.
VOL. 276, PG. 94
D.R.B.C.T.
EAST PORTION OF LOT 9
RESUBDIVISION OF SECTION B
NORTHWOOD TERRACE SUBDIVISION
CITY OF MARBLE FALLS
BURNET COUNTY, TEXAS
VOL. 2, PG. 60
P.R.B.C.T.

LINE	BEARING	DISTANCE
L1	N 11°32'10" E	18.97'
L2	N 06°20'01" E	10.88'
L3	N 10°26'02" E	6.66'
L4	N 18°19'50" E	13.42'
L5	N 20°38'25" E	14.08'
L6	N 24°57'46" E	19.79'
L7	N 28°22'31" E	58.86'
L8	N 23°01'51" E	23.12'
L9	N 61°38'16" W	5.94'
L10	S 28°36'24" W	6.86'
L11	S 28°09'01" W	89.96'
L12	S 25°49'42" W	12.41'
L13	S 20°19'10" W	18.79'
L14	S 13°50'52" W	10.02'
L15	S 09°44'47" W	22.21'
L16	S 06°08'15" W	7.58'
L17	S 75°08'21" E	9.41'



THE BASIS OF BEARINGS FOR THE SURVEY SHOWN HEREON IS LAMBERT GRID TEXAS CENTRAL ZONE NAD83/93 HARN. CONTROL MONUMENTATION PROVIDED BY L.C.R.A.

3-14-05
DATE

Todd Holland
TODD HOLLAND
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5421
STATE OF TEXAS

HOLLAND LLC
SURVEYING

PROFESSIONAL SURVEYING AND MAPPING SERVICES

PROJECT #: 2005-00369
DRAWN BY: T. HOLLAND
CLIENT: CITY OF MARBLE FALLS

1510 HWY. 281 NORTH, STE. 108
MARBLE FALLS, TEXAS 78654
830.798.8850 FAX 830.798.1180

STATE OF TEXAS
COUNTY OF BURNET

I hereby certify that this instrument was FILED on this date
and at the time stamped hereon by me and was duly
RECORDED in the OFFICIAL PUBLIC RECORDS
OF BURNET COUNTY, TEXAS in the volume
and Page as shown.



Janet Parker
County Clerk
Burnet County, Texas
By *[Signature]*
DEPUTY

Any provision herein which restricts the sale, rental or use
of the described real property because of color or race is
invalid and unenforceable under federal law.

004816

FILED

2005 APR 27 PM 12:34

JANET PARKER
COUNTY CLERK
BURNET COUNTY, TEXAS

SCANNED

1327 0667

OFFICIAL PUBLIC RECORD
BURNET COUNTY, TEXAS

19-

City of MF
800 3rd St
Marble Falls

78654

February 2, 2016

7. REGULAR AGENDA

- (a) Discussion and Action regarding a Cost Participation Agreement between the City of Marble Falls and Faith Academy of Marble Falls for the Construction of a water line. ***Eric Belaj, City Engineer***

Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



Council Agenda Item Cover Memo
February 2, 2016

Agenda Item No.: 7(a)
Presenter: Eric Belaj, PE, CFM
Department: Administration
Legal Review:

AGENDA CAPTION

Discussion and Action regarding a Cost Participation Agreement between the City of Marble Falls and Faith Academy of Marble Falls for the construction of a water line.

BACKGROUND INFORMATION

The City received a request, in October 2013, for the extension of a water line from the Hamilton Creek water system to the Faith Academy School (Developer). The school is currently indirectly furnished with water from the City, and approached City staff to help identify ways to furnish needed fire flows to the school campus. Staff has since been coordinating with the school to identify funding sources, obtain input from different property owners, obtain needed TxDOT permit, and consult with the different parties involved to put together the attached agreement.

The water line size requested from the school was smaller than the standard 8" City water line. Staff requested the minimum water line size to be 8" allowing for future extensions, including water meters for impacted customers who are currently receiving water from the City, and installation of fire hydrants at key locations (intersections and high points). In negotiations the City agreed to participate in oversizing costs.

The total construction cost of the project is estimated to be \$162,000.00. The City offered to contribute up to a maximum of \$40,000. The Developer will be responsible for constructing the water line per City standards and acquisition of easements. The City's contributing funds are available. Funds were set aside during the FY 2014-2015.

The attached document is an agreement between the City and Faith Academy to detail the terms under which the City will accept the new utility line and contribute towards the construction costs.

City staff has reviewed the agreement and attached exhibits, and recommends that Council approve this agreement between the City and Faith Academy.

The [draft easements](#) (copies provided to you for review) will be brought back to Council at a later date for acceptance.

STATE OF TEXAS §
§ **COST PARTICIPATION AGREEMENT**
COUNTY OF BURNET §

The **CITY OF MARBLE FALLS** ("City"), a home rule municipal corporation situated in Burnet County, Texas, and **FAITH ACADEMY OF MARBLE FALLS** ("Developer"), make and enter into this Cost Participation Agreement ("Agreement"), dated and effective on the date of the last party to sign this Agreement ("Effective Date").

RECITALS

WHEREAS, the Developer wishes to extend and expand City water lines to its property, which is located at 3151 E FM-1431, in Marble Falls, Burnet County, Texas, consisting of approximately 26.17 acres of land, more or less, and more particularly described by metes and bounds in Exhibit "A", which Exhibit is attached hereto and incorporated herein by reference for all purposes allowed by law (the "Property");

WHEREAS, Developer and City have agreed that an eight inch (8") water line (the "Public Improvement") should be constructed to service the needs of the Property and to provide service to other possible development within the area;

WHEREAS, Developer has agreed to construct, with cost participation by the City, the water utility line to an eight inch (8") capacity line (and replacing any current water lines), upon and across the Property and across certain adjacent property (the "Easement Tracts") as shown on Exhibit "B", which Exhibit is attached hereto and incorporated herein by reference for all purposes allowed by law; and

WHEREAS, the City is authorized by subchapter C, §212.071 et. seq. (Developer Participation in Contract for Public Improvements) of the Texas Local Government Code to execute a contract with a developer of land in the municipality to construct public improvements without complying with the notice and competitive sealed bidding procedure of Chapter 252 of the Texas Local Government Code; and

