



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

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

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Notice is hereby given that on the 6<sup>th</sup> day of December, 2016 the Marble Falls City Council will meet in regular session at 6:00 pm in the City Hall Council Chambers located at 800 3<sup>rd</sup> 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 from Air Evac. **Teri Thompson, Program Director**
  - Update from Marble Falls Area EMS. **Johnny Campbell, Executive Director**
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 November 15, 2016 regular and workshop meetings and the November 21, 2016 special meeting. **Christina McDonald, City Secretary**

- (b) Approval of an agreement between the Highland Lakes Creative Arts and the City of Marble Falls regarding the [Sculpture on Main Street](#) event. **Robert Moss, Parks and Recreation Director**

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

- (a) Public Hearing, Discussion, and Action regarding a [Replat](#) of Lot Nos. 1 through 10, and a portion of a 20' alley, Block No. 278, Marble Falls Original Township, City of Marble Falls, Burnet County, Texas, municipally addressed as 404 South Avenue M. **Elizabeth Yeh, City Planner**
- (b) Public Hearing and Discussion on the First Reading of [Resolution 2016-R-12A](#) "Resolution Approving Economic Development Project proposed by the Marble Falls Economic Development Corporation. **Christian Fletcher, Executive Director MFEDC**
- (c) Discussion and Action regarding a [Construction Plat](#) for the Mustang Ridge Estates Subdivision, being 173.692 acres out of the Logan Vandiver Survey No. 206, Abstract No. 927, the J.M. Roper Survey No. 1517, Abstract No. 1559, the Charles D. Ball Survey No. 25, Abstract No. 126, and the William C.M. Baker Survey No. 202, Abstract No. 123, and Tract No. 9 of the Holly-Naumann Subdivision, Number Three, City of Marble Falls, Burnet County, Texas, located north of the Wildflower Subdivision and west of Marble Falls High School. **Elizabeth Yeh, City Planner**
- (d) Discussion and Action regarding the approval of a design services contract with Willis Environmental Engineering for the [Via Viejo water tank replacement](#) project. **Eric Belaj, City Engineer**
- (e) Discussion and Action on the recommendation from the Hotel Motel Tax Advisory Committee regarding the [allocation of HOT funds](#) for Victory Publishing/101 Highland Lakes.com. **Mike Hodge, City Manager**
- (f) Discussion and Action on a [Hotel Occupancy Tax Reimbursement Agreement](#) with Novak Cobalt Partners for 50 percent of the taxes collected from the Hotel. **Mike Hodge, City Manager**

**8. CITY MANAGER'S REPORT**

- CARTS Update

**9. EXECUTIVE SESSION**

**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 posting at City Hall, in a place readily accessible to the general public at all times, on the 1<sup>st</sup> day of December, 2016 at 10:00 am 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.marblefallstx.gov](http://www.marblefallstx.gov)*

**December 6, 2016**

**6. CONSENT AGENDA**

- (a) Approval of the minutes of the November 15, 2016 regular meeting and workshop and the November 21, 2016 special meeting. ***Christina McDonald, City Secretary***
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Background information is attached as follows:

[November 15, 2016 regular meeting minutes](#)

[November 15, 2016 workshop minutes](#)

[November 21, 2016 special meeting minutes](#)

STATE OF TEXAS  
COUNTY OF BURNET  
CITY OF MARBLE FALLS

On this the 15<sup>th</sup> day of November, 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
Craig Magerkurth	Councilmember
Ryan Nash	Councilmember
Reed Norman	Councilmember
Richard Westerman	Councilmember

**ABSENT:** None

**STAFF:**

Mike Hodge	City Manager
Caleb Kraenzel	Assistant City Manager
Monte Akers	City Attorney
Christina McDonald	City Secretary
Margie Cardenas	Finance Director
Christian Fletcher	EDC Executive Director
Eric Belaj	City Engineer
Mike Ingalsbe	Building Official
Elizabeth Yeh	City Planner
Mark Whitacre	Police Chief
Stacy Baker Marberry	Communications Supervisor
Perry Malkemus	Director of Public Works

**VISITORS:** Glynis Smith (The Highlander), Mary Ann Raesener (Mayor, City of Meadowlakes), Lucy Weber, Zach Weber (Boy Scout Troop #284), Nancy Biggerstaff (1108 Mulberry), Margaret Hardin (Langford Community Management)

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT.** Mayor Packer called the meeting to order at 6:00 pm.
2. **INVOCATION.** Mayor Packer gave the invocation.
3. **PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES AND TO THE TEXAS FLAG.** The pledges were led by Councilmember Magerkurth and Zach Weber (Boy Scout Troop #284)

4. **UPDATES, PRESENTATIONS AND RECOGNITIONS.** There were no updates, presentations or recognitions.
5. **CITIZEN COMMENTS.** There were no citizen comments,
6. **CONSENT AGENDA.**

- (a) **Approval of the minutes of the November 1, 2016 regular meeting.**
- (b) **Approval of distribution of funds from the Community Event Fund for holiday lighting on Main St.**
- (c) **Approval of Resolution 2016-R-11B authorizing the City of Marble Falls to participate in Texas Class Investment Pool.**
- (e) **Approval of Ordinance 2016-O-11D amending the City of Marble Falls Investment Policy.**

Mayor Pro-Tem Hurst made a motion to move item 6(d) to the regular agenda and approve the remainder of the consent agenda. Councilmember Westerman seconded the motion. The motion carried by a vote of 7-0.

## 7. **REGULAR AGENDA.**

- 6(d) **Approval of the 4<sup>th</sup> Quarterly Investment Report for the period July 1, 2016 through September 30, 2016 and the Annual Investment Report for Fiscal Year 2015/2016.** Margie Cardenas, Finance Director addressed Council. After some discussion, Councilmember Magerkurth made a motion to approve both investment reports as presented. Councilmember Norman seconded the motion. The reports were approved by a vote of 7-0.

- (a) **Discussion and Action on awarding a contract for Administrative Services for grant management for the 2016 Community Development Block Grant for the Wastewater Project.** Margie Cardenas, Finance Director addressed Council. Margaret Hardin (Langford Community Management) was present. City Engineer Eric Belaj addressed the project.

Mayor Pro-Tem Hurst made a motion to award the contract for Administrative Services for grant management for the 2016 Community Development Block Grant for the wastewater project to Langford Community Management. The motion was seconded by Councilmember Nash and carried by a unanimous vote (7-0).

- (b) **Discussion and Action on awarding a contract for Administrative Services on the application and grant administration, if funded, of the 2017/18 Community Development Block Grant.** Margie Cardenas, Finance Director addressed Council. Margaret Hardin (Langford Community Management) was present.

Councilmember Nash made a motion to award the contract for Administrative Services on the application and grant administration for the 2017/18 Community Development Block Grant. The motion was seconded by Councilmember Westerman and carried by a unanimous vote (7-0).

- (c) **Discussion and Action on an Agreement with Marble Falls Area Volunteer Fire Department for dispatching services.** Mark N. Whitacre, Chief of Police addressed Council. Stacy Baker Marberry, Communications Manager was present. Councilmember Nash made a motion to approve the agreement with the Marble Falls Area Volunteer Fire Department for dispatching services as presented. The motion was seconded by Councilmember Westerman and carried by a vote of 7-0.

- (d) **Discussion and Action on the appointment of a Zoning Advisory Committee (ZAC) to work with City staff and consultant, Halff Associates, Inc., to develop and recommend updates to the Land Use Regulations/Zoning Regulations and associated City development codes.** Elizabeth Yeh, City Planner addressed Council. Mayor Packer stated he would like to remove his name from the committee and replace it with Councilmember Reed Norman. Councilmember Nash made a motion to approve the appointments to the Zoning Advisory Committee and replace Councilmember Norman with Mayor Packer. Councilmember Magerkurth seconded the motion. The motion carried by a vote of 7-0.

8. **CITY MANAGER'S REPORT.** City Manager Mike Hodge gave a report on the recent storm damage and public safety building ground breaking.
9. **EXECUTIVE SESSION.** There was no executive 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 December 6 regular Council meeting were reviewed.
12. **ADJOURNMENT.** There being no further business to discuss, Mayor Pro-Tem Hurst made a motion to adjourn. Councilmember Austin-Cook seconded the motion. The motion carried by a unanimous vote (7-0) and the meeting was adjourned at 6:55 pm.

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**John Packer, Mayor**

**ATTEST:**

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**Christina McDonald, TRMC  
City Secretary**

DRAFT

STATE OF TEXAS  
COUNTY OF BURNET  
CITY OF MARBLE FALLS

On this the 21<sup>st</sup> day of November, 2016 the Council of the City of Marble Falls convened in regular session at noon 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  
Craig Magerkurth Councilmember  
Reed Norman Councilmember

**ABSENT:** Rachel Austin-Cook Councilmember  
Ryan Nash Councilmember  
Richard Westerman Councilmember

**STAFF:** Caleb Kraenzel Assistant City Manager  
Christina McDonald City Secretary  
Mark Whitacre Chief of Police

**VISITORS:** Glynis Smith (The Highlander), Caroline Dulfer (303 Villa Vista Way), Robert and Norma Huffman (402 Avenue E)

1. **CALL TO ORDER AND ANNOUNCE QUORUM IS PRESENT.** Mayor Packer called the special meeting to order at noon and announced the presence of a quorum.
2. **REGULAR AGENDA**
  - (a) **Discussion and Action on Resolution 2016-R-11C canvassing the returns and declaring the results of a Charter Amendment Election held on November 8, 2016.** Christina McDonald, City Secretary addressed Council. After review of the returns as submitted by the Burnet County Elections Administrator, Mayor Pro-Tem Hurst made a motion to approve Resolution 2016-R-11C. The motion was seconded by Councilmember Norman and carried by a vote of 4-0.
  - (b) **Discussion and Action on an order adopting the amendments to the City Charter as a result of the November 8, 2016 Charter Amendment Election.** Christina McDonald, City Secretary addressed Council. Ms. McDonald stated that after approval of the order by Council a Certificate of Charter Amendments will be filed with the Secretary of State's Office. Councilmember Norman made a motion to approve the order as presented. Mayor Pro-Tem Hurst seconded the motion. The motion carried by a unanimous vote (4-0).

3. **ADJOURNMENT.** There being no further business to discuss, Mayor Pro-Tem Hurst made a motion to adjourn. The motion was seconded by Councilmember Norman and the meeting was adjourned at 12:07 pm.

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**John Packer, Mayor**

**ATTEST:**

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**Christina McDonald, TRMC  
City Secretary**

DRAFT

STATE OF TEXAS  
COUNTY OF BURNET  
CITY OF MARBLE FALLS

On this the 15<sup>th</sup> day of November, 2016 the Council of the City of Marble Falls convened in workshop session at 7:00 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
Craig Magerkurth	Councilmember
Ryan Nash	Councilmember
Reed Norman	Councilmember
Richard Westerman	Councilmember

**ABSENT:** None

**STAFF:**

Mike Hodge	City Manager
Caleb Kraenzel	Assistant City Manager
Monte Akers	City Attorney
Christina McDonald	City Secretary
Margie Cardenas	Finance Director
Christian Fletcher	EDC Executive Director
Bryan Wendt	Code Enforcement Officer
Mike Ingalsbe	Building Official
Elizabeth Yeh	City Planner
Mark Whitacre	Police Chief

**VISITORS:** Nancy Biggerstaff (1108 Mulberry), Eddie Arrendondo, Atty. (Municipal Court Prosecutor)

1. **CALL TO ORDER.** Mayor Packer called the workshop to order at 7:00 pm.
2. **WORKSHOP.** Assistant City Manager Caleb Kraenzel led the presentation and discussion on Code Enforcement, the Property Maintenance Code and various Nuisance Ordinances, including key points, process, code updates and approach. Attorney Eddie Arrendondo addressed enforcement procedures.
3. **ADJOURNMENT.** Mayor Packer closed the workshop at 8:17 pm.

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**John Packer, Mayor**

**ATTEST:**

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**Christina McDonald, TRMC  
City Secretary**

DRAFT

**December 6, 2016**

**6. CONSENT AGENDA**

- (b) Approval of an agreement between the Highland Lakes Creative Arts and the City of Marble Falls regarding the Sculpture on Main Street event.  
**Robert Moss, Parks and Recreation Director**
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Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



**Council Agenda Item Cover Memo**  
**December 6, 2016**

**Agenda Item No.:** 6(b)  
**Presenter:** Robert Moss, Parks and Recreation Director  
**Department:** Parks and Recreation  
**Legal Review:**  Not Applicable

**AGENDA CAPTION**

Approval of an agreement between the Highland Lakes Creative Arts and the City of Marble Falls regarding the Sculpture on Main Street event.

**BACKGROUND INFORMATION**

The Highland Lakes Creative Arts (the arts) is a non-profit organization that has been established to support local art. The Sculpture on Main Street event is now sponsored by the arts. The attached [agreement](#) allows the arts the permission to use the City's property to place the sculptures at the approved locations. The approved locations are identified in [Exhibit A](#). A final rendering of the map will be distributed to the City by the end of December 2016.

The term of this agreement is for one year and will commence upon approval by the City Council.

[Insurance](#) is also attached.



3rd St

	Main St →	<p>Come Dore * With Me</p> <p>* Leo</p> <p>* Red Bird</p> <p>* Bull's Eye</p> <p>* Awakening</p> <p>* Cache del Mar</p>	Main St ←	<p>* Spirit Bear</p> <p>* Freshwater Cowgirl → (3<sup>rd</sup> + Hwy 281)</p> <p>* Trois Jets d'Eau</p>	<p>Fleur *</p> <p>Arch Bldg</p>
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Marta's  
Ballet

2nd St

* Peace		Sulphure on Main 2016/2017
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**Leo**  
36" w x 17" d x 22" h  
245 lbs  
\$16,000  
*Pokey Park*



**Fleur**  
42" w x 32" d x 82" h  
150 lbs  
\$2,250  
*Bobby Peiser*

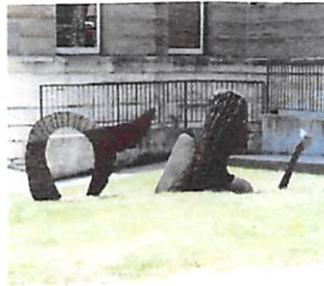


**Trois Jets D'eau**  
60" w x 24" d x 96" h  
350 lbs  
\$10,000  
*Helene Vachon + Mark Jaschke*

**2016**  
**Sculpture**  
**On Main**



**Redbird**  
30" w x 17" d x 84" h  
125 lbs  
\$3,500  
*Dan Pogue*



**Freshwater Cowgirl**  
168" w x 6" d x 48" h  
382 lbs  
\$10,000  
*Anthony St. James*



**Cache del Mar**  
42" w x 40" d x 120" h  
500 lbs  
\$13,000  
*Marshall Cunningham*



**Come Dance with Me**  
48" w x 34" d x 144" h  
325- 350 lbs  
\$17,500  
*Jerry Daniel*



**Spirit Bear**  
24" w x 12" d x 24" h  
475 lbs  
\$5,500  
*Cat Quintanilla*



**Bull's Eye**  
72" w x 24" d x 96" h  
2500 lbs  
\$120,000  
*Candyce Garrett*



**Awakening**  
17" w x 17" d x 38" h  
50 lbs  
\$2,900  
*Peter Mangan*



**Peace**  
20" w x 10" d x 32" h  
55 lbs  
\$3,200  
*Ruth Burink*



**For Purchasing or Sponsorship:**

[www.hlarts.com](http://www.hlarts.com)

[thearts.hlca@gmail.com](mailto:thearts.hlca@gmail.com)

210-363-1187



Third St

Avenue H

Fleur

Spirit Bear

Come Dance with Me

Trois Jets D'eau

Leo

Red Bird

Bull's Eye

Awakening

Cache del Mar

Second St

Main St

Third St

Main St

Main St

Peace

Second St

## OMNIBUS AGREEMENT

THIS OMNIBUS AGREEMENT (hereinafter, the "Agreement") is made and entered into on this 17 day of NOVEMBER, 2016 (the "Effective Date"), by and between the City of Marble Falls, a Texas home rule municipal corporation (the "City"), and the Highland Lakes Creative Arts ("the arts"), a non-profit corporation, pursuant to 26 U.S. CODE § 501(c)(3), located in Marble Falls, Texas ("the arts").

### WITNESSETH:

WHEREAS, the City has determined it is in the community's interest to support local arts and artists through its sponsorship of such events as "the arts" *Sculpture on Main* (the "Event"); and,

WHEREAS, to accommodate the City's needs and to address related issues of public concern regarding such sponsorship, the City and "the arts" (collectively, the "Parties") desire to enter into this Agreement for the purposes of defining each Party's roles and responsibilities, among other relevant matters, as such specifically relate to the Event;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Premises.** The City grants "the arts" the right to use the public sidewalks, rights-of-way, and other public property (collectively, the "Licensed Property"), providing a single, contiguous area, in which the Event shall take place, as indicated on the map attached hereto as Exhibit "A," which is incorporated herein for all purposes.

The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

2. **Purpose.** The City grants "the arts" permission to use the Licensed Property solely for the purpose of placing the Event's sculptures (the "Sculptures") at the approved locations, as indicated on the attached Exhibit "A."
3. **Consideration.** The City shall not require "the arts" to pay an annual fee. Instead, the Parties agree that the consideration supporting this Agreement derives from the benefits they stand to realize from their collaboration and collective efforts to put on the Event. Any subsidies that the City pays or may promise to provide are ancillary to this Agreement.
4. **Term.** This Agreement shall commence on the Effective Date and shall remain enforceable in its entirety for the full term of the Event (the "Term"), which is held annually by the Parties and usually runs for a period of eleven (11) consecutive months; however, this Agreement may be terminated prior to the expiration of the Term in the event of default, pursuant to terms provided herein.

5. **Limits on License.** The existence of this Agreement is expressly subordinate to the present and future right of the City to use the Licensed Property in any manner authorized by law. This Agreement is also subordinate to any easements, utility easements, rights-of-way, use of streets for vehicular traffic or other properly recorded property interests, regardless of whether they are pre-existing or not; however, the City will make best efforts so as not to undermine the purposes of this Agreement through any right that it may choose to exercise during the Term.

Accordingly, the City may enter the Licensed Property without notice, and without incurring any obligation to “*the arts*”, and remove or alter the Sculptures, using reasonable efforts to prevent any damage thereto. Such removal will occur only if the City Manager deems it is necessary, pursuant to the following: (a) in order to exercise the City’s rights or duties with respect to the Licensed Property; (b) to, otherwise, protect persons or property; or (c) for the public health or safety with respect to the Licensed Property.

6. **Conditions.**

- a. **Location of Sculptures.** The basis for the locations approved by the City for the placement of the Sculptures, as indicated on the attached Exhibit “A,” is so that the Sculptures do not cause any kind of impediment to pedestrians, vehicular traffic, the duties and operations of the City, including all municipal ordinances and laws, both state and federal, or the interests of neighboring property owners. Moreover, all Sculptures shall comply with the Americans with Disabilities Act.
- b. **Installation.** “*the arts*” shall install the Sculptures in a manner that insures that the Sculptures can withstand winds up to 45 miles per hour. Any substantive alteration or excavation of existing real property that “*the arts*” deems is necessary must be approved by the City prior to installation, and upon removal of the Sculptures, “*the arts*” is obligated to engage in all reasonable remediation measures necessary to return the property to the condition it was in prior to installation. Beyond what is necessary for “*the arts*” to comply with the requirements of this Agreement, installation shall not be permanent in nature.
- c. **Graphic/Artistic Content of Sculptures.** All Sculptures “*the arts*” intends to use for the Event must be approved by the City prior to installation. Any Sculptures that are pornographic, violent, or discriminatory, or otherwise offensive in nature. For the purpose of this Agreement, “offensive” is defined as anything that meets the following three-part test:
  - i. Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;
  - ii. Whether the work depicts or describes, in a patently offensive way, sexual conduct or excretory functions, as defined by Texas law;

- iii. Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Additionally, following installation of the Sculptures, “*the arts*” shall be responsible for removing any offensive alteration to the Sculptures, including graffiti, even if it means that “*the arts*” must remove the Sculpture(s) at-issue in their entirety.

- d. **Removal or Modification of Sculptures.** “*the arts*” shall be responsible for the removal of or any alteration made to the Sculptures, pursuant to the terms of this Agreement. In the event that any such removal or alteration should temporarily affect existing rights-of-way, easements or public utilities, “*the arts*” shall comply with all scheduling procedures mandated by the City prior thereto.
- e. **Maintenance.** “*the arts*” shall timely and properly maintain the Sculptures as needed. Accordingly, all Sculptures must remain in place, as indicated on the attached Exhibit “A,” until their removal is required under this Agreement. The Sculptures may not be replaced or substituted without prior written approval by the City.

- 7. **Insurance.** “*the arts*”, or any guarantor therefor, shall maintain a commercial general liability insurance policy with a combined singled limit of not less than \$500,000.00, written by a company acceptable to the City Manager and licensed to do business in Texas, and name the City as an additional insured. The required coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Either way, the policy must cover all perils that may arise from the activities of “*the arts*”, which includes those of its officers, employees, duly authorized agents, or contractors, related to “*the arts*” use of the Licensed Premises and any events stemming from such use. “*the arts*”, or any guarantor therefor, shall be responsible for paying any required deductibles under the policy.

All insurance certificates must include a clause stating that the insurance policy shall not be canceled, reduced, restricted, or otherwise limited, which includes a failure to timely renew, until forty-five (45) days after the City Manager has received (a) written notice, as evidenced by a return receipt for certified mail and (b) substitute certificates of insurance that meet or exceed the requirements stated herein for any such policy. Proof of insurance must be provided to the City prior to placement of the Sculptures, and such coverage must continuously remain in place until all Sculptures have been properly removed.

- 8. **Indemnification.** “*the arts*” hereby agrees to indemnify, save, and hold harmless the City, and all qualified employees, agents and representatives, against any and all liabilities, damages, losses, claims, causes of action, expenses or demands of any nature and to the furthest extent allowed by law, which may arise from or relate to any personal injury, property damage or other alleged harm, stemming from or in any way connected

with the placement, display, construction, installation, existence, operation, use, maintenance, repair or removal of the Sculptures (the "Scope of Indemnification"). "*the arts*", at its own expense, shall be wholly and completely responsible for all costs associated with or obligations arising from anything that falls within the Scope of Indemnification until final disposition. However, "*the arts*" shall not be liable for anything for which the City has already been compensated by insurance proceeds, whether the underlying claim was filed against "*the arts*" general liability policy, as provided by this Agreement, or the policy of a third party.

9. **Sovereign Immunity.** By entering into this Agreement and performing any obligation hereunder, the Parties agree that the City has not waived its sovereign immunity.
  
10. **Termination.** If the City reasonably believes that "*the arts*" has abandoned or has failed to maintain the Licensed Premises, the City shall promptly give notice to "*the arts*" of same in writing, pursuant to the proper means provided by this Agreement. Thereafter, if the City Manager receives no substantive response within five (5) days following "*the arts*" receipt of such notification, the City may remove and store all Sculptures, the costs of which "*the arts*" shall be responsible for bearing in full and shall pay within thirty (30) days after having been billed therefor.
  
11. **Default.** Notwithstanding any other events that may be grounds for default under this Agreement, such events shall include if "*the arts*" fails to provide certificates of insurance required by this Agreement and if "*the arts*" fails to comply with the conditions set forth in paragraph 6 ("Event of Default"). Upon the occurrence of an Event of Default, the City shall give "*the arts*" written notice of same, pursuant to the means provided by this Agreement, and thereafter, "*the arts*" shall have five (5) days from the date of its receipt of such notification to respond or, otherwise, cure the Event of Default.
  
12. **Waiver of Default.** Either Party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent, or other, default.
  
13. **Notice.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, by hand-delivering the same in-person to such Party with a signed acknowledgement of receipt, or via Federal Express or other courier service that provides a return receipt showing the date of actual, as opposed to constructive, delivery of same. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

If to the City, then to the City Manager at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to “*the arts*”, then to:

Highland Lakes Creative Arts (“*the arts*”)  
*Sculpture on Main*  
P.O. Box 8936  
Horseshoe Bay, Texas 78657

14. **Assignment of License for Non-Commercial Use of Artwork.** “*the arts*” hereby assigns to the City the license granted to “*the arts*” by each artist for non-commercial use of the Sculptures, or their likenesses, and the artist’s name in connection therewith, for publicity or marketing related to the Event, to make such Sculptures available to the public to photograph or videotape, for record-keeping and documentation of installation and removal, and additional non-commercial purposes, including but not limited to, educational, public relations, and promotion of the arts. While risk of infringement certainly accompanies the public display of anything that may be protected by copyright, City covenants that it will take all reasonable measures to protect such interests in its non-commercial use of the Sculptures or their likenesses. This Agreement, however, does not assume that any such copyright has been applied for and approved. No royalties, fees or other remuneration shall be paid by the City for the rights afforded under this assignment.
15. **Artist Participation Agreement, Waiver and License.** Prior to installation, “*the arts*” shall provide the City with executed copies of a form of participation agreement that “*the arts*” has entered into with each artist that will be showcasing artwork during the Event (the “Participation Agreement,” as further defined by the following sub-paragraphs). The form of participation agreement must include terms substantially similar to the following:
- a. **Conflicts.** To the extent there are any conflicts between this Agreement and the Participation Agreement, the artist acknowledges that this Agreement controls. Accordingly, the installation, display, removal and terms of each artist’s participation are subject to this Agreement, including the conditions set out in paragraph 6. “*the arts*” covenants to provide a copy of this Agreement to each artist prior to, or at the time of, their execution of the Participation Agreement.
  - b. **Terms of Informed Consent, Waiver of Liability and Hold Harmless.** The artist understands that participating in certain activities, such as showcasing large heavy works of art for long-term public display at an event like *Sculpture on Main* (the “Event”) and the associated activities related to their installation, maintenance, use and existence (the “Special Activities”), involves a certain degree of risk that could result in serious injury, permanent disability or death. In consideration of the benefits to be derived by the artist named herein from the Special Activities, after carefully considering the risk involved:
    - i. TO THE FULLEST EXTENT PERMITTED BY LAW, THE ARTIST HEREBY RELEASES AND WAIVES ALL CLAIMS THE ARTIST MAY HAVE IN CONNECTION WITH THE SPECIAL ACTIVITIES AGAINST THE CITY OF MARBLE FALLS, TEXAS, ITS QUALIFIED

EMPLOYEES, AFFILIATES, AGENTS, CONTRACTORS AND VOLUNTEERS (THE "CITY PARTIES").

- ii. TO THE FULLEST EXTENT PERMITTED BY LAW, THE ARTIST WILL AND DOES HEREBY INDEMNIFY, HOLD FREE AND HARMLESS, ASSUME LIABILITY FOR, AND DEFEND THE CITY PARTIES FROM ALL CLAIMS ARTIST MAY HAVE IN CONNECTION WITH THE SPECIAL ACTIVITIES.
  - iii. "ALL CLAIMS" MEANS ANY AND ALL COSTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, REASONABLE INVESTIGATIVE AND DISCOVERY COSTS, COURT COSTS, AND ALL OTHER SUMS THAT THE COUNCIL PARTIES INCUR AS A RESULT OF ANY DEMAND, CLAIM OR ASSERTION OF LIABILITY BROUGHT BY THE PARTICIPANT OR ANY PARTICIPANT PARTY UNDER ANY MUNICIPAL, STATE, OR FEDERAL LAW OR CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION ANY ACTION FOR INJURY TO PERSONS OR PROPERTY, INCLUDING DEATH, AND ANY ACTION UNDER THE AMERICANS WITH DISABILITIES ACT, ARISING OR ALLEGED TO HAVE ARISEN OUT OF ANY ACT OR OMISSION OF THE COUNCIL PARTIES, OR ANY USE OF REAL OR PERSONAL PROPERTY BELONGING TO THE COUNCIL PARTIES, IN CONNECTION WITH THE SPECIAL ACTIVITIES, INCLUDING WITHOUT LIMITATION ANY CLAIM ARISING, IN WHOLE OR IN PART, FROM THE NEGLIGENCE OR FAULT OF THE CITY PARTIES.
  - iv. FOR PURPOSES OF THIS INFORMED CONSENT, WAIVER OF LIABILITY AND HOLD HARMLESS, "ARTIST" MEANS AND SHALL INCLUDE THE ARTIST'S HEIRS, GUARDIANS, EXECUTORS, ADMINISTRATORS, AND INSURERS.
  - v. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH THE ARTIST AND "*the arts*", THAT THE CITY PARTIES SHALL BE THIRD-PARTY BENEFICIARIES OF THE INDEMNITY PROVIDED FOR HEREIN.
- c. **Assignment of License for Non-Commercial Use of Artwork.** By way of the Participation Agreement, the artist permits "*the arts*" the right to assign to the City any license granted to "*the arts*" for non-commercial use of the Sculptures, or their likenesses, and the artist's name in connection therewith, for publicity or marketing related to the Event, to make such Sculptures available to the public to photograph or videotape, for record-keeping and documentation of installation and removal, and additional non-commercial purposes, including but not limited to, educational, public relations, and promotion of "*the arts*".

- d. **Representations and Warranties Regarding Copyright.** The artist warrants and represents that the artwork intended for exhibition at the event is an original creation of the artist and does not infringe the copyright, trademark or other intangible rights of any third party.
- e. **Sculpture Intended for Exhibition at Event.** The Participation Agreement must include a representative depiction, as an attachment thereto, and accompanying description, if necessary, of the work of art each artist will provide for display during the Event.

16. **Miscellaneous Provisions.**

- a. **Entire Agreement, Forum Selection and Choice of Law.** This Agreement constitutes the entire agreement between the Parties. No modification will be enforceable, unless such modification is in writing and has been signed by the Parties. In the event that any dispute arising under or related to this Agreement results in litigation, mediation or arbitration, such action or proceeding shall be brought in the state district courts of or, otherwise, pursued in Burnet County, Texas.
- b. **No Third-Party Beneficiaries.** Other than the benefits that maybe afforded to or realized by the artists participating in the Event, nothing in this Agreement shall be construed to create any right in any third party that is not a signatory to this Agreement, and besides the express exception provided herein, the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- c. **Assignment.** This Agreement is not assignable, in full or in part, without the prior written consent of the City. Any proposed assignment shall be presented to the City and shall include the name, address, and proposed date of assignment.
- d. **Compliance with Laws.** The Parties covenant that all obligations performed under this Agreement or related hereto will comply with all applicable municipal, county, state and/or federal laws, ordinances, or regulations, existing now or that may be lawfully adopted in the future.
- e. **Joint-Drafting.** The Parties agree that this Agreement was drafted jointly and that this Agreement shall not be construed against the other because of their involvement in preparing this Agreement in its written form. Accordingly, in the event of any dispute over its meaning or application, the Parties agree that this Agreement should be interpreted fairly and reasonably, neither more strongly for or against either Party.

- f. **Authority to Execute and Execution.** The individuals executing this Agreement on behalf of the respective Parties represent and warrant that all appropriate and necessary actions have been taken to authorize the individuals who are signing this Agreement to do so for and on behalf of the Party for which his/her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement, that each individual affixing his/her signature is authorized to do so, and that such authorization is valid and effective on the date hereof and for as long as this Agreement may be in place. This Agreement is executed by the Parties hereto without coercion or duress.
  
- g. **Binding Effect and Renewal.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, including any respective successors, to the fullest extent permitted herein. And, by written agreement, signed by the Parties hereto, this Agreement may be renewed or extended beyond the initial Term.
  
- h. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which, when taken together, shall be deemed to constitute an original for all purposes, which express includes signatures transmitted via facsimile.
  
- i. **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect or to any degree, such defective provision(s), or portion(s) thereof, shall not affect any other provision hereof, and this Agreement shall be construed as if such defective provision(s) had never been contained herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement and have thereby caused same to become enforceable in all respects as of the Effective Date noted above.