WHEREAS, as provided in § 212.071 of the Texas Local Government Code, the Developer and the City agree that the Developer shall construct the Public Improvements required by and in accordance with the City's ordinances, and the City will participate in the construction costs as budgeted and set forth herein; and

WHEREAS, Developer will dedicate and/or will cause dedication, conveyance and/or assignment to the City of the necessary easements and/or right-of-way across the Easement Tracts for the installation, and future access and maintenance of the Public Improvements and other utilities; and

WHEREAS, as further provided in § 212.072 of the Texas Local Government Code, the City may participate and pay 100 percent of the total cost for any oversizing of improvements

required by the municipality, including but not limited to increased capacity of improvements to accommodate additional and future development in the area; and

WHEREAS, the City has determined that this Agreement and the Developer's construction of the Public Improvements can be accomplished in a cost efficient manner, will therefore result in an economic benefit to local taxpayers, and is in the best interests of the citizens of the City; and

WHEREAS, for the construction of the Public Improvements, City shall participate in its cost as further described herein, subject to Developer complying with all requirements under the law and terms in this Agreement.

NOW THEREFORE, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, the City and Developer agree as follows:

1. DEFINITIONS.

A. *City* means the City of Marble Falls, a Texas home-rule city and municipal corporation situated in Burnet County, and includes its representatives, agents, assigns, inspectors, contractors, employees and consultants.

B. *Developer* means Faith Academy of Marble Falls, its representatives, agents, contractors, employees, and consultants.

C. *Easement Tracts* means the property that the water line will cross in order to connect to the Developer's Property.

D. *Effective Date* means the date on which the last party executes this Agreement.

E. *Notice* means any formal notice or communication required or permitted to be given by one Party to another by this Agreement.

F. *Parties* means the City and Developer.

G. *Property* means Developer's real property, which is located at 3151 E FM-1431 in Marble Falls, Burnet County, Texas, consisting of approximately 26.17 acres of land, more or less, and more particularly described by metes and bounds in Exhibit "A".

H. *Public Improvement* means the eight inch (8") water line proposed to be constructed under the terms of this Agreement on the Property described in Exhibits "A" and "B". The construction of the Public Improvement also includes the dedication of any necessary public utility easements or right-of-way to the City or assignment of any applicable easements for purposes of access and maintenance of the Public Improvements and other utilities, permitting, erosion control, easement preparation, excavation, trench safety, construction, including labor and materials, of the eight inch (8") water line, backfill, compaction, re-establishment of ground

cover, and any other improvements necessary to connect this line to the City's water system, and all engineering and surveying for the construction of the Public Improvement, together with all related appurtenances thereto, upon and across the Property and the Easement Tracts, that is the subject of this Agreement in accordance with all City, state and federal standards.

2. PARTIES' OBLIGATIONS

Developer shall design and construct the Public Improvements in accordance with all applicable governmental rules and regulations and the terms of this Agreement. Developer further agrees that it shall be solely responsible for payment of any and all costs, including but not limited to design and construction costs, including labor and materials, arising from the construction of the Public Improvement, except as provided herein.

The Parties agree that the following cost estimates shall determine the cost to be paid by the City:

DEVELOPER'S SHARE = 100% of the total cost of construction of an eight inch (8") water line less the City Share on the Property, as described on Exhibit "C", which is incorporated herein for all purposes.

CITY'S SHARE = Forty thousand dollars and no/cents (\$40,000.00) for the construction cost of a eight inch (8") water line, as shown on Exhibit "C".

The City's Share shall be paid in accordance with the terms of this Agreement in a lump sum amount not to exceed forty thousand dollars and no cent (\$40,000.00.)

The City shall not be responsible for any cost increase between the cost estimate and the actual cost to construct the Public Improvement. The Developer shall be solely responsible for any increase or unforeseen cost for the construction of the Public Improvement.

The Developer shall comply with all applicable federal, state and local laws including all City ordinances, codes and regulations in the design and construction of the Public Improvement. As the Public Improvement will ultimately be owned and maintained by the City, prior to beginning construction of the Public Improvement, the Developer shall submit plans and material specifications to the City for review and approval. Failure to obtain the City's final approval prior to construction or failure to comply with all applicable federal, state and local law including all City ordinances, codes and regulations shall constitute a material breach of this Agreement and permit the City to terminate this Agreement immediately, and the City shall not be responsible for any costs incurred by the Developer through the date of termination. In addition, Developer shall obtain all permits and inspections required by the City and shall be solely responsible for any costs associated with obtaining such

permits and inspections. Upon execution of this Agreement, a schedule shall be submitted to the City Engineer as to when work will begin and be completed under this Agreement.

Developer agrees to furnish the City with a copy of each written agreement entered into with a contractor or consultant retained to design and complete the construction of the Public Improvement. Any work performed by a contractor or consultant of the Developer will not, under any circumstances, relieve Developer of its responsibilities and obligations under this Agreement. All work performed by the Developer or its agent shall be done in a good and workmanlike manner satisfactory to the City. Any contractor or consultant hired by Developer shall have sufficient skills and experience to properly perform the work described in the approved specifications and as shown on the approved construction plans, and shall provide adequate supervision to assure competent performance of the work.

During construction of the Public Improvement, the City shall be granted entry onto the Property and the Easement Tracts at reasonable times to inspect the progress and quality of the construction of the Public Improvement and test the line as necessary; and as deemed appropriate in accordance with the City's Code of Ordinances, and any applicable rules and regulations. Developer shall provide to the City a copy of all test results ordered by the Developer.

Upon satisfactory completion and no later than thirty (30) days after completion of the construction of the Public Improvement, and dedication and acceptance by the City of any necessary public utility easement or right-of-way (including easements and right of way from Developer for the portion of the water line constructed within the Developer's property), the Developer shall submit a written invoice to the City requesting payment from the City for its lump sum share, and shall include i) a copy of all release of liens forms from any subcontractor which worked on the construction of the Public Improvement or other written evidence of satisfactory payment by the Developer to all subcontractors, agents or vendors supplying material and/or equipment, as applicable for the construction of the Public Improvement, ii) an assignment and conveyance to City of all of the Easements associated with the Easement Tracts utilizing the form (the "Assignment Form") attached hereto as Exhibit "D", iii) the Burnet County Deed Record document number for all executed Easement documents recorded in Burnet County Deed Records and associated with the Easement Tracts, and iv) the Easement document from the Developer, in a form acceptable to the City, for the portion of the water line constructed on Developer's property. If there are no disputes as to the construction of the Public Improvement or costs invoiced, and all necessary dedication and assignments of easements or right-of-way has been received and accepted by the City, the City shall pay its share as stated in this Agreement within thirty days (30). Payment by the City is subject to the Developer completing the construction of the Public Improvement pursuant to this Agreement and the receipt of the documentation described in this section.