**CITY OF MARBLE FALLS, TEXAS**

By \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_

**HIGHLAND LAKES CREATIVE ARTS ("THE ARTS")**

By Camp C. Beto  
 Title BOARD MEMBER  
 Date 11-17-2016

**EXHIBIT "A"**

**MAP OF LICENSED PROPERTY AND LOCATION OF SCULPTURES**

*[Map Inserted Here]*

**December 6, 2016**

**7. REGULAR AGENDA**

- (a) Public Hearing, Discussion, and Action regarding a Replat of Lot Nos. 1 through 10, and a portion of a 20' alley, Block No. 278, Marble Falls Original Township, City of Marble Falls, Burnet County, Texas, municipally addressed as 404 South Avenue M. **Elizabeth Yeh, City Planner**

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Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



**Council Agenda Item Cover Memo  
December 6, 2016**

**Agenda Item No.:** 7(a)  
**Presenter:** Elizabeth Yeh, City Planner  
**Department:** Development Services  
**Legal Review:**  N/A

**AGENDA CAPTION**

Public Hearing, Discussion, and Action regarding a Replat of Lot Nos. 1 through 10, and a portion of a 20' alley, Block No. 278, Marble Falls Original Township, City of Marble Falls, Burnet County, Texas, municipally addressed as 404 South Avenue M.

**BACKGROUND INFORMATION**

This item is regarding a replat of ten (10) existing lots within Block 278 of the Marble Falls Original Township Subdivision. The Subject Area is 1.698 acres and comprised of Lot No. 1 through Lot No. 10 of the original platted block, in addition to the remaining portion on a 20' alley which was closed and deeded to the property owner of the time in 1996. The Subject Area is proposed to be resubdivided into four (4) lots, to be known as Lot 2-A, Lot 4-A, Lot 6-A, and Lot 8-A.

The Subject Area is located south of Johnson Street and in between S. Avenue M and S. Avenue N. The Subject Area is municipally addressed as 404 S Avenue M and home to the Brant Badger House, a recorded Texas Historic Landmark by the Texas Historical Commission, which is presently used as a two story commercial building.

The Brant Badger House would be encompassed entirely within the proposed Lot 4-A. Lot 2-A, Lot 6-A, and Lot 8-A would encompass undeveloped vacant land surrounding the Brant Badger House property.

The Subject Area is adequately served by city water and wastewater services, therefore no public infrastructure or right-of-way is being dedicated with this replat. The proposed replat does not lie within the 100-year floodplain.

Surrounding properties to the north, east, and south are zoned Duplex Base District (R-2). Surrounding properties to the west are zoned Single-Family Base District (R-1). The Subject

Area and proposed lots are located in the Mixed Use Base District (MU-1). The proposed lots meet the minimum lot area and lot width requirements of the zoning district, and comply with the adopted City subdivision regulations.

Due of the number of lots involved exceeding four (4) lots, Commission and Council approval is required for this replat, after a public hearing on the matter at which parties of interest and citizens have an opportunity to be heard.

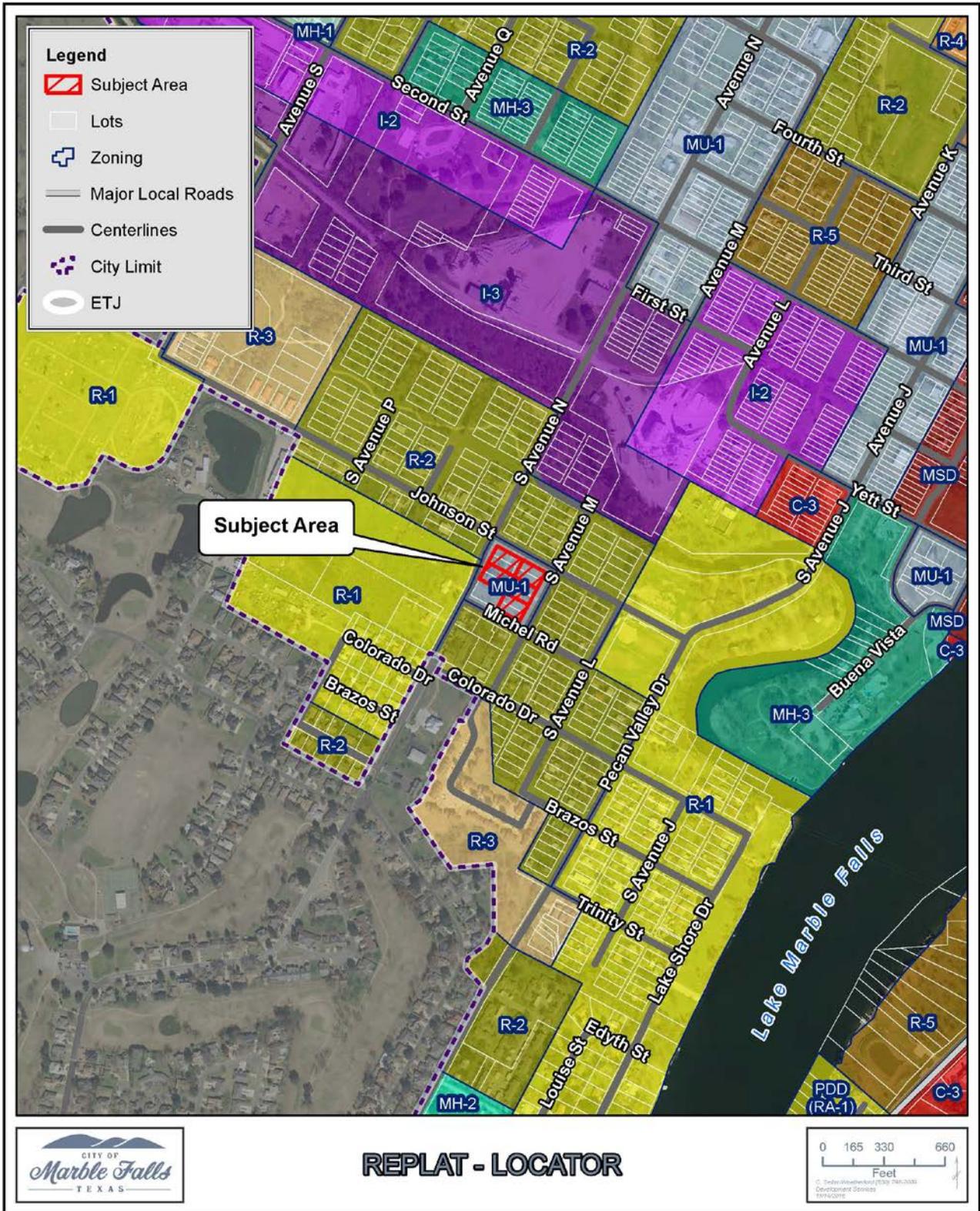
A total of seventeen (17) adjacent property owners within two hundred feet (200') of the Subject Area were mailed notification letters, including the public hearing dates and a prepaid comment card for response supporting/opposing the proposed replat. At the time of packet distribution zero (0) property owners submitted a response.

**RECOMMENDATION**

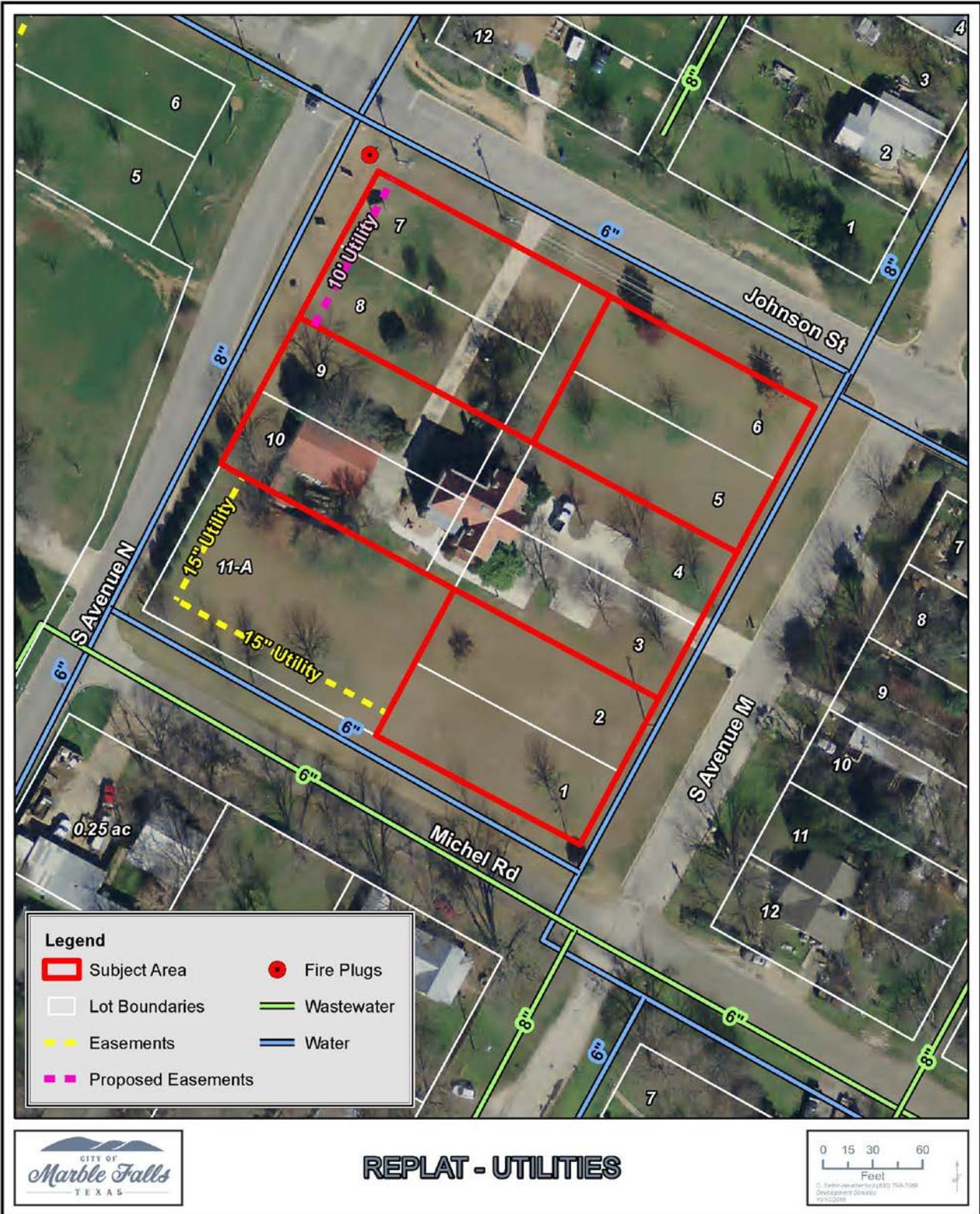
Due to proposed lot conforming to subdivision regulations and zoning district regulations, Staff recommends approval of the replat.

**Memo Contents:**

- Informational maps produced by City Staff: **Pages 3 - 8**
- Replat Survey: **Page 9**





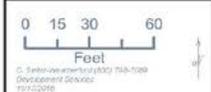


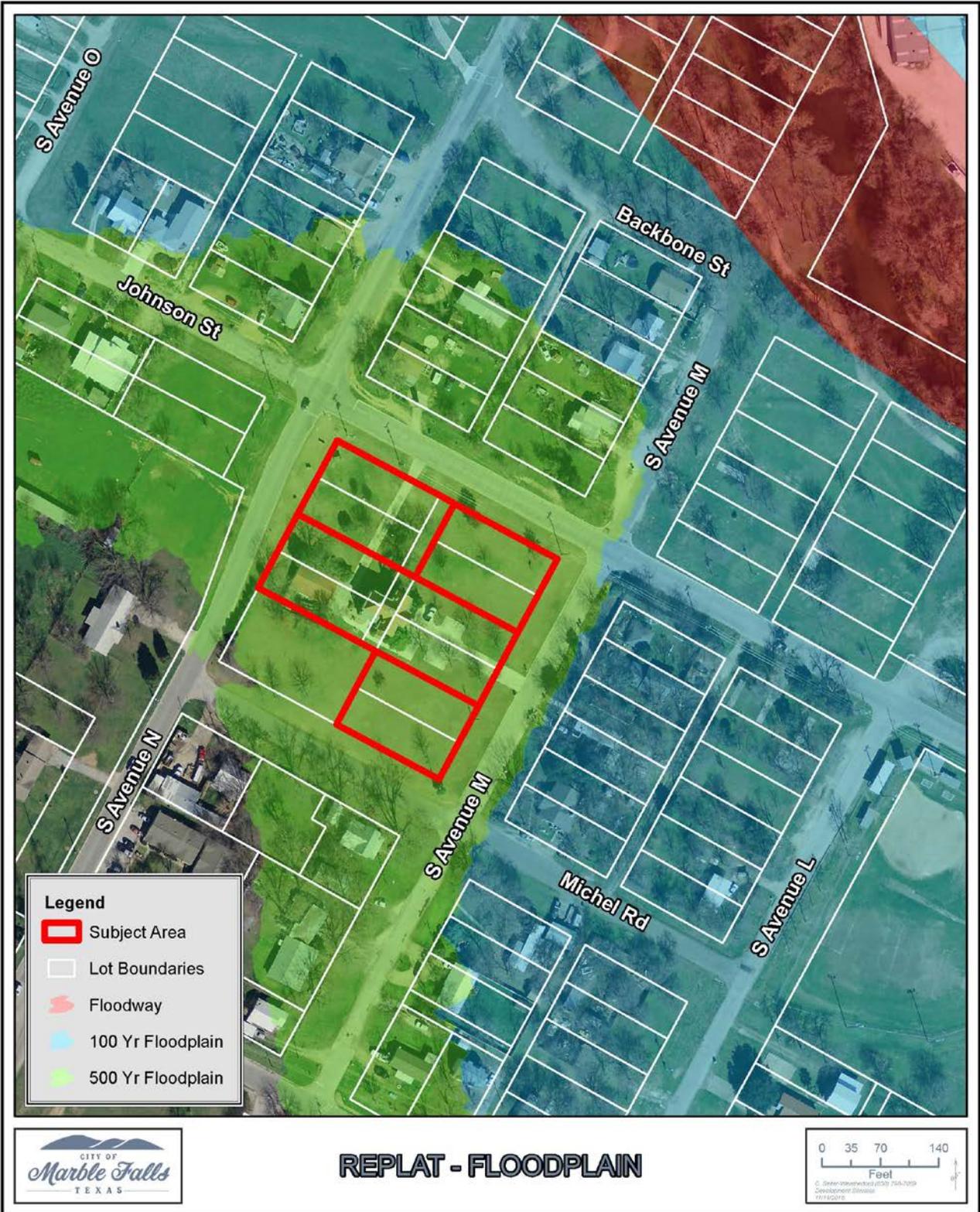
**Legend**

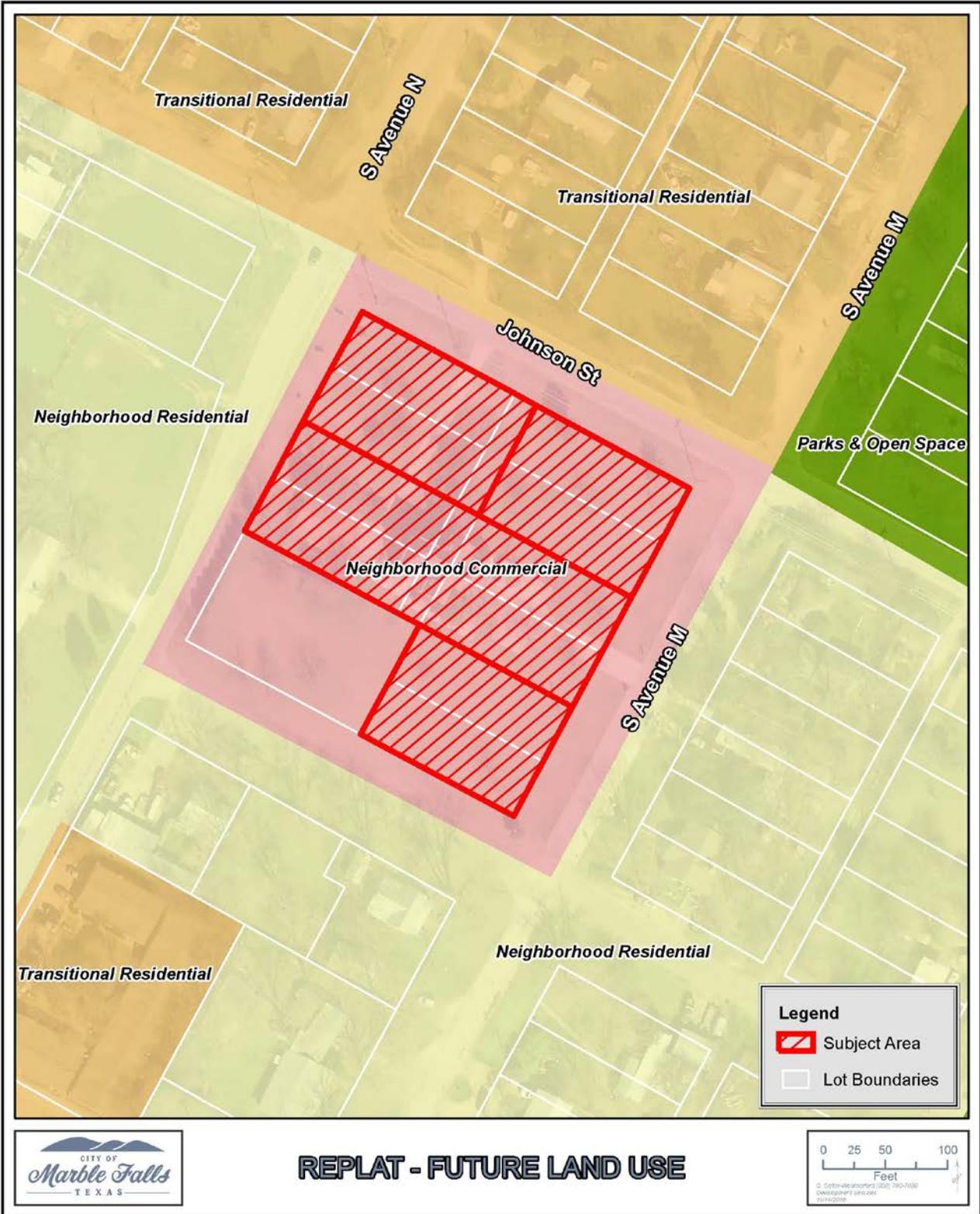
 Subject Area	 Fire Plugs
 Lot Boundaries	 Wastewater
 Easements	 Water
 Proposed Easements	

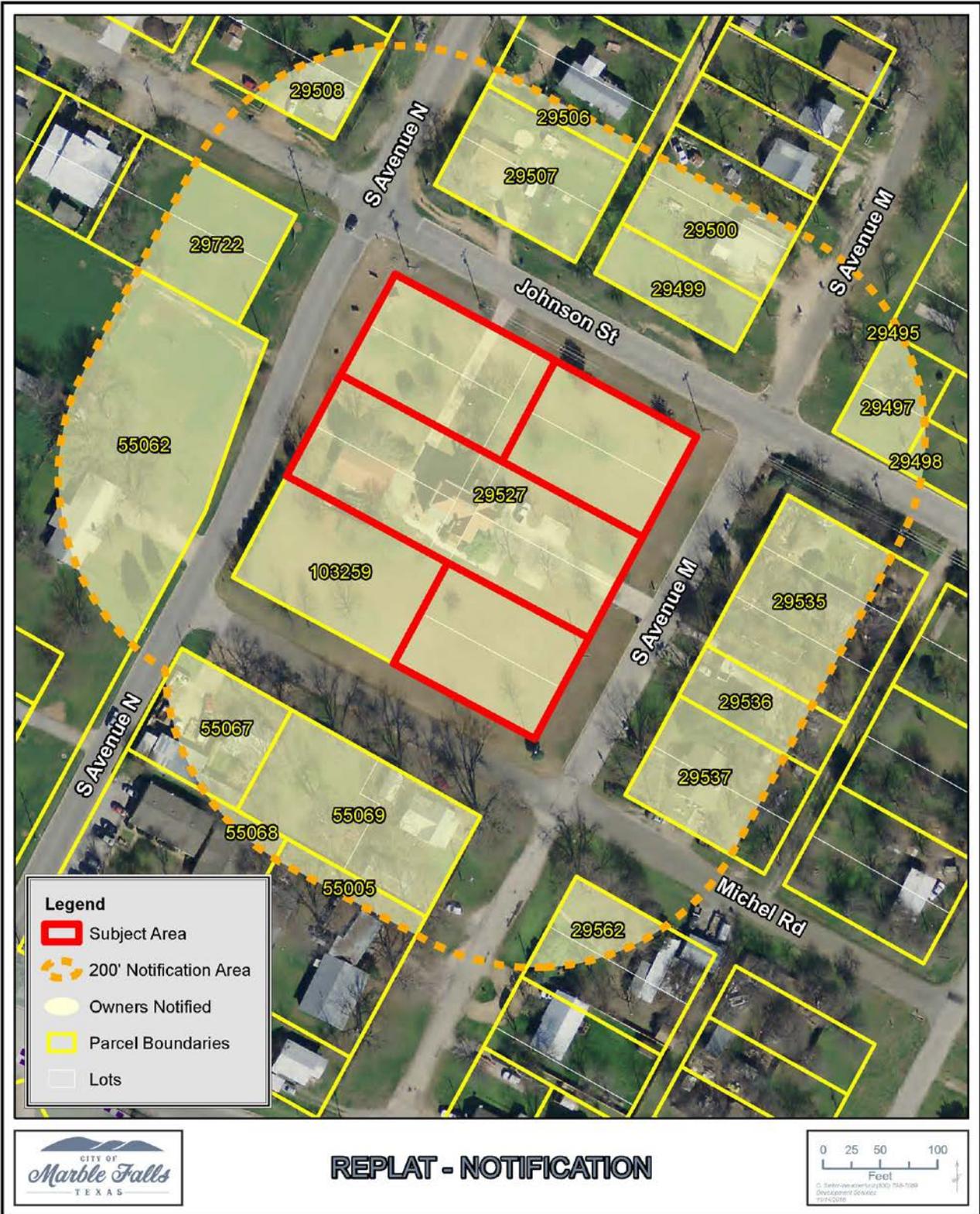


**REPLAT - UTILITIES**











**December 6, 2016**

**7. REGULAR AGENDA**

- (b) Public Hearing and Discussion on the First Reading of Resolution 2016-R-12A  
“Resolution Approving Economic Development Project proposed by the Marble  
Falls Economic Development Corporation. **Christian Fletcher, Executive  
Director MFEDC**
- 

Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



**Council Agenda Item Cover Memo  
December 6, 2016**

**Agenda Item No.:** 7(b)

**Presenter:** Christian Fletcher, Executive Director

**Department:** Marble Falls Economic Development Corporation

**Legal Review:**

**AGENDA CAPTION**

Public Hearing and Discussion on the First Reading of Resolution 2016-R-12A  
“Resolution Approving Economic Development Project Proposed By The Marble Falls  
Economic Development Corporation.”

**BACKGROUND INFORMATION**

The Marble Falls Economic Development Corporation (“Corporation”) has previously issued Sales Tax Revenue Bonds to acquire property in the City to be used for economic development purposes. The Corporation now proposes to develop that property by contracting with a developer for the construction of a hotel and full-service conference center, restaurant and bar (the “Project”) to develop business in the City under Section 505.158 of the Texas Local Government Code. The Corporation will contract with a developer to lease the site, being approximately 2.046 acres at Yett Street to the north, Main Street to the west and south, and Avenue H to the east, and for the developer to construct the Project. The Corporation will issue sales tax revenue bonds in an amount not to exceed \$6,500,000 for the Project.

In order to proceed with the Project, the City Council must approve the Project by a resolution. Two readings of the resolution are required by Section 505.158, Texas Local Government Code before the Corporation can undertake the Project. The second reading of the Resolution is scheduled for the December 20, 2016 Council Meeting.

The Corporation published notice of a public hearing on October 18, 2016 and held its hearing on November 2, 2016. After 60 days has passed, the Corporation will request the City Council to approve the issuance of sales tax revenue bonds in an amount not to exceed \$6,500,000 to fund its share of the Project.

Staff recommends approval of the Resolution.

**RESOLUTION NO. 2016-R-12A**

**RESOLUTION APPROVING ECONOMIC DEVELOPMENT PROJECT PROPOSED  
BY THE MARBLE FALLS ECONOMIC DEVELOPMENT CORPORATION**

WHEREAS, Marble Falls Economic Development Corporation (the “Corporation”) was created under the auspices of the City of Marble Falls (the “City”) to act on behalf of the City in accordance with the provisions of Chapter 505, Texas Local Government Code (the “Act”); and

WHEREAS, the Corporation and the City have entered into a Financing and Sales Tax Remittance Agreement dated as of November 12, 2009 (the “Remittance Agreement”), pursuant to which the City agreed to collect an economic development sales and use tax approved by the voters of the City at an election held May 12, 2007 (defined in the Remittance Agreement as the “Economic Development Sales Tax”), which Economic Development Sales Tax is pledged to bonds issued by the Corporation including, without limitation, the bonds hereinafter described; and

WHEREAS, the Corporation desires to issue bonds, secured by the sales tax approved by the voters of the City at an election held for such purpose on May 12, 2007, to finance the construction of a hotel and adjacent full-service conference center, restaurant and bar on approximately 2.046 acres of land located within the City, being one block bounded by Yett Street to the north, Main Street to the west and south, and Avenue H to the east, as identified in Exhibit “A” attached hereto (the “Project”), under authority of Section 505.158 of the Act; and

WHEREAS, Section 505.159 of the Act requires a public hearing be held before the Corporation may spend money on a project in excess of \$10,000; and

WHEREAS, Section 505.160 of the Act authorizes the Corporation to undertake the Project unless, not later than the 60th day after the date notice of the project is first published, the governing body of the City receives a petition from more than 10 percent of the registered voters of the City requesting that an election be held before the Project is undertaken; and

WHEREAS, on October 18, 2016, notice of the public hearing and the proposed undertaking of the Project was published in *The Highlander*, a newspaper of general circulation in the City and a newspaper of the type described in Section 2051.044 of the Texas Government Code; and

WHEREAS, on November 2, 2016, the Board of Directors of the Corporation conducted a public hearing on the Project;

WHEREAS, the Corporation cannot proceed with the Project unless approved by the City Council; and

WHEREAS, it is deemed necessary and advisable that this Resolution be adopted.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARBLE FALLS THAT:

Section 1. The proposed hotel and full-service conference center, restaurant and bar project proposed by the Corporation is hereby approved, to be funded by sales tax revenue bonds in an aggregate principal amount not to exceed \$6,500,000 (the “Bonds”). The City Council will consider approval of the Bonds after the 60-day period has passed.

Section 2. This Resolution shall be effective immediately upon its adoption; provided, that in no event shall the Corporation proceed with the development of the Project or provide funds for the Project if on or before December 17, 2016, the City receives a petition signed by more than 10 percent of the registered voters of the City requesting that an election be held before the Project is undertaken.

PUBLIC HEARING AND FIRST READING - DECEMBER 6, 2016.

APPROVED AND ADOPTED ON SECOND READING – DECEMBER 20, 2016.

*[The remainder of this page intentionally left blank.]*

SIGNED AND SEALED this 20<sup>TH</sup> DAY of DECEMBER, 2016.

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John Packer, Mayor  
City of Marble Falls, Texas

[SEAL]

---

Christina McDonald, City Secretary  
City of Marble Falls, Texas

EXHIBIT A



**December 6, 2016**

**7. REGULAR AGENDA**

- (c) Discussion and Action regarding a Construction Plat for the Mustang Ridge Estates Subdivision, being 173.692 acres out of the Logan Vandiver Survey No. 206, Abstract No. 927, the J.M. Roper Survey No. 1517, Abstract No. 1559, the Charles D. Ball Survey No. 25, Abstract No. 126, and the William C.M. Baker Survey No. 202, Abstract No. 123, and Tract No. 9 of the Holly-Naumann Subdivision, Number Three, City of Marble Falls, Burnet County, Texas, located north of the Wildflower Subdivision and west of Marble Falls High School.  
**Elizabeth Yeh, City Planner**

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Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



## Council Agenda Item Cover Memo December 6, 2016

**Agenda Item No.:** 7(c)  
**Presenter:** Elizabeth Yeh, City Planner  
**Department:** Development Services  
**Legal Review:**  N/A

### AGENDA CAPTION

Discussion and Action regarding a Construction Plat for the Mustang Ridge Estates Subdivision, being 173.692 acres out of the Logan Vandiver Survey No. 206, Abstract No. 927, the J.M. Roper Survey No. 1517, Abstract No. 1559, the Charles D. Ball Survey No. 25, Abstract No. 126, and the William C.M. Baker Survey No. 202, Abstract No. 123, and Tract No. 9 of the Holly-Naumann Subdivision, Number Three, City of Marble Falls, Burnet County, Texas, located north of the Wildflower Subdivision and west of Marble Falls High School.

### BACKGROUND INFORMATION

At the November 10, 2016 regular meeting of the Planning and Zoning Commission, the Commission recommended approval (7-0) of the Construction Plat and the *Mustang Ridge Waivers* subject to the addition of a four (4) foot wide sidewalk on the south side of Trophy Oak Trail to extend from Lot 12 connecting to the six (6) foot wide sidewalk on Park View Dr.

This item is for consideration of the Construction Plat for Mustang Ridge Estates Subdivision, including public infrastructure extensions of water, dedication and construction of new public roadway infrastructure, and associated waiver/suspension regarding the development.

The Subject Area was recently downzoned to Single-Family Estates District (RE-1) on November 1, 2016 through Ordinance 2016-O-11A. This item, being the platting of lots and construction of infrastructure extensions to serve said lots, is the next phase of development for the project. One of the purposes of the downzone, a voluntary act by the developer, was to restrict the property through zoning to a larger minimum lot size and to achieve the infrastructure attributes specific to RE-1. The larger lot size and infrastructure attributes were to

develop a subdivision similar with and compatible with the Park View and Hi-Ridge area located to the north of the Subject Area.

The Subject Area is proposed to be subdivided into a sixty (60) lot residential subdivision. The RE-1 zoning requires a minimum lot width of 100 feet at the required front yard setback line and a minimum of 20 feet at the front property line accessing the street. The minimum lot size is one acre. The proposed Construction Plat meets the zoning requirements for lot sizes and widths. The RE-1 zoning district is intended as an area for single-family homes on estate size lots in areas where city wastewater services are not readily available. Housing in the district is restricted to conventional site built homes, and grading, streets, and drainage should conform to the natural terrain as nearly as practicable. Based on these character standards, the applicant has submitted the necessary Construction Plans for the public improvements/infrastructure required within the subdivision. City Staff has reviewed the plans and a majority of the proposed infrastructure designs for the public improvements meet City requirements, however, due to the low density development of the estate lot subdivision, a semi-rural subdivision design has been proposed, versus a typical urban subdivision which the subdivision regulations are focused on requiring. Therefore, consideration of a few waivers/suspensions are needed to allow for final approval. The City staff has closely evaluated each of these items, and due to the low density of the overall acreage and that the entire subdivision in being platting in a single application/plat find there is justification unique to this development to support the waiver/suspension requests.

The following is a summary of the proposed public improvements and the waiver/suspension requests needed. Collectively the various waiver/suspension requests are herein referred to as the *Mustang Ridge Estates Waivers*.