3. TERM

No building permit shall be issued on the Property until the Developer has completed construction of the Public Improvement, the City has inspected the Public Improvement, the Developer has dedicated or provided for the dedication and conveyance to the City and City has accepted the Public Improvement and dedication of a utility easement or right-of-way acceptable to the City to access and maintain the Public Improvement. In any event the Developer shall complete construction of the Public Improvement and offer to the City the dedication of the Public Improvement and provide for the dedication and conveyance of utility easement or right-of-way across the Easement Tracts, no later than the dates specified in the schedule approved by the City Engineer.

Unless terminated earlier as provided for herein, this Agreement shall automatically terminate after the construction of the Public Improvement is complete, the City has inspected the Public Improvement to assure that City specifications and applicable regulations have been satisfied, the Developer has dedicated and the City has accepted the dedication of the utility easements or right-of-way acceptable to the City to access and maintain the Public Improvement, the City has accepted the Public Improvement for maintenance, and the City has paid the City's share to the Developer.

If the City Engineer determines that the City's specifications or any requirements under the law have not been met and the Public Improvement cannot be accepted for maintenance by the City, then Developer shall be solely responsible for any necessary corrections and alterations and all costs associated with any necessary corrections and alterations. The City shall not be responsible nor participate in any costs incurred in such instance. If Developer does not complete the construction of the Public Improvement in accordance with the terms herein, the Developer shall still be responsible for the dedication of a utility easement or right-of-way, and City may elect to terminate this Agreement, complete the construction and assess the Developer with any costs to complete the construction of the Public Improvement.

In addition, Developer agrees to give a warranty on its work on the Public Improvement in accordance with the requirements of the City's Code of Ordinances.

4. INCREASED COSTS

It may be anticipated that additional costs may arise from change in location, if requested by Developer and agreed to by City, site conditions or latent defects; however, Developer agrees that it will be solely responsible for payment of all increased costs in the construction of the Public Improvement in such instances.

5. NOTICE OF DEFAULT; OPPORTUNITY TO CURE; REMEDIES

Should any Party allege that the other has defaulted in the performance of any obligation hereunder, it will provide at least thirty (30) days written notice to the other Party specifying the

nature of the alleged default and opportunity to cure the default before exercising any remedy related to the alleged default.

Upon the failure of either Party to comply with the provisions of this Agreement, which failure continues beyond the thirty (30) day notice and cure period provided above, the other Party shall have the right to enforce the terms and provisions of this Agreement by specific performance, or by such other legal or equitable relief to which the non-defaulting Party may be entitled.

Any remedy or relief described in this Agreement shall be cumulative of and in addition to any other remedies and relief available at law or in equity.

The foregoing notwithstanding, it is understood and agreed that in addition to any other remedy which the City may have upon default by Developer under this Agreement, should Developer fail to comply with the City's Land Use Regulations or any other applicable development regulation, the City may terminate this Agreement and may withhold all payment for costs incurred by Developer.

No prior written notice shall be required to terminate this Agreement if there is an imminent threat to the public health, safety and welfare, and the City may take any and all actions as necessary to mitigate the immediate threat and assess the costs to the Developer.

6. MISCELLANEOUS

A. **Entire Agreement.** This Agreement including any attached exhibits is the entire agreement between the Parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter herein.

B. **Amendment.** No amendment of this Agreement will be effective unless it is in writing and signed by the duly authorized representatives of the Parties hereto, which amendment will incorporate this Agreement in every particular not otherwise changed by the amendment.

C. **Other Instruments, Actions.** The Parties hereto agree that they will take such further actions and execute and deliver such other and further consents, authorizations, instruments, or documents as are necessary or incidental to effectuate the purposes of this Agreement.

D. **No Third Party Rights or Obligations.** No person or entity not a party to this Agreement shall have any third party beneficiary or any other rights against the parties to this Agreement.

E. **Applicable Law; Venue.** This Agreement shall be construed under and according to the laws of the State of Texas. Jurisdiction and venue for any suit arising hereunder shall be in Burnet County, Texas.

F. **Severability.** The provisions of this Agreement are severable, and if any court shall ever hold any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application of it to any person or circumstance of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected by that and this Agreement will be construed as if it had never contained such invalid or unconstitutional portion therein.

G. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

H. **Notices.** For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

CITY:

800 Third Street
Marble Falls, Texas 78654
Attn.: City Manager
Phone: (830) 693-3615
Fax: (830) 693-6737

DEVELOPER:

Faith Academy of Marble Falls
ATTN: Stuart Nunnally, Chairman Board of Trustees
Phone: _____
Fax: _____

The Parties will have the right from time to time to change their respective addresses upon written notice to the other Party. If any date or notice period described in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the Notice will be extended to the first business day following such Saturday, Sunday or legal holiday.

I. **No Waiver of Development Ordinances.** No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision or any other agreement, if any, between the Parties. No waiver of any provision of this Agreement will be deemed to constitute a continuing waiver unless expressly provided for by written amendment to this Agreement; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent defaults of the same type. Nothing herein shall waive any obligations of Developer under applicable ordinances, including but not limited to the Code of Ordinances or the water and wastewater regulations.

J. **Attorney's Fees.** Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other Party. If the court awards relief to both Parties, each will bear its own costs in their entirety except as otherwise specified by the court.

K. **Governmental Authority.** Nothing in this Agreement shall be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the facilities and utility improvements contemplated by the terms of this Agreement except as specifically waived or modified herein or by specific action of the City Council, nor the City's duty to provide for the public health, safety, and welfare in the construction or maintenance of the same.