**Streets** - There is 4,969 centerline feet of new roadway (10.5 acres of public right-of-way) that will be dedicated and constructed with this plat. Approximately 3,517 feet of the new roadway will be an extension of Park View Drive, featuring a roundabout traffic calming device at the proposed Park View Drive and King Road intersection, to reduce high-speeds on the residential collector road. This connection was identified in the Comprehensive Plan Future Thoroughfare Plan as a priority connection necessary to improve the City's street network connectivity. Approximately 1,452 feet of residential streets/cul-de-sacs (known as Trophy Oak Trail, Falling Creek Cove, and Hidden View Trail) will also be provided. The proposed streets are designed to

have a 30 MPH designated speed. The streets will feature ribbon (lay down) curbs, similar to that found along the existing Park View Drive neighborhood.

The applicant has submitted a waiver/suspension request for the *Subdivision Regulations, Section 825.p.* due to the Hidden View Trail cul-de-sac right-of-way diameter being less than required diameter of at least one hundred twenty (120) feet. A right-of-way diameter of one hundred ten (110) feet is proposed in order to preserve existing trees found in the location.

Additionally, a minimum pavement diameter of at least one hundred (100) feet is required for cul-de-sacs by *Section 825.p.*, however pavement for Trophy Oak Trail, Falling Creek Cove, and Hidden View Trail is proposed at ninety-six (96,) feet, in order to preserve the natural terrain as much as practicable.

The applicant has submitted a waiver/suspension request for the *Subdivision Regulations, Sections 825.o., 825.c.7, 825.t., and 841.a.*, which require that all streets and thoroughfares be “constructed and paved to city standards and within rights-of-way as required by the thoroughfare plan, and in accordance with the TCSS and other city standards as may be from time to time amended or adopted.” Pavement widths proposed deviate from the minimum thirty-one (31) foot width on the residential cul-de-sacs. Twenty-four (24) foot residential streets ending in cul-de-sacs are proposed, however due to the low density of residential lots found on these cul-de-sacs, and due to the applicant agreeing to designate said streets as “No On-Street Parking Anytime” (see Striping and Signage plan on page 22), Staff recommends approval of the reduced widths. The applicant has also requested to waive construction of the King Road extension (3,015 centerline feet). The required right-of-way (approximately 4 acres) is proposed to be dedicated to allow for future construction, however due to the minimal density, topography, and drastically limited amount of vehicle trips being produced from such a substantial amount of acreage, staff supports dedication of the thoroughfare right-of-way for future potential roadway construction. This will not inhibit or otherwise harm neighboring property owners or the general public.

The applicant has submitted a waiver/suspension request for the *Subdivision Regulations, Sections 841.f. and 825.h.2.*, which state that residential driveways shall not be allowed on a collector roadways (Park View Drive). The applicant has requested a waiver to allow residential driveways along Park View Drive. Staff recommends approval of this waiver request due to the fact that, to the greatest extent possible, the number of lots fronting along the residential collector streets was minimized (through use of estate sized lots) in order to ensure adequate traffic safety and efficiency. Additionally, due to the low density the road will function more as a

local street than a thoroughfare for the neighborhood, but will provide connectivity between neighborhoods.

**Sidewalks** - City standard subdivision requirements require the installation of a four (4) foot sidewalk to be constructed on both sides of residential and collector streets within a residential subdivision. The applicant has submitted a waiver/suspension request for the *Subdivision Regulations, Section 829. Sidewalks*, in order to allow for construction of a six (6) foot concrete sidewalk on one side of the collector street (Park View Drive). At the request of the Planning and Zoning Commission, the applicant has also added a four (4) foot sidewalk on the south side of Trophy Oak Trail, to provide connection to the main sidewalk from the longer residential cul-de-sac street. Staff recommends approval of the waiver request due to the low density and rural character of the subdivision.

**Utilities** – The proposed water line extensions, connections, street lights, and fire hydrants necessary to serve the proposed lots meet City standards. Standard subdivision requirements also state that all new subdivisions shall be served by the city's wastewater collection and treatment system. The applicant has submitted a waiver/suspension request for the *Subdivision Regulations, Sections 833.b. and 844. Water and wastewater requirements*, in order to waive the requirement to extend/provide sewer service and instead require individual lots to provide on-site septic systems. Staff recommends approval of the waiver request due to the rural character expressed in the zoning district, the large lots providing adequate room for on-site wastewater collection and treatment, the low density of the subdivision, and septic served neighborhoods do not consume wastewater plant capacity which can be used to serve higher density development (commercial, multi-family, standard single family).

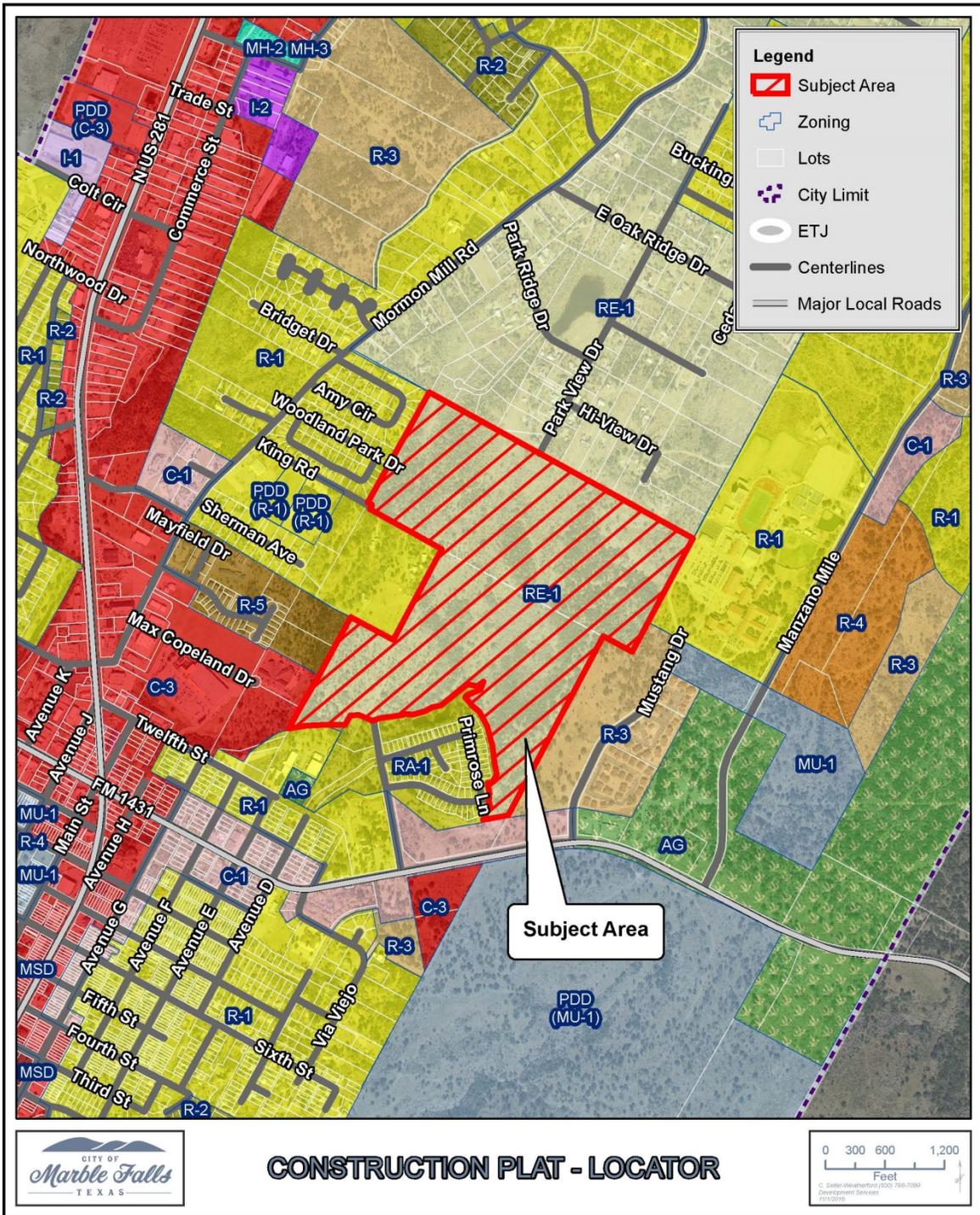
This item is a construction plat. No notification of adjacent property owners is required for a construction plat.

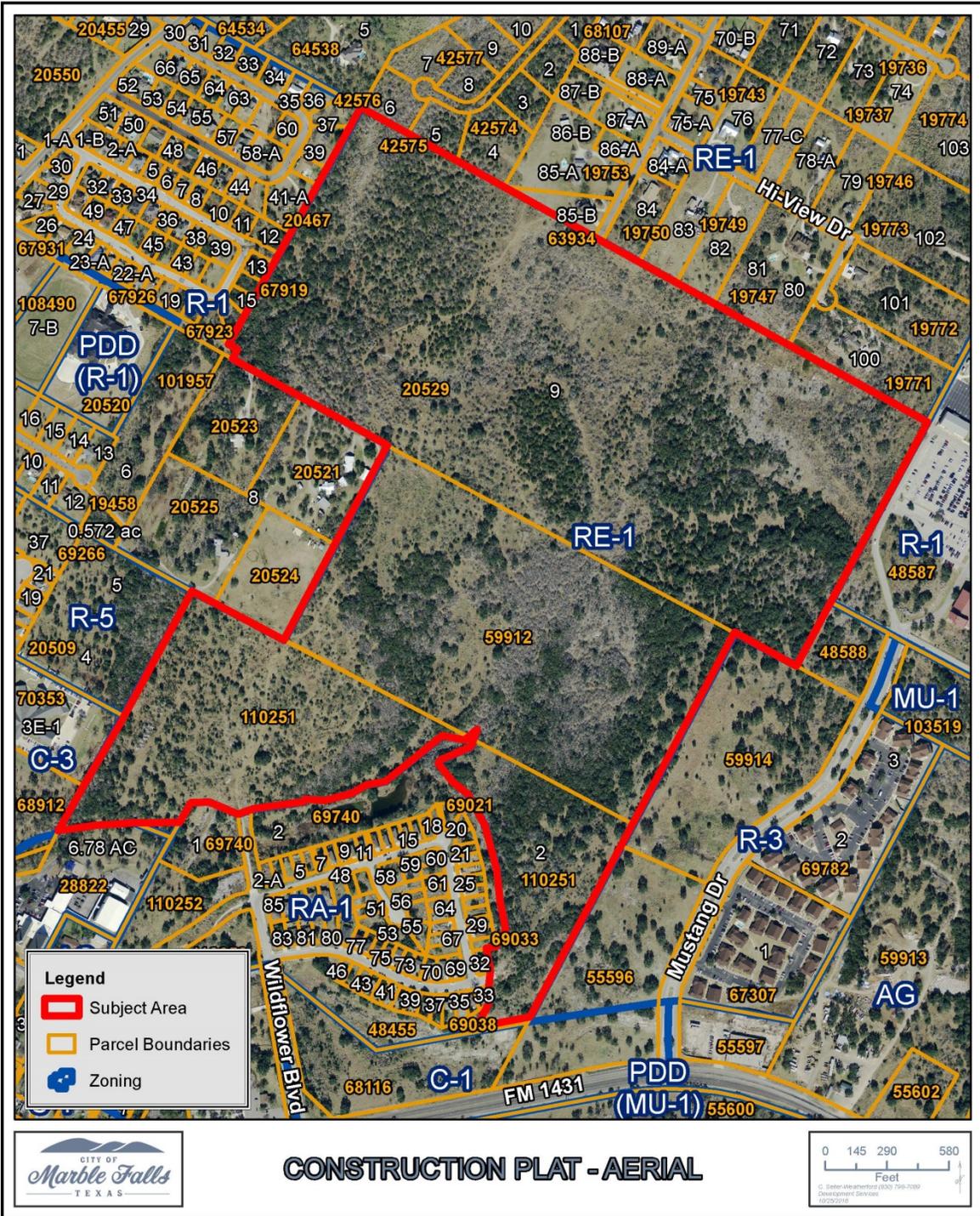
## RECOMMENDATION

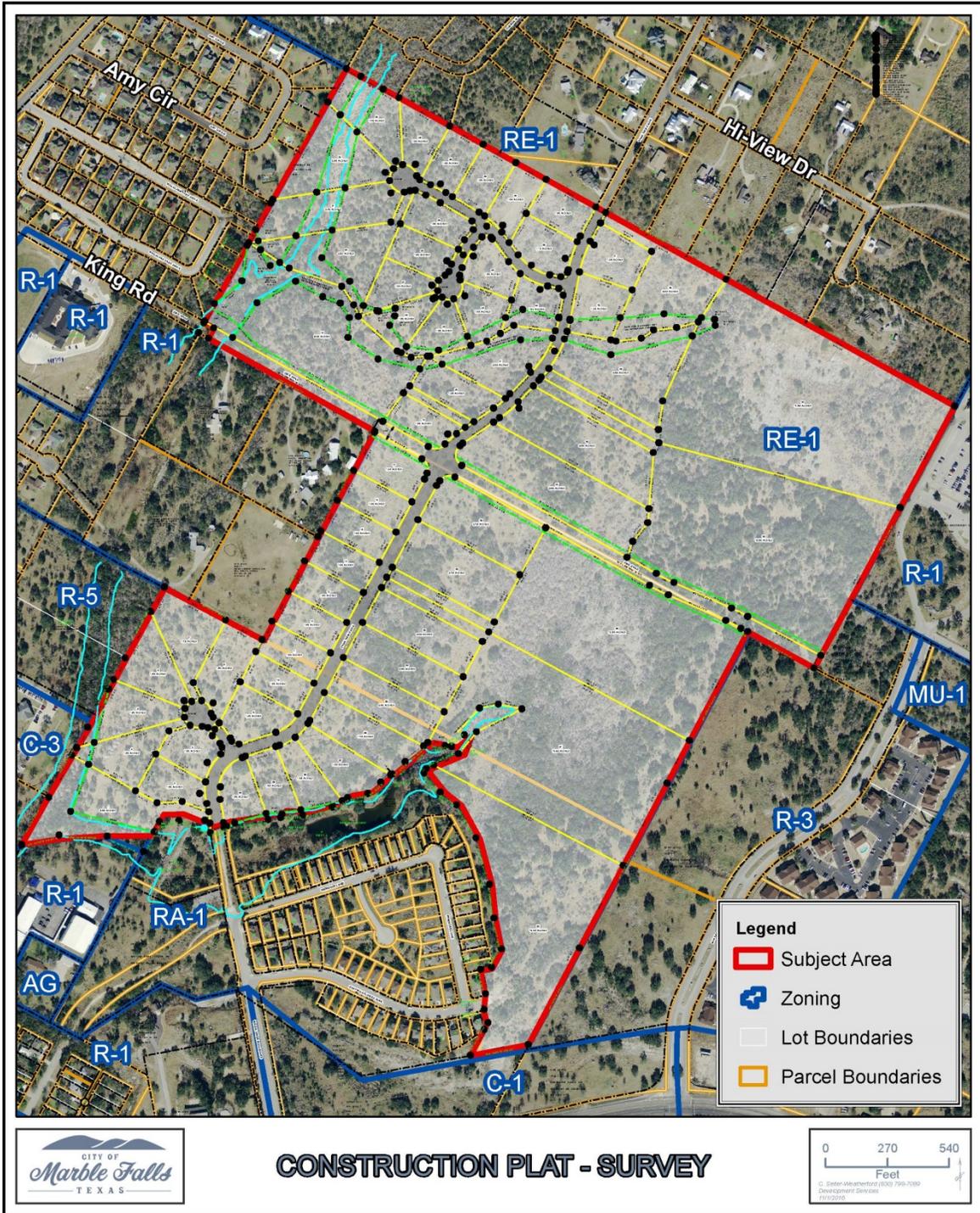
Due to conformance with the Comprehensive Plan, the compatibility with surrounding zoning and established residential neighborhoods, the overall benefit of the proposed public improvements and the need for diversification of City Housing inventory, and the minimal density of the development proposed, City Staff recommends approval of the Construction Plat and the associated *Mustang Ridge Estates Waivers*.