L. **Assignability.** This Agreement shall not be assignable by Developer without the prior written consent of the City.

M. **Binding Obligation.** This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, successors, and assigns.

N. **Indemnification.** This Agreement is not intended to alter or reallocate any defense or immunity presently authorized to either party by law. The City shall not be subject to any obligations or liabilities of the Developer incurred in the performance of this Agreement. Developer has voluntarily agreed to undertake the construction of the Public Improvement. The construction of the Public Improvement is not a condition of approval or acceptance of the development of the Property. DEVELOPER SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY AND ALL CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPER'S SUCCESSORS, ASSIGNS, GRANTEES, VENDORS, TRUSTEES OR REPRESENTATIVES, BROUGHT PURSUANT TO THIS AGREEMENT OR THE CLAIMS OR TYPES OF CLAIMS DESCRIBED IN THIS PARAGRAPH. CITY SHALL HAVE NO RESPONSIBILITY OR OBLIGATION FOR INDEMNIFICATION OR DEFENSE OF DEVELOPER IN THIS AGREEMENT.

O. **Ambiguities Not to Be Construed against Party Who Drafted Agreement.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Agreement.

P. **No Special Relationship.** The parties' do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship by executing this Agreement.

Q. **Authorized Signature.** The person executing this Agreement on behalf of the Developer warrants to the City that the Developer is a duly authorized to do so, is qualified to do business in the State of Texas, and that Developer has full right and authority to enter into this Agreement, and that every person signing on behalf of Developer is authorized to do so.

Executed on the dates set forth below, to be effective as the date of the last party to sign this Agreement (“Effective Date”).

CITY OF MARBLE FALLS, TEXAS

Date: _____, 2016

By: _____

Name: John Packer

Title: Mayor

ATTEST:

Christina McDonald, City Secretary

**FAITH ACADEMY OF MARBLE FALLS,
DEVELOPER**

_____ ,

_____ ,

a _____

By: _____

Name: _____

Title: _____

Date Signed: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
20____, by _____, as _____ of _____, a
_____, on behalf of said _____.

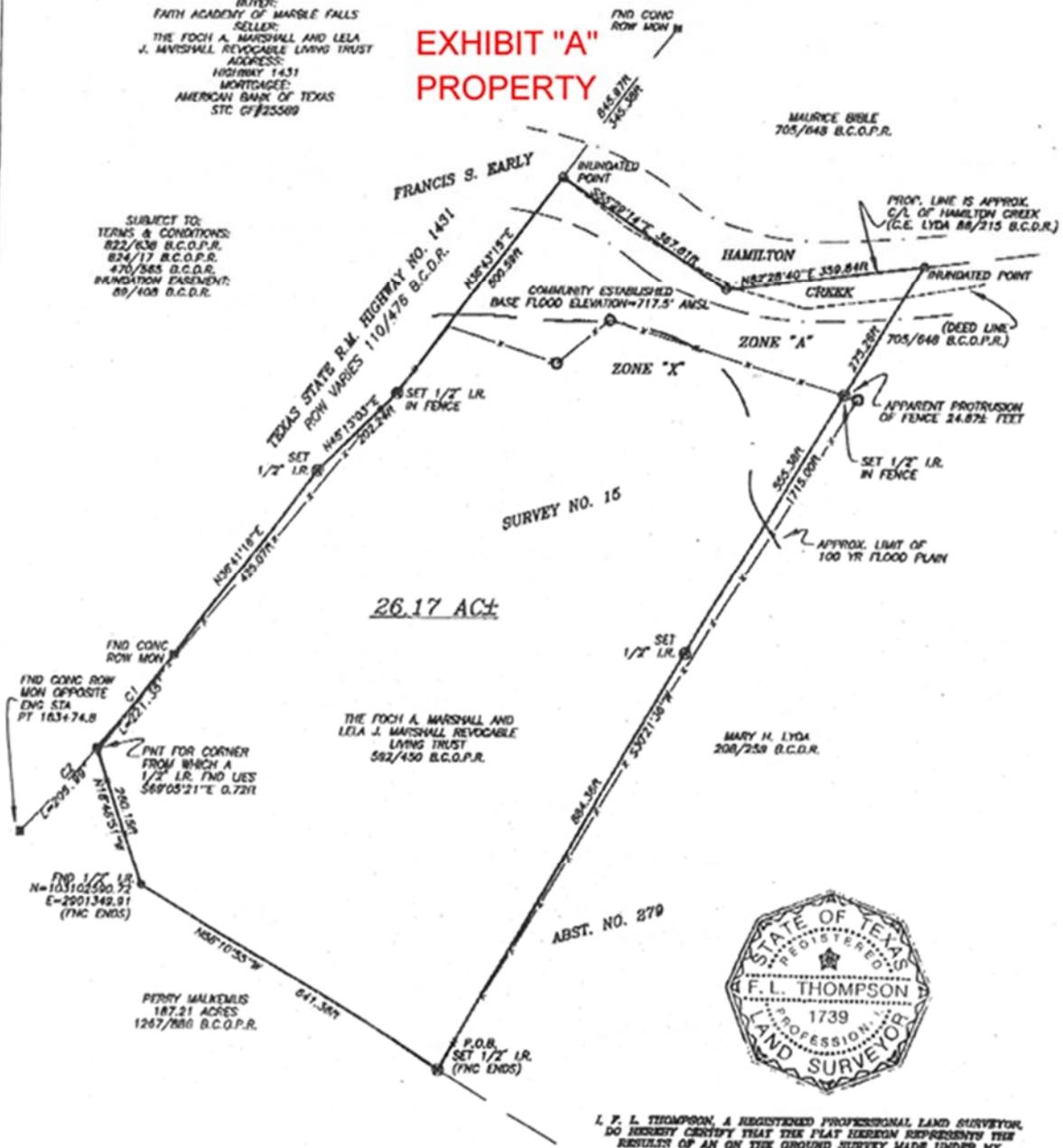
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY
OF _____, 2016.

Notary Public Signature

BUYER:
FAITH ACADEMY OF MARBLE FALLS
SELLER:
THE FOCH A. MARSHALL AND LELA
J. MARSHALL REVOCABLE LIVING TRUST
ADDRESS:
HIGHWAY 1431
MORTGAGEE:
AMERICAN BANK OF TEXAS
STC 0725589

EXHIBIT "A" PROPERTY

SUBJECT TO:
TERMS & CONDITIONS:
822/638 B.C.O.P.R.
824/17 B.C.O.P.R.
470/385 B.C.O.P.R.
BANDWIDTH EASEMENT:
89/108 B.C.O.P.R.



26.17 AC±



I, F. L. THOMPSON, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PLAT HEREON REPRESENTS THE RESULTS OF AN ON THE GROUND SURVEY MADE UNDER MY SUPERVISION ON THE 1ST DAY OF JUNE, 2008. NO IMPROVEMENTS ARE SHOWN, SET BACK FROM PROPERTY LINES THE DISTANCES INDICATED. THERE ARE NO ENCROACHMENTS, CONFLICTS OR PROTRUSIONS APPARENT ON THE GROUND EXCEPT AS SHOWN, AND THE PROPERTY HAS ACCESS TO A DEDICATED PUBLIC ROADWAY. WITNESS MY HAND AND SEAL THIS 6TH DAY OF JUNE, 2008.

F. L. Thompson
F. L. THOMPSON, REG. PROF. LAND SURV. NO. 1739
P. O. BOX 74, LLANO, TEXAS 78643
382-847-4610

CURVE TABLE

NUMBER	L=	CD=	R=	L=	LC=
C1	04°21'36"	N50°54'07"E	2804.79	221.35	221.30
C2	04°03'47"	S43°08'58"W	2804.79	208.00	208.65

COPYRIGHT 2008
FRED L. THOMPSON & ASSOCIATES, P.C.

DRAWN BY: RDJ DATE: 06/08/2008 DWG. NO.: 08051801.DWG APPROVED BY: FLT	REVISIONS	PROJECT BOUNDARY SURVEY OF 26.17 ACRES IN THE FRANCIS S. & EARLY SURVEY NO. 18, ABST. NO. 879, BURNETT COUNTY, TEXAS.	SHEET NAME FLOOD INFORMATION: THIS PROPERTY PARTLY LIES WITHIN THE 100 YEAR FLOOD HAZARD ZONE AS REFERENCED BY THE FIRM MAP PANEL No. 48053C (3116C) EFFECTIVE DATE 11/16/1990	SHEET NO. 1 / 2
---	-----------	---	--	--------------------

FRED L. THOMPSON & ASSOCIATES, P. C.**P. O. BOX 74 LLANO, TEXAS 78643-0074****Registered Professional Land Surveyor No.1739****Licensed State Land Surveyor****325-247-4510 (O) - 325-247-1043 (F)****PAGE 2 OF 2****FIELD NOTES OF 26.17 ACRES MORE OR LESS IN BURNET COUNTY, TEXAS.**

The tract of land described hereon contains 26.17 acres more or less out of the Francis S. Early Survey No. 15, Abst. No. 279, in Burnet County, Texas, part of that certain tract of land described in a deed to The Foch A. Marshall and Lela J. Marshall Revocable Living Trust, recorded in Volume 592, Page 450, Burnet County Official Public Records, described by metes and bounds as follows:

Beginning at a ½" iron rod set at the end of a fence in the north line of that certain tract of land described as 187.21 acres in a deed to Perry Malkemus recorded in Volume 1267, Page 886, Burnet County Official Public Records, for the southwest corner of that certain tract of land described in a deed to Mary H. Lyda recorded in Volume 208, Page 259, Burnet County Deed Records, the southeast corner of the Marshall tract, and the southeast corner hereof;

Thence with the north line of the Malkemus tract, N 58° 10' 55" W 641.36 feet to a ½" iron rod found, N=103102590.72, E=2901349.91 by a fence post, continuing with the fence N 18° 48' 51" W 260.15 feet to a point in the east line of Texas State R.M. Highway No. 1431 for the northwest corner of the Malkemus tract and the southwest corner hereof, from which a ½" iron rod found by a fence post lies S 69° 05' 21" E 0.72 feet and a concrete monument found opposite Eng. Sta. PT 163+74.8 in the east line of Highway 1431 lies around a curve to the right, through a central angle of 04° 03' 47", a radius of 2904.79 feet, an arc length of 205.99 feet, and a chord bearing of S 43° 06' 59" W 205.95 feet (C2);

Thence, with the east line of Highway 1431 and the west line hereof, the following courses and distances:

around a curve to the left, through a central angle of 04° 21' 58", a radius of 2904.79 feet, an arc distance of 221.35 feet, and a chord bearing of N 38° 54' 07" E 221.30 feet (C1) to a concrete right of way monument found;

N 36° 41' 16" E 425.07 feet to a ½" iron rod set;

N 45° 15' 03" E 202.24 feet to a ½" iron rod set in the fence; and

N 36° 43' 15" E 500.59 feet to an inundated point in the approximate centerline of Hamilton Creek as called for by deed (86/215 B.C.D.R.), in the east line of Highway 1431 for the southwest corner of that certain tract of land described in a deed to Maurice Bible recorded in Volume 705, Page 648, Burnet County Official Public Records and the northwest corner hereof;