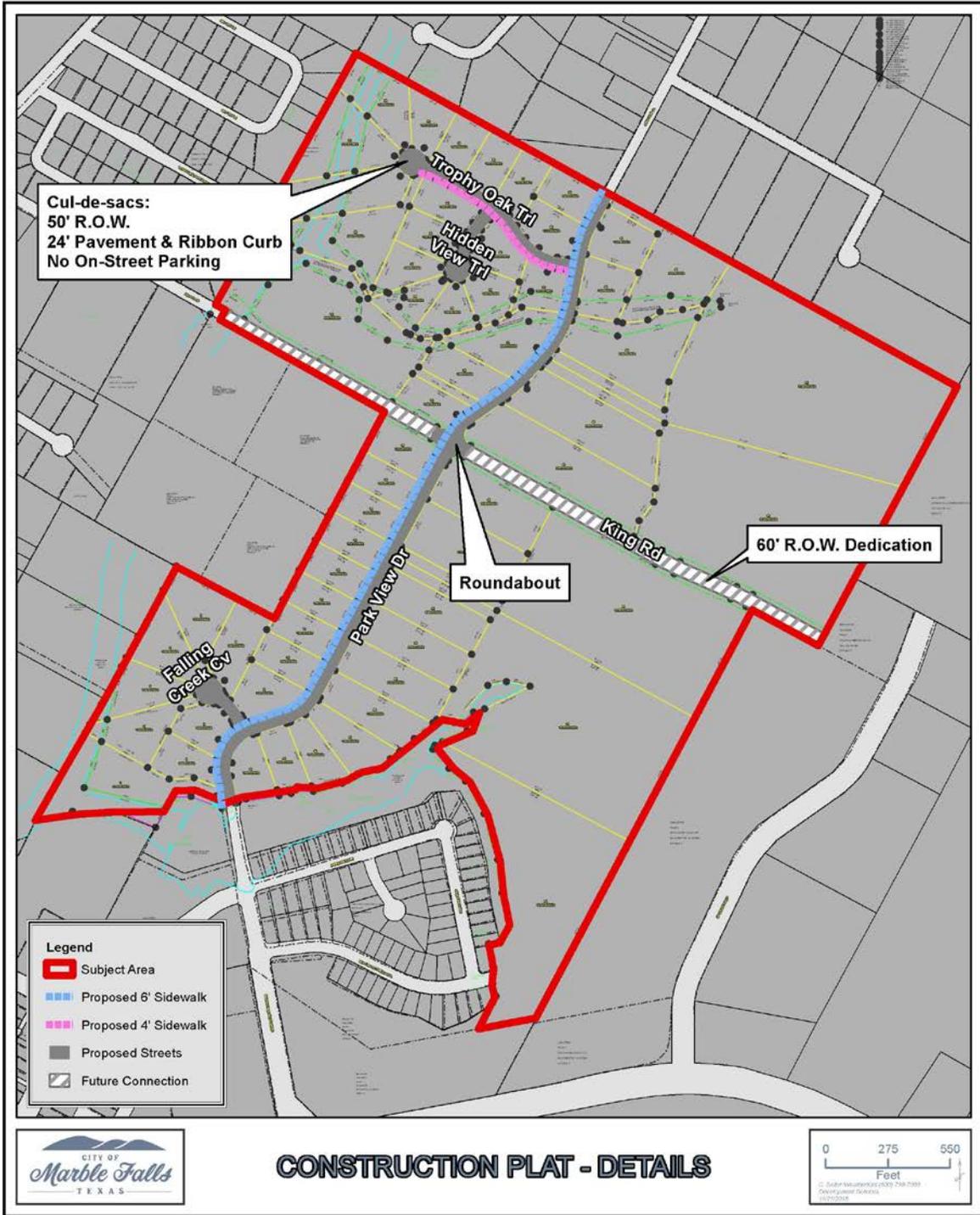
### **Memo Contents:**

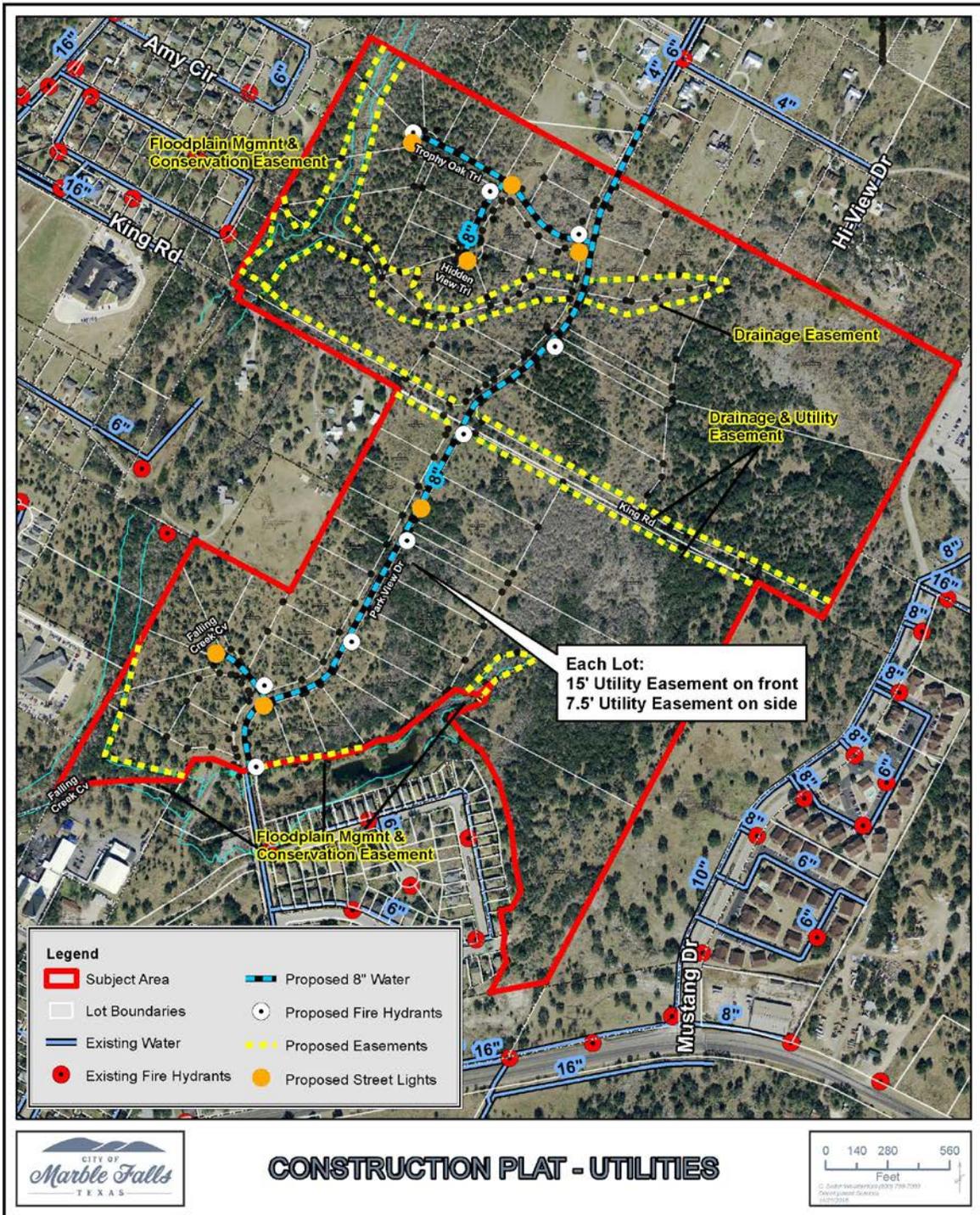
- Informational maps produced by City Staff: **Pages 6 - 10**
- Construction Plat: **Pages 11 - 19**
- Roadway Construction Plan: **Page 20**
- Waterline and Utility Construction Plan: **Page 21**
- Stripping and Signage Construction Plan: **Page 22**







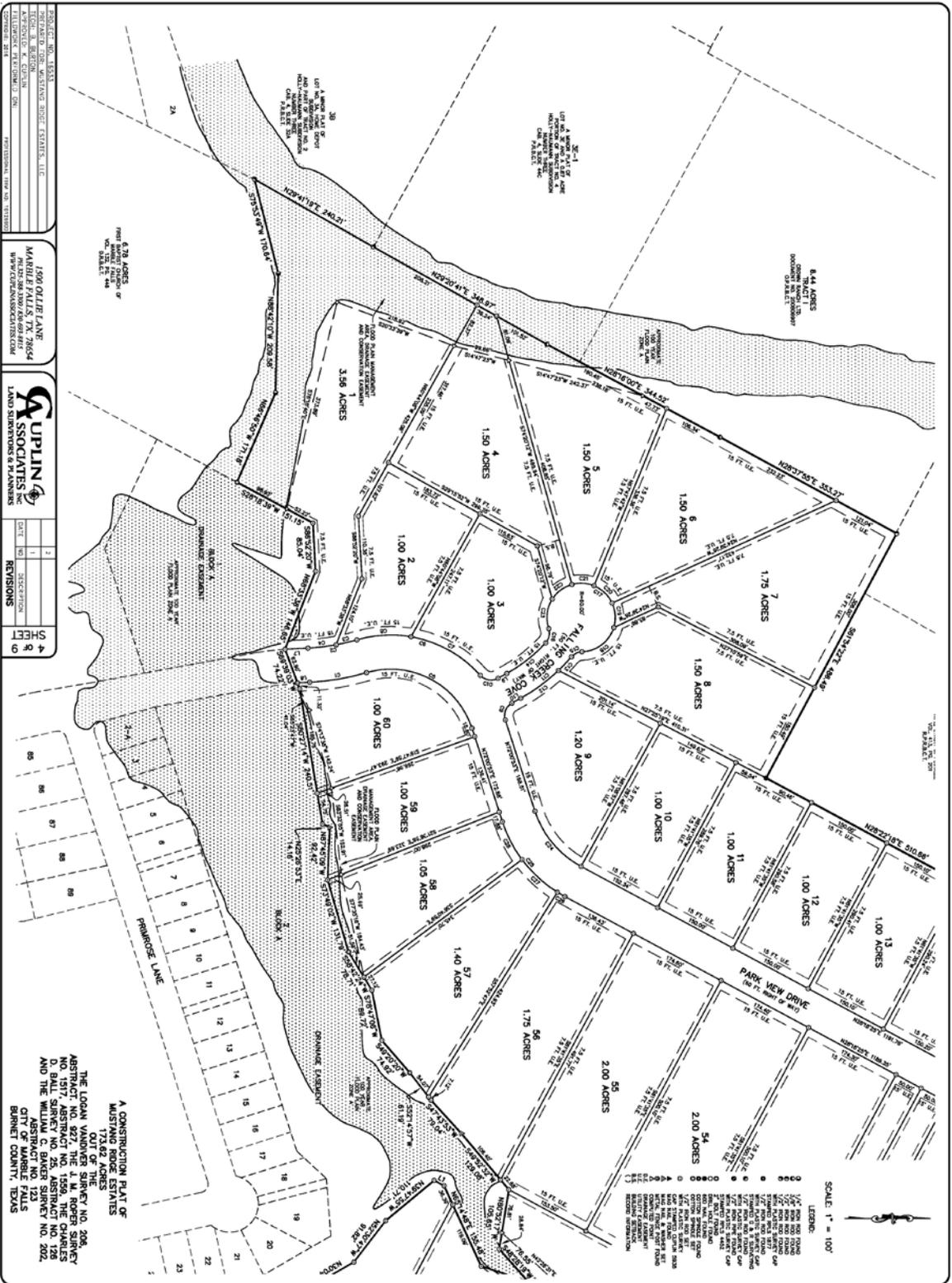












2587-01, NO. 15533  
 PREPARED BY: UPUN ASSOCIATES, L.P.  
 DATE: 08/11/2011  
 PROJECT: MARBLE FALLS, TEXAS  
 DRAWING NO.: 2587-01

1500 OUTLET LANE  
 MARBLE FALLS, TEXAS 75754  
 WWW.UPUNASSOCIATES.COM

**UPUN ASSOCIATES, L.P.**  
 LAND SURVEYORS & PLANNERS

NO.	DATE	REVISIONS
1		ISSUANCE
2		
3		
4		

SHEET 4 OF 6

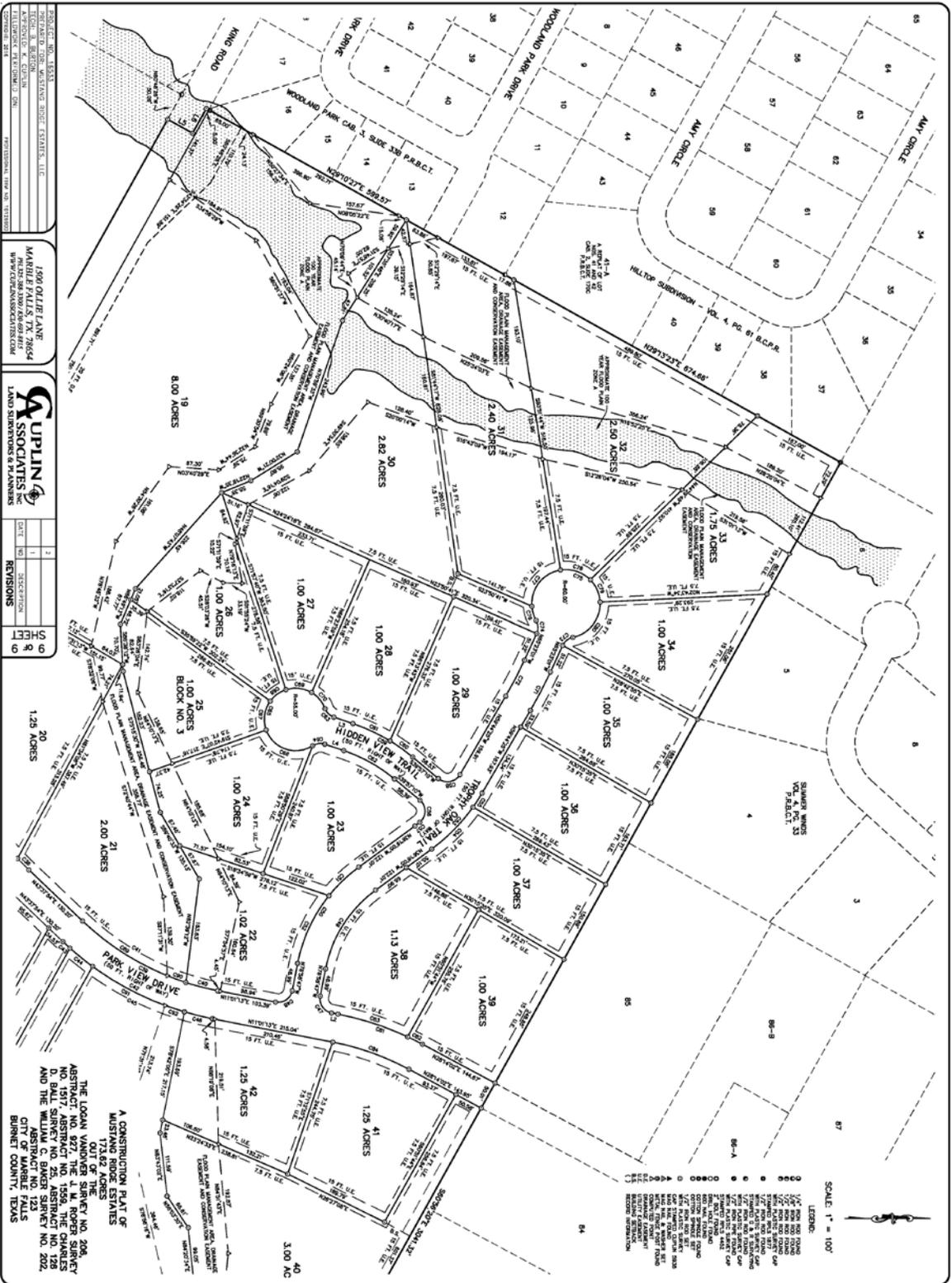
A CONSTRUCTION PLAT OF  
 MARBLE FALLS, TEXAS  
 173.62 ACRES  
 OUT OF THE  
 THE LOGAN WILSON SURVEY NO. 206,  
 ABSTRACT NO. 827, THE J. M. ROPER SURVEY  
 NO. 1517, ABSTRACT NO. 1556, THE CHARLES  
 D. BALL SURVEY NO. 23, ABSTRACT NO. 728  
 AND THE WILSON SURVEY NO. 205,  
 CITY OF MARBLE FALLS  
 BURNET COUNTY, TEXAS