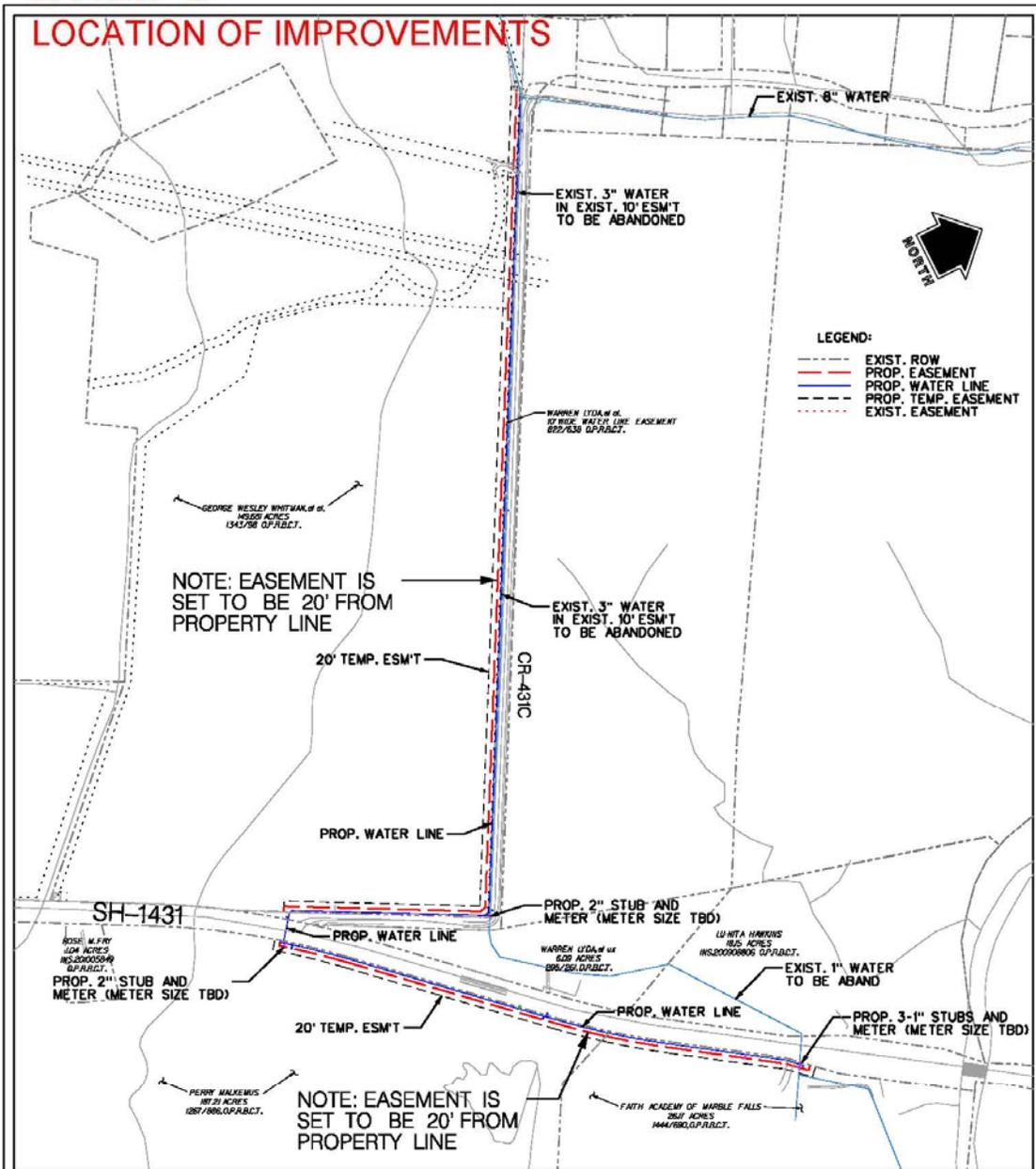
Thence with the said centerline of Hamilton Creek, as called for by deed, S 55° 29' 14" E 367.81 feet and N 82° 28' 40" E to an inundated point in the centerline of Hamilton Creek for the northwest corner of the said Lyda tract, the northeast corner of the Marshall tract, and the northeast corner hereof;

Thence S 30° 21' 36" W at 275.26 feet pass a ½" iron rod set in a cross fence, at 830.64 feet pass a ½" iron rod set, in all 1715.00 feet to the **Point of Beginning** and containing 26.17 acres more or less.

Basis of Bearing is Lambert Grid 2 Parallel Conic Projection; State Plane Coordinates; Texas Central Zone; Nad83 Harn.

EXHIBIT "B"

LOCATION OF IMPROVEMENTS



MARBLE FALLS
 800 THIRD STREET
 MARBLE FALLS, TX 78654
 PH: (830) 693-6737

CITY OF MARBLE FALLS
 FOR REFERENCE ONLY

These documents are for Interim Review, Reference, and not Intended for Construction, Bidding, or Permit Purposes. They were prepared by, or under the supervision of:

ERIC BELAJ	107148	DEC 10, 2015
Engineer's Name	PE#	Date

UTILITY EASEMENT EXHIBIT

EXHIBIT NO.
B

SCALE

EXHIBIT "C"
Public Improvement Construction Summary
Faith Academy

3/18/2014 4:01:30PM

Nelson Lewis, Inc.
P.O. Box 235
Marble Falls, TX 78654
Phone: (830)-693-8874
Fax: (830)693-5986



Contact: Hank Lewis or Mark Bray
Phone: 830 693 8874
Fax: 830 693 5986

Quote To: Mark Earwood

Job Name: COMF Waterline Extention to Faith Academy

Phone:

Date of Plans: None

Fax:

Revision Date:

Mobilization to be added to selected water line option.

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
5	Mobilization				
10	Mobilization	1.00	LS	3,000.00	3,000.00
15	Total Mobilization				\$3,000.00
20	4" Waterline				
30	4" C900 DR18 PVC	6,000.00	LF	13.00	78,000.00
40	4" MJ 45 Bends w/ Restraint	6.00	EA	400.00	2,400.00
50	4" Gate Valve w/ Restraints and Box	2.00	EA	1,100.00	2,200.00
55	12" Bore w/ Steel Casing	100.00	LF	225.00	22,500.00
60	4" WATERLINE TOTAL				\$105,100.00
70	6" WATERLINE				
80	6"C900 DR18 PVC	6,000.00	LF	17.00	102,000.00
90	6" MJ 45 Bends w/ Restraint	6.00	EA	450.00	2,700.00
95	12" Bore w/ Steel Casing	100.00	LF	225.00	22,500.00
100	6" Gate Valve w/ Restraints and Box	2.00	EA	1,200.00	2,400.00
110	6" WATERLINE TOTAL				\$129,600.00
120	8" WATERLINE				
130	8"C900 DR18 PVC	6,000.00	LF	21.00	126,000.00
140	8" MJ 45 Bends w/ Restraint	6.00	EA	500.00	3,000.00
150	8" Gate Valve w/ Restraints and Box	2.00	EA	1,500.00	3,000.00
155	16" Bore w/ Steel Casing	100.00	LF	300.00	30,000.00
160	8" WATERLINE TOTAL				\$162,000.00

EXHIBIT "D"
CONVEYANCE AND ASSIGNMENT OF EASEMENTS

CONVEYANCE, ASSIGNMENT AND ASSUMPTION OF EASEMENTS

THE STATE OF TEXAS

COUNTY OF BURNET

WHEREAS, FAITH ACADEMY OF MARBLE FALLS ("Academy") and the City of Marble Falls, Texas, a home rule municipal corporation ("City") entered into that certain "Cost Participation Agreement", dated February _____, 2016 (the "Agreement");

WHEREAS, Academy was conveyed and granted various temporary and permanent easements for the construction of certain public improvements as described in the Agreement;

WHEREAS, on or about _____, construction of the public improvements was completed by Academy and the City has inspected and accepted the public improvements;

WHEREAS, the Agreement provides that upon completion of the construction of the public improvements and acceptance of such improvements by the City, that Academy shall assign and convey to the City and City shall accept the Easements granted to Academy;

WHEREAS, Academy now desires to assign, transfer and convey all of Academy's right, title and interest in and to the Easements and the associated Easement Property to City, and City desires to acquire from Academy such right, title and interest in the Easements and Easement Property. Unless otherwise provided herein, all capitalized words and terms in this Assignment shall have the same meanings ascribed to such words and terms as in the Agreement.

NOW, THEREFORE, Academy, for and in consideration of the premises and the agreement set forth herein, together with the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid and delivered by City to Academy, the receipt and sufficiency of which are hereby acknowledged by Academy, does hereby CONVEY, ASSIGN, TRANSFER AND DELIVER to City all of its rights title and interest in and to the Easements described by Burnet County Deed Records recording information described in Exhibit "A", attached hereto and covering the Easement Property described in Exhibit "B", attached hereto.

By its execution hereof, City hereby accepts the conveyance and assignment of the right, title and interest of Academy in and to the Easements and the Easement Property described in such Easements, and hereby assumes and agrees to perform and discharge all duties and obligations to be performed and/or discharged by Academy under each Easement from and after the date of this instrument.

EXECUTED by the undersigned effective as of the ____ day of _____, 2016.

(Signatures follow)

ACADEMY:

FAITH ACADEMY OF MARBLE FALLS:

a _____

By: _____

Name: _____

Title: _____

Date Signed: _____

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, as _____ of _____, a _____, on behalf of said _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2016.

Notary Public Signature

Address:

CITY:

CITY OF MARBLE FALLS,

a home rule municipal corporation

By: _____

Name: _____

Title: _____

Date Signed: _____

STATE OF _____ §

§

COUNTY OF BURNET §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, as _____ of _____, a _____, on behalf of said _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF _____, 2016.

Notary Public Signature

Address:

Exhibit “A”

LIST OF EASEMENTS

- Utility Easement from Faith Academy of Marble Falls granted to City of Marble Falls

- Utility Easement from Perry Malkemus granted to Faith Academy of Marble Falls

- Utility Easement from George Wesley Whitman, John Raymond Whitman, Doretha F. Bergman (formerly known as Doretha F. Whitman) and RTMK, Inc. to Faith Academy of Marble Falls

Exhibit "B"
EASEMENT PROPERTY

UTILITY EASEMENT

**STATE OF TEXAS §
 §
COUNTY OF BURNET §**

KNOW ALL BY THESE PRESENTS:

That **FAITH ACADEMY OF MARBLE FALLS**, a Texas non-profit corporation (hereinafter "Grantor"), for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration paid by the below named Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged, does hereby give, grant and convey to **THE CITY OF MARBLE FALLS**, a Texas home rule municipal corporation (hereinafter "Grantee"), its successors and assigns, a perpetual and non-exclusive easement in, upon, under and across that certain 0.24 acre tract of land out of the Francis S. Early League No. 15, Abstract No. 279, within 26.17 acres conveyed to Faith Academy of Marble Falls in the deed recorded in Volume 1444, Page 690, of the Official Public Records of Burnet County, Texas, as set forth in the attached Exhibit A (the "Easement Property"), to (a) construct, reconstruct and perpetually maintain, repair and operate water mains, pipelines, sanitary sewer mains, storm sewer mains and other utilities, including but not limited to, telecommunication facilities, with all necessary appurtenances thereto, together with the right to make connections and such other construction and improvements incidental to the construction, maintenance, operation and repair of such lines, and (b) together with the right to use roads, driveways and access ways, and the right of ingress and egress at all times across the Easement Property.

Grantee's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's heirs, successors, and assigns the right to use all or part of the Easement Property as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Grantee for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property, as long as such further conveyance is subject to the terms of this Utility Easement.

TO HAVE AND TO HOLD the Easement Property to Grantee and Grantee's heirs, successors, and assigns forever; all upon the conditions that Grantee will at all times, after doing any work in connection with the construction, reconstruction, repair or removal of said pipe line, or any lateral thereof, restore said premises to the condition in which same were found before such work was undertaken, and that in the use of said rights and privileges herein granted Grantee will not create a nuisance or do any act that will be detrimental to said premises.

Grantor reserves the right to enter upon and use the Easement Property in any manner that is not inconsistent with the rights granted to Grantee herein, but in no event shall Grantor place, erect or maintain on the Easement Property (a) any permanent structures, including, but not limited to, any habitable structures such as homes or offices, or (b) any structure, including,

but not limited to, drainage, filtration or detention ponds, or make changes in grade, elevation, or contour of the land which would impair Grantee's use of the Easement Property.

This Utility Easement is made and accepted subject to all validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; and all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Easement Property.

When the context requires, singular nouns and pronouns include the plural.

This instrument was prepared based on information furnished by the parties, and no independent title search has been made.

Executed to be effective as of _____, _____ 2016.

GRANTOR

FAITH ACADEMY OF MARBLE FALLS

By: _____

Its: _____

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on the ____ day of January, 2016, by _____ of FAITH ACADEMY OF MARBLE FALLS, a Texas non-profit corporation, on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO:

City of Marble Falls
Attn: City Secretary
800 3rd Street
Marble Falls, TX 78654

UTILITY EASEMENT

STATE OF TEXAS §
§
COUNTY OF BURNET §

KNOW ALL BY THESE PRESENTS:

That **PERRY MALKEMUS** (hereinafter “Grantor”), for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration paid by the below named Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged, does hereby give, grant and convey to **FAITH ACADEMY OF MARBLE FALLS**, a Texas non-profit corporation (hereinafter “Grantee”), its successors and assigns, a perpetual and non-exclusive easement in, upon, under and across that certain 0.57 acre tract of land out of the Francis S. Early League No. 15, Abstract No. 279, within 187.21 acres conveyed to Perry Malkemus in the deed recorded in Volume 1267, Page 886, of the Official Public Records of Burnet County, Texas, as set forth in the attached Exhibit A (the “Easement Property”), to (a) construct, reconstruct and perpetually maintain, repair and operate water mains, pipelines, sanitary sewer mains, storm sewer mains and other utilities, including but not limited to, telecommunication facilities, with all necessary appurtenances thereto, together with the right to make connections and such other construction and improvements incidental to the construction, maintenance, operation and repair of such lines, and (b) together with the right to use roads, driveways and access ways, and the right of ingress and egress at all times across the Easement Property.