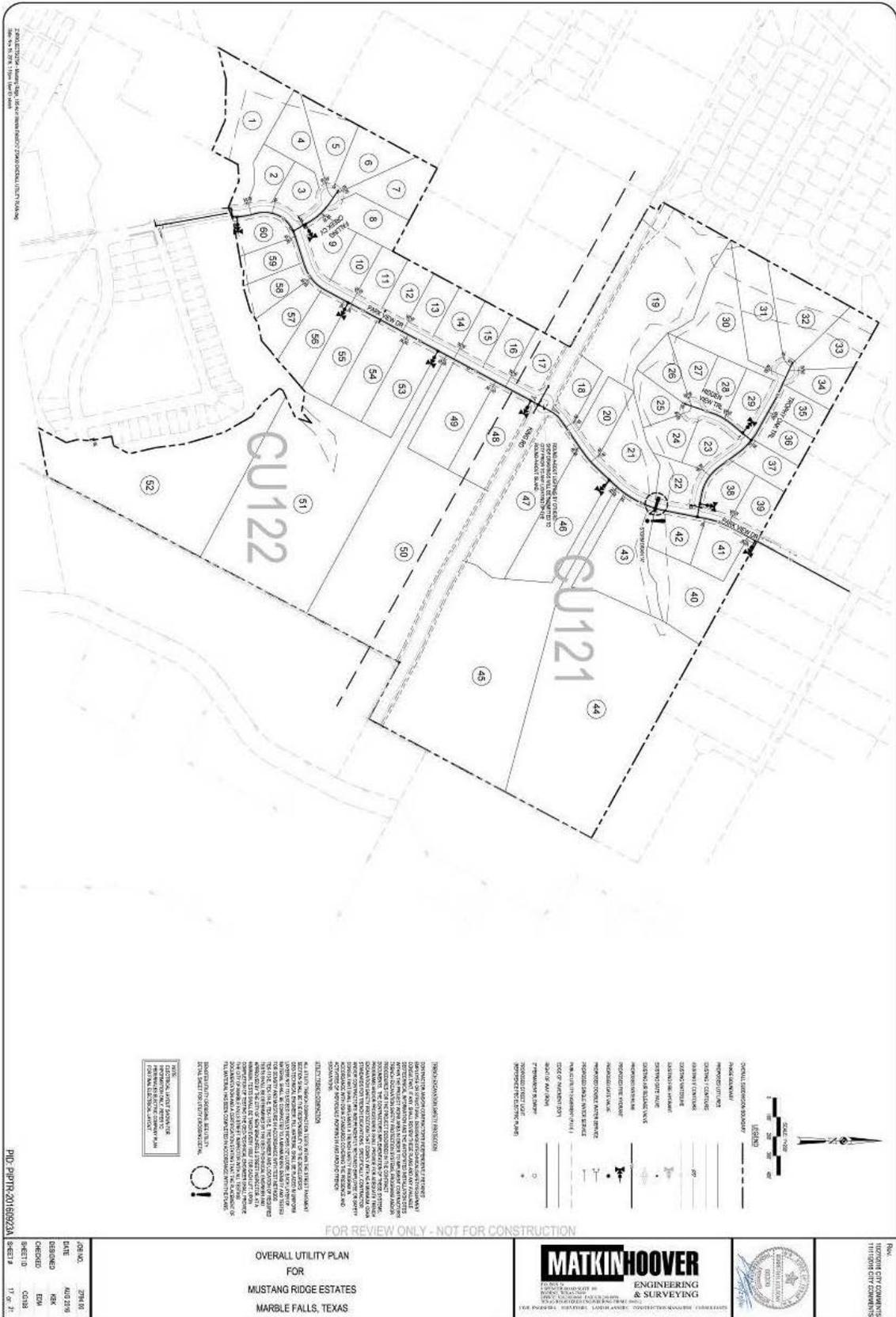








# Waterline and Utility Construction Plan





**December 6, 2016**

**7. REGULAR AGENDA**

- (d) Discussion and Action regarding the approval of a design services contract with Willis Environmental Engineering for the Via Viejo water tank replacement project. **Eric Belaj, City Engineer**

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Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



**Council Agenda Item Cover Memo  
December 6, 2016**

**Agenda Item No.:** 7(d)  
**Presenter:** Eric Belaj, PE, CFM  
**Department:** Engineering  
**Legal Review:**

**AGENDA CAPTION**

Discussion and Action regarding approval of the design services contract with Willis Environmental Engineering, for the Via Viejo water tank replacement project.

**BACKGROUND INFORMATION**

Currently the Via Viejo storage tanks are comprised of one 200,000 gallon and a 500,000 gallon welded steel tank. The two tanks were constructed in the early 60's. The larger of the two tanks is leaking and cannot feasibly be repaired, while the smaller tank has not been rehabilitated since the early 2000's. Moreover, continued growth in the City has prompted staff to look into options to increase storage capacity, as outlined in the water master plan.

TCEQ requires that the City implements corrective measures to mitigate for the leaking tank. The City is seeking to demolish the larger tank, build a new welded steel tank, and rehabilitate the smaller tank. The new tank is anticipated to be no larger than 800,000 gallons. The proposed improvements will also include the upsizing and consolidation of piping within the site, electrical, and SCADA. The City has budgeted a not to exceed budget of \$900,000 to do all the work, which amount includes, all surveying, design, construction, and testing. The design will also include a bid option to construct a 600K gallon tank in lieu of the larger one mentioned above.

City staff has been working with an engineering consultant to identify viable courses of action. The engineering firm, Willis Engineering, (Engineer) has been working with City staff to identify improvement needs and to fine-tune a design scope. Per the submitted design scope, the Engineer will design all needed improvements to TCEQ standards. The Engineer will also prepare bid documents; assist during the bidding process, as well as construction administration duties and inspections. The Engineer has considerable steel tank design experience, and has designed many other projects for the City in the past.

The proposal to perform all duties to design, bidding, construction administration and inspections, as lined out in the contract scope, is \$92,000. City staff has reviewed the contract documents and recommend approval of this item.

[View Contract](#)

THE STATE OF TEXAS §

CITY OF MARBLE FALLS

**ENGINEERING SERVICES CONTRACT**

COUNTY OF BURNET §

THIS CONTRACT is made and entered into this \_\_\_\_\_ day of December, 2016, by and between the City of Marble Falls, Burnet County, Texas, a home rule municipality, ("City"), and Willis Environmental Engineering Inc., ("Engineer"), whose address is at 310 Main Street, Marble Falls, Texas 78654.

**WITNESSETH:**

That in consideration of the terms and conditions contained herein the parties do mutually agree as follows:

I.

**Engineer and Services**

Engineer shall perform all services under this Contract to the prevailing engineering professional standards consistent with the level of care and skill ordinarily exercised by members of the engineering profession, both public and private, currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action. If Engineer is representing that he/she has special expertise in one or more areas to be utilized in this Contract, then Engineer agrees to perform those special expertise services to the appropriate local, regional or national professional engineering standards. Engineer shall provide the services related to the **Via Viejo Ground Storage Tank** ("Base Services") as generally described in the attached Exhibit A, which is incorporated herein for all purposes. Additional Services as defined below may also be required and such Base and Additional Services may be collectively referred to as the "Project".

If Engineer determines that services outside the scope of Exhibit A ("Additional Services") are required or recommended, or that Engineer is being asked by City to perform services not covered by Exhibit A or by previously approved amendments to this Contract, Engineer shall notify City that such services are Additional Services, the cost associated with their performance and shall receive approval to perform such Additional Services prior to undertaking them. Any provision in this Contract to the contrary notwithstanding, City shall not be liable to Engineer for the payment of any Additional Services, unless the City and Engineer have entered into a written amendment to this Contract which identifies the services to be performed as Additional Services, and states the cost, or a not-to-exceed amount, for such services prior to the commencement of such Additional Services. Additional Services shall be calculated at the professional rates listed in Exhibit B.

Engineer shall not commence work on this project until given written permission by the City via a Notice to Proceed (NTP). The City shall not be obligated to compensate engineer for any work done prior to the issuance of the NTP.

II.  
Compensation to Engineer

**COMPENSATION:** City agrees to pay Engineer for all services outlined in Section I and as described in Exhibit A. Such services undertaken by Engineer shall be provided in accordance with the fees set forth in Exhibit B, attached hereto. Base Services performed by Engineer shall not exceed the lump sum fees described in Exhibit B. Additional Services will be performed by Engineer according to the hourly rates listed in Exhibit B.

Payments to Engineer will be made by City from invoices submitted by the Engineer and shall be based on the percentage of the work performed by Engineer on the Project as of the date of the invoice. Invoices shall itemize the services performed between Base Services, Additional Services and expenses, as applicable. Invoices shall not be submitted more frequently than one time per month. Invoices are due and payable thirty (30) days after receipt by the City.

III.  
Timely Completion of Engineering Services.

The Engineer shall make all reasonable efforts to complete assigned engineering duties and tasks in a timely manner. For all services related to the Project, and on at least a Weekly Basis, the Engineer shall provide a Schedule of the tasks that have been completed and the percentage of the Project that is remaining, and any obstacles that may cause a delay in completing engineering services related to the Project.

IV.  
Engineer's Coordination with Owner

Engineer shall be available for conferences with City so that the Project can be designed and managed with the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with current policies and construction standards.

City shall make available to Engineer all existing plans, maps, field notes, and other data in its possession relative to the Project; including geotechnical exploration reports. If additional geotechnical exploration is needed the City will provide right of entry to the project site for field work performed by the geotechnical sub-consultant and will coordinate with sub-consultant to locate underground utilities in the vicinity of proposed boring locations.

Engineer may show justification to City for changes in design from City standards due to the judgment of said Engineer of a cost savings to City and/or due to the surrounding topographic and geological conditions. City shall make the final decision as to any changes after appropriate request by Engineer.

Engineer shall accompany City representatives on Project observation visits during construction of Project at appropriate frequencies to ensure the Project is progressing based on

Engineer's plans and specifications. City may require more frequent construction observation visits as construction problems arise as a result of Project design.

The City will assign a project identification number (PID) to this project. The PID shall be referenced on all correspondence and invoices pertaining to this project. This number shall also be indicated on the cover page and each subsequent page of the drawings. The City will assign a PID and notify the Engineer in conjunction with the NTP.

In conjunction with the bid process for construction of the Project the City shall receive and review bid documents from the Engineer, advertise for bids for the work, attend pre-bid conferences, attend bid opening, and award contract as required by state law. Engineers agrees to perform the duties relative to contract and construction documents in accordance with Exhibit "A".

The Engineer shall be a representative of the City during the Construction Phase, and shall advise and consult with the City. Instructions to the Contractor shall be forwarded through the Engineer. The Engineer shall have authority to act on behalf of the City only to the extent provided in this Agreement. On the basis of on-site observations The Engineer shall keep the City informed of the progress and quality of the Work, promptly notify the City of problems or potential problems, and shall endeavor to guard the City against defects and deficiencies in the Work of the Contractor. The City shall arrange meetings with the Engineer as needed, and provide all pertinent available data as requested including any available historical information related to City's water utility. Engineer and City shall meet at City offices to review design deliverables. The City shall provide timely review of design documents and provide Engineer with review comments. During the construction phase, the City shall attend pre-construction conferences, construction progress meetings, walk-through inspections of the Work, provide clarifications regarding existing features and work as necessary, operate existing utilities as required to assist Contractor's work, process applications for payment and change orders as needed, provide construction materials testing for the Work and provide on-site inspection of the construction work.

The Engineer shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the City or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the City and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents. Interpretations and decisions of the Engineer shall be in written or graphic form.

The Engineer shall promptly notify the City in writing of Work that does not conform to the Contract Documents, and recommend rejection or other appropriate action. If in the Engineer's opinion, special inspection or testing of the Work is advisable or necessary, the Engineer shall recommend that the City require such inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work has been fabricated, installed, or completed.

The Engineer shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract

Documents. Engineer shall make City aware of all substantive deviations. The Engineer's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the City or of separate contractors, while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Engineer shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents, unless the Engineer has actual knowledge to the contrary.

The issuance of an Application for Payment, signed by the Engineer, shall constitute a representation by the Engineer to the City that the Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents and that the Contractor is entitled to payment in the amount certified. However, such issuance shall not be a representation that the Engineer has 1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; 2) reviewed construction means, methods, techniques, sequences or procedures; or 3) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Amount.

The Engineer shall prepare Change Orders for the City's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work which are consistent with the intent of the Contract Documents, but do not involve an adjustment to the Contract Amount or an extension of the Contract Time.

Upon receipt of notification by the Contractor that the Work has been substantially completed, the City, Contractor, and Engineer and its sub-consultants shall conduct an on-site review and prepare a list of corrections needed to render the Project substantially completed.

## V.

### Contract Termination Provision

This Contract may be terminated at any time by City for any cause without penalty or liability except as may otherwise be specified herein. Upon receipt of written notice by City, Engineer shall immediately discontinue all services and Engineer shall immediately terminate placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to cancel promptly all existing contracts insofar as they are related to this Contract. As soon as practicable after receipt of notice of termination, Engineer shall submit a statement showing in detail the services performed but not paid for under

this Contract to the date of termination. City shall then pay Engineer promptly the accrued and unpaid services to the date of termination, to the extent the services are approved by City.

This contract may be terminated by Engineer with mutual consent of City at any time for any cause without penalty or liability except as may otherwise be specified herein. Engineer shall submit written notice to terminate contract and shall submit to City all plans and documents relative to the design of Project. City shall then ascertain cost to complete the balance of the work under this Contract. If the cost to complete the balance of the work is greater than the unpaid contract amount, City shall retain all unpaid balances and, in addition, Engineer shall pay directly to City the difference in the unpaid balance and the cost to complete the work. In no case shall City pay Engineer any additional monies other than those previously paid under the Contract.

VI.  
Ownership of Documents

All drawings and specifications prepared or assembled by Engineer under this Contract shall become the sole property of City and shall be delivered to City, without restriction on future use. Drawings and specifications shall be submitted to City in both hard copy and electronic formats. Engineer shall retain in his files all original drawings, specifications and all other pertinent information for the work. Engineer shall have no liability for changes made to the drawings, specifications, and other documents by other engineers subsequent to the completion of the contract. City shall require that any such change be sealed, dated, and signed by the engineer making that change and shall be appropriately marked to reflect what was changed or modified.

VII.  
Insurance

The Engineer shall procure, pay for, and maintain during the term of this Contract, with a company authorized to provide insurance in the State of Texas and otherwise acceptable to the City, the minimum insurance coverage contained in Exhibit C, attached hereto and made a part of this Contract.

VIII.  
Monies Withheld

When City has reasonable grounds for believing that:

- A. Engineer will be unable to perform this Contract fully and satisfactorily within the time fixed for performance; or
- B. A claim exists or will exist against Engineer or City arising out of the negligence of the Engineer or the Engineer's breach of any provision of this Contract; then

City may withhold payment of any amount otherwise due and payable to Engineer under this Contract. Any amount so withheld may be retained by City for that period of time as it may deem advisable to protect City against any loss and may, after written notice to Engineer, be applied in

satisfaction of any claim described herein. This provision is intended solely for the benefit of City, and no other person or entity shall have any right or claim against City by reason of City's failure or refusal to withhold monies. No interest shall be payable by City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of City.

IX.

No Damages for Delays

Notwithstanding any other provision of this Contract, Engineer shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen.

X.

Right to Inspect Records

Engineer agrees that City shall have access to and the right to examine directly any pertinent books, documents, papers and records of Engineer involving transactions relating to this Contract. Engineer agrees that City shall have access during normal working hours to all necessary Engineer facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Engineer reasonable advance notice of intended audits.