Grantee’s right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor’s heirs, successors, and assigns the right to use all or part of the Easement Property as long as such use by Grantor and Grantor’s heirs, successors, and assigns does not interfere with the use of the Easement Property by Grantee for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property, as long as such further conveyance is subject to the terms of this Utility Easement.

TO HAVE AND TO HOLD the Easement Property to Grantee and Grantee’s heirs, successors, and assigns forever; all upon the conditions that Grantee will at all times, after doing any work in connection with the construction, reconstruction, repair or removal of said pipe line, or any lateral thereof, restore said premises to the condition in which same were found before such work was undertaken, and that in the use of said rights and privileges herein granted Grantee will not create a nuisance or do any act that will be detrimental to said premises.

Grantor reserves the right to enter upon and use the Easement Property in any manner that is not inconsistent with the rights granted to Grantee herein, but in no event shall Grantor place, erect or maintain on the Easement Property (a) any permanent structures, including, but not limited to, any habitable structures such as homes or offices, or (b) any structure, including,

but not limited to, drainage, filtration or detention ponds, or make changes in grade, elevation, or contour of the land which would impair Grantee's use of the Easement Property.

This Utility Easement is made and accepted subject to all validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; and all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Easement Property.

When the context requires, singular nouns and pronouns include the plural.

This instrument was prepared based on information furnished by the parties, and no independent title search has been made.

Executed to be effective as of _____, ____ 2016.

GRANTOR

PERRY MALKEMUS

By: _____

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on the _____ day of January, 2016, by Perry Malkemus.

NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO:

City of Marble Falls
Attn: City Secretary
800 3rd Street
Marble Falls, TX 78654

UTILITY EASEMENT

STATE OF TEXAS §
 §
COUNTY OF BURNET §

KNOW ALL BY THESE PRESENTS:

That **GEORGE WESLEY WHITMAN, JOHN RAYMOND WHITMAN, DORETHA F. BERGMAN** (formerly known as Doretha F. Whitman), and **RTMK, INC.**, a Texas corporation (hereinafter “Grantors”), for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration paid by the below named Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged, does hereby give, grant and convey to **FAITH ACADEMY OF MARBLE FALLS**, a Texas non-profit corporation (hereinafter “Grantee”), its successors and assigns, a perpetual and non-exclusive easement in, upon, under and across that certain 1.72 acre tract of land out of the Francis S. Early League No. 15, Abstract No. 279, within 149.81 acres conveyed to John Whitman and Wesley Whitman in deed recorded in Volume 677, Page 8770 of the Official Public Records of Burnet County, Texas, as set forth in the attached Exhibit A (the “Easement Property”), to (a) construct, reconstruct and perpetually maintain, repair and operate water mains, pipelines, sanitary sewer mains, storm sewer mains and other utilities, including but not limited to, telecommunication facilities, with all necessary appurtenances thereto, together with the right to make connections and such other construction and improvements incidental to the construction, maintenance, operation and repair of such lines, and (b) together with the right to use roads, driveways and access ways, and the right of ingress and egress at all times across the Easement Property.

Grantee’s right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor’s heirs, successors, and assigns the right to use all or part of the Easement Property as long as such use by Grantor and Grantor’s heirs, successors, and assigns does not interfere with the use of the Easement Property by Grantee for the Easement Purpose, and the right to convey to others the right to use all or part of the Easement Property, as long as such further conveyance is subject to the terms of this Utility Easement.

TO HAVE AND TO HOLD the Easement Property to Grantee and Grantee’s heirs, successors, and assigns forever; all upon the conditions that Grantee will at all times, after doing any work in connection with the construction, reconstruction, repair or removal of said pipe line, or any lateral thereof, restore said premises to the condition in which same were found before such work was undertaken, and that in the use of said rights and privileges herein granted Grantee will not create a nuisance or do any act that will be detrimental to said premises.

Grantor reserves the right to enter upon and use the Easement Property in any manner that is not inconsistent with the rights granted to Grantee herein, but in no event shall Grantor

place, erect or maintain on the Easement Property (a) any permanent structures, including, but not limited to, any habitable structures such as homes or offices, or (b) any structure, including, but not limited to, drainage, filtration or detention ponds, or make changes in grade, elevation, or contour of the land which would impair Grantee's use of the Easement Property.

This Utility Easement is made and accepted subject to all validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; and all presently recorded and validly existing instruments, other than conveyances of the surface fee estate, that affect the Easement Property.

When the context requires, singular nouns and pronouns include the plural.

This instrument was prepared based on information furnished by the parties, and no independent title search has been made.

Executed to be effective as of _____ 2016.

(Signature Pages Follow)

GRANTOR:

George Wesley Whitman

THE STATE OF LOUISIANA §
 §
PARISH OF _____ §

This instrument was acknowledged before me on the _____ day of January, 2016, by George Wesley Whitman.

NOTARY PUBLIC, STATE OF LOUISIANA

GRANTOR:

John Raymond Whitman

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on the _____ day of January, 2016, by John Raymond Whitman.

NOTARY PUBLIC, STATE OF TEXAS

GRANTOR:

Doretha F. Bergman

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on the _____ day of January, 2016, by Doretha F. Bergman.

NOTARY PUBLIC, STATE OF TEXAS

GRANTOR:

RTMK, INC.

By: _____
Tammy Whitman
Its: President

THE STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on the ____ day of January, 2016, by Tammy Whitman, President of RTMK, INC., a Texas corporation, on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO:

City of Marble Falls
Attn: City Secretary
800 3rd Street
Marble Falls, TX 78654