Engineer further agrees to include in subcontract(s), if any, a provision that any subcontractor or consultant agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of such consultant or subcontractor involving transactions to the subcontract, and further, that City shall have access during normal working hours to all consultant or subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this paragraph. City shall give the consultant or subcontractor reasonable advance notice of intended audits.

XI.

No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (City and Engineer) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Engineer or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Engineer.

XII.

Successors and Assigns

City and Engineer each bind itself and their respective successors, executors, administrators and assigns to the other party of this Contract and to the successor, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither City nor Engineer shall assign or transfer its interest herein without the prior written consent of the other.

**XIII.**  
**Engineer's Liability**

Acceptance of the final plans by City shall not constitute nor be deemed a release of the responsibility and liability of Engineer, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by City for any defect in the designs, working drawings, specifications, or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, working drawings, specifications, or other documents prepared by said Engineer, its employees, subcontractor, agents and consultants.

With regard to engineering services related to the construction phase of the Project, the Engineer shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for construction. The Engineer shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Engineer shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. However, nothing in this subsection is intended to relieve Engineer of liability for delays occasioned by Engineer, its employees or sub-consultants or errors or deficiencies in the Work or services provided by The Engineer under this Agreement. The Engineer's notification to the City regarding Contractors' corrections of any deficiencies related to the Work shall not be construed as an implied or express warranty or representation by the Engineer, that the deficiencies have been corrected or that there are no other deficiencies on the Project.

**XIV.**  
**Indemnification**

To the fullest extent permitted by law, Engineer shall and does hereby agree to indemnify and hold harmless the City of Marble Falls, its officers, agents, and employees from any and all damages, loss or liability of any kind, whatsoever, by reason of death or injury to property or third persons to the extent caused by the negligent omission or negligent act of Engineer, its officers, agents, employees, invitees or other persons for whom it is legally liable, with regard to the performance of this Contract, and Engineer shall, at its cost and expense, defend, pay on behalf of, and protect the City of Marble Falls and its officers, agents, and employees against any and all such claims and demands.

XV.  
Severability

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, or conditions of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XVI.  
Conflict of Interest

A. Chapter 176 of the Local Government Code requires businesses conducting business activity with the City to file a "Conflict Disclosure Statement," and the Engineer shall complete such Statement and it shall be on file with the City, with the Statement to be updated as necessary.

B. The Engineer, when performing all services under this Contract, shall devote itself to the engineering duties and services required by the City. A "conflict of interest" condition exists when another Client of the Engineer proposes that the Engineer engage in engineering services for a project or development that is under the auspices and authority of the City of Marble Falls and such development will connect to or prosper from the Project that is the subject of this Contract. The Engineer shall refrain from those situations that create an actual conflict of interest or the appearance of same. However, if such a situation is unavoidable, then Engineer shall withdraw from this Contract so that City can identify and utilized another Engineer without delay or hindrance.

XVII.  
Gift to a Public Servant

The City may immediately terminate this Contract if the Engineer offers or agrees to confer any benefit on a City employee or official that the City employee or official is prohibited by law from accepting. "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage; "Benefit" does not mean purchase, by the Engineer, of a meal (breakfast, lunch, or dinner) for employee or official in the course of regular business activity. Notwithstanding any other legal remedies, City may require Engineer to remove any employee of Engineer from the Project who has violated the restrictions of this section or any similar State or Federal Law, and obtain reimbursement for any expenditures made as a result of the improper offer, contract to confer, or conferring of a benefit to a City employee or official.

XVIII.  
Governing Law and Legal Construction

A. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

B. In the event any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

XIX.

Independent Contractor

Engineer covenants and agrees that he/she is an independent contractor, and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of and exclusive right to control the details of the work performed hereunder, and all persons performing same, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

XX.

Disclosure

By signing this Contract, Engineer acknowledges to City that he/she has made a full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including personal financial interests, direct or indirect, in property abutting the proposed Project and business relationships with abutting property owners. Engineer further agrees that he shall make disclosure in writing of any conflicts of interests which develop subsequent to the signing of this Contract and prior to final payment under the contract.

XXI.

Venue

The parties to this Contract agree and covenant that this Contract shall be enforceable in Marble Falls, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue shall lie in Burnet County, Texas.

XXII.

Entire Contract

This Contract embodies the complete Contract of the parties hereto, superseding all oral or written previous and contemporary Contracts between the parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written contract of the parties.

XXIII.  
Applicable Law

This Contract is entered into subject to the Charter and ordinances of City, as they may be amended from time to time, and is subject to and is to be construed, governed, and enforced under all applicable State of Texas and federal laws. Situs of this Contract is agreed to be Burnet County, Texas, for all purposes, including performance and execution.

XXIV.  
Default

If at any time during the term of this Contract, Engineer shall fail to commence the work in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely, and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel or equipment to complete the work or fail to perform any of its obligations under this Contract, then City shall have the right, if Engineer does not cure any such default after thirty (30) days written notice thereof, to terminate this Contract and complete the work in any manner it deems desirable, including engaging the services of other parties therefor. Any such act by City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy, the cost to City of the performance of the balance of the work, as defined in Exhibit A, is in excess of that part of the Contract sum which has not therefore been paid to Engineer hereunder, Engineer shall be liable for and shall reimburse City for such excess.

XXV.  
Headings

The headings of this Contract are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXVI.  
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by City in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXVII.  
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but, each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVIII.

Equal Employment Opportunity

Engineer shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, place of birth or disability. Engineer shall take action to ensure that applicants are employed and treated without regard to their race, age, color, religion, sex, ancestry, national origin, place of birth or disability. This action shall include, but not be limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship.

XXIX.

Construction of Contract

Both parties have participated fully in the review and revision of this Contract. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Contract.

XXX.

Notices

All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for City, to:

City of Marble Falls  
City Manager  
800 Third Street  
Marble Falls, Texas 78654

If intended for Engineer, to:

William A. Plumlee, P.E.  
Willis Environmental Engineering Inc.  
310 Main Street  
Marble Falls, Texas 78654

XXXI.

Warranty

To the extent allowed by law, Engineer warrants that all work will be performed to the professional services standard indicated in Section I. of this Contract.

XXXII.

Attorney Fees

In the event any party to this Contract should bring suit against the other party with respect to any matters provided for in this Contract, the prevailing party shall be entitled to recover from such other party its costs of court, legal expenses and reasonable attorneys' fees in connection with such suit.

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IN WITNESS WHEREOF, the parties enter into this Contract on the date first written above.

WITNESS:

WILLIS ENVIRONMENTAL ENGINEERING INC.

Carolyn A. Chambers

BY: William A. Plumlee

William A. Plumlee

Printed or Typed Name

President

Printed or Typed Title

74-1722660

Tax Identification No.

ATTEST:

CITY OF MARBLE FALLS, TEXAS:

\_\_\_\_\_  
, City Secretary

BY: \_\_\_\_\_

John Packer

Printed or Typed Name

Mayor

Printed or Typed Title

THE STATE OF TEXAS §

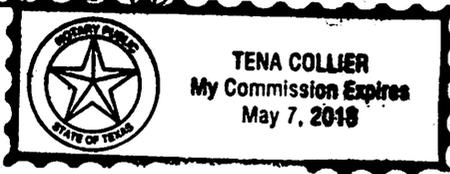
Engineer Acknowledgment

COUNTY OF BURNET §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared WILLIAM A. PLUMMER, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act of WILKS ENVIRONMENTAL ENGINEERING corporation of BURNET County, Texas, and as PRESIDENT thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 21<sup>st</sup> day of November 2016

(SEAL)



Tena Collier  
Notary Public in and for the State of Texas

TENA COLLIER  
Notary's Printed Name

My Commission Expires: 5/7/18

THE STATE OF TEXAS §

Municipal Acknowledgment

COUNTY OF BURNET §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act of the City of Marble Falls, Texas, a Texas municipal corporation, and as the \_\_\_\_\_ thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

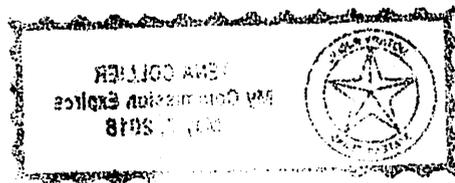


EXHIBIT "A"



# SCOPE OF WORK

FOR

VIA VIEJO  
GROUND STORAGE TANK

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**DESIGN SCOPE  
FOR  
VIA VIEJO GROUND STORAGE TANK**

## 1. INTRODUCTION

This proposal is for professional engineering services related to preliminary engineering, final design, bidding assistance, and construction administration for the VIA VIEJO GROUND STORAGE TANK of the City of Marble Falls.

## 2. BACKGROUND

Currently the Via Viejo storage tanks are comprised of one 200,000 gallon and a 500,000 gallon welded steel tank. The larger of the two tanks is leaking and cannot feasibly be repaired, while the smaller tank has not been rehabilitated since the early 2000's. The City is seeking to demolish the larger tank, build a new welded steel tank, and rehabilitate the smaller tank. The new tank is anticipated be no larger than 800,000 gallons. The proposed improvements will also include the upsizing and consolidation of piping within the site, electrical, SCADA. The City has budgeted a not to exceed budget of \$900,000 to do all the work, which amount includes, all surveying, design, construction, and testing. The detailed scope of work is encompassed below.

The City has retained the services of a tank inspection company to inspect the existing tanks and provide recommendations.

## 3. ENGINEERING DESIGN

Consulting engineer shall not commence work on this project until given written permission by the City via a Notice to Proceed (NTP). The City shall not be obligated to compensate engineer for any work done prior to the issuance of the NTP.

### 3.1 Survey

**Willis Environmental Engineering** (hereinafter "The Engineer" or "WEE") will employ the services of a Texas Licensed Land Surveyor to perform a topographic survey for design of the affected area, if not included in the survey already provided by the City (if any). If any additional survey is required for the design and construction, the Engineer shall retain additional surveying services at no cost to the City.

The Engineer shall make available to the City any additional CAD file(s) of the survey and design.

### 3.2 Geotechnical Engineering

The Engineer shall employed the services of a geotechnical engineering sub-consultant and provide field borings and laboratory services to assist design and construction of proposed improvements. The Engineer will analyze the geotechnical field data provided by the geotechnical sub-consultant to characterize subsurface conditions for prospective bidders and help determine the appropriate structural design criteria to be used during the design phase. The Engineer will coordinate with the geotechnical engineering sub-consultant as needed and request and additional information as needed to complete the design. The Engineer may not increase the scope of work of the geotechnical engineering sub-consultant without prior discussions with the City. The Engineer will encompass the geotechnical field data and final report, provided by the geotechnical sub-consultant, to design the new improvements. The Engineer shall also include the geotechnical report with the bid documents.

### 3.3 Preliminary Design

Engineer shall prepare preliminary design for this project and submit to the City for review. Preliminary design shall be considered a 20% completed design. The Engineer shall assure that the performed design work matches the topographic survey, and make necessary adjustments as follows:

1. Coordinate preliminary design with City, surveyor, Geotech, and other entities.
2. Provide the City a design and construction schedule.
3. Define the proposed improvement footprint.
4. Identify major components that require re-design.
5. Prepare drawings and submit to City for review and discussion.
6. Establish new drainage facilities for the proposed improvements.
7. Design relocation of City utilities affected by the construction.
8. Extend City utilities for service.

WEE is familiar with the site and have met with the, the Owner, and Owner rep. about this project.

### 3.4 Final Design

The Engineer will refine design criteria and recommendations developed during preliminary engineering as necessary in order to develop final drawings and specifications for this project. The drawings and specifications will indicate the scope, extent, and character of the work to be performed and furnished by a Contractor. The Engineer will furnish 60%, and 90% drawings, and specifications for review by the City. The Engineer will conduct meetings with the City to review schematic, 60%, and 90% deliverables, and the design documents will be revised in accordance with comments and instructions from the City, as appropriate.

Engineer shall incorporate the city's drafting standards to the civil design for this project. Engineer shall inform and obtain permission from the City for any deviation to the drafting standards.

The City anticipates that there will need to be coordination between the Geotech and Engineer. The City expects both the Geotech and Engineer to be able to coordinate without any need for interference from the City. The City will facilitate any such meeting as practical as possible.

The City will assign a project identification number (PID) to this project. The PID should be referenced on drawings, bid documents, all correspondence and invoices pertaining to this project. This number shall also be indicated on the cover page and each subsequent page of the drawings. The City will assign a PID and notify the Engineer of it along with the NTP.

Engineering scope of services shall include the following:

1. Prepare site grading and drainage plan in accordance with dimensioned site plan. Engineer will analyze provided plan and make adjustments to fit topography and other items not considered during preliminary design.
2. Provide dimensional control with coordinate points, and grading plan.

3. Design the on-site utility lines as needed to accommodate for population growth as identified in the 2016 Water and Wastewater Master Plan. Engineer will meet with City's Public Works Dept. to determine best location for the utility lines.
4. Prepare a TCEQ permit for the storm-water pollution prevention (SWPPP Plan).
5. Prepare an Erosion Control plan.
6. Provide a demolition plan for the existing tank, utilities, and other structures.
7. Provide bid option for 600,000 gallon tank.
8. Bid alternate to demolish one tank in lieu of rehabilitation.
9. Utilize the City provided tank inspection to design the rehabilitation of the existing tank.
10. Provide site visits during construction to review utility and paving installation.
11. Coordinate with the Geotech for any Geological Site or Construction testing requirements.
12. Design any retaining walks required between the parking lots or streets that are not associated to the building.
13. Provide an irrigation and landscape plan for the project based on City staff instructions.
14. Design electrical, SCADA, and other components needed to facilitate the operation of the storage tank(s).
15. Coordinate scope and cost for construction material testing and third party inspections (if any).

Regulatory Notification: Engineer will prepare and submit a project summary letter to the Texas Commission on Environmental Quality (TCEQ) in accordance with the state regulations, which states that the letter notification shall be submitted to TCEQ prior to construction. The TCEQ notification should be finalized and submitted at the completion of 90% Drawings and Specifications. A TCEQ plan review is anticipated for this project, and any comments as a result thereof should be addressed prior to issuance for bid. Should the TCEQ exercise its right to request additional detailed plan review, Engineer will submit final plans, specifications and engineering design criteria to the TCEQ accordingly on behalf of the City.

**City Responsibility during Design Process**

Arrange meetings with Engineer as needed, and provide all pertinent available data as requested. Make staff available to meet and provide available utility historical background information. Meet with the Engineer at City offices to review design deliverables. Provide timely review of design documents and provide review comments. If needed, coordinate meetings with design architect.

**4. BIDDING ASSISTANCE**

Following 90% review, the Engineer will furnish final bidding documents and assist the City in the preparation of other related documents (if any). The Engineer shall furnish bid documents along with project specifications. The drawings along with the specifications will indicate the scope, extent, and character of the work to be performed and furnished by a Contractor. The Engineer shall incorporate the City of Marble Falls Standard Specifications (specs) as much as practical. For items not included in the aforementioned specs, the Engineer shall incorporate other standard engineering specifications in the design.

The Engineer will prepare the opinion of probable construction cost for the project based on the most up-to-date design information and advise the City promptly and in writing of any adjustments to construction cost known to the Engineer. Each deliverable will receive an internal quality assurance and quality control review prior to submittal to the City.

The Engineer will prepare bid documents and assist in advertising for and obtaining bids for the work and, where applicable, maintain a record of prospective bidders to whom bidding documents have been issued, attend a pre-bid conference, and receive and process contractor deposits or charges for the bidding documents. Bidding document charges shall be no more than \$75 per set.

The Engineer will assist the City of Marble Falls, Texas in posting notice in the local newspaper about the project, as well as the local trade distributors i.e.; American General Contractors, Dodge Room and other Trade Journals.

The Engineer will respond to bidder questions and issue addenda as appropriate to clarify the bidding documents and where applicable, maintain a record of prospective bidders to whom bidding documents have been issued, attend a pre-bid conference, and receive and process contractor deposits or charges for the bidding documents. Engineer will respond to bidder questions and issue addenda as appropriate to clarify the bidding documents. The Engineer will also attend the bid opening, prepare bid tabulation sheets, and assist the City in evaluating bids and in assembling and awarding contracts for the work. The Engineer will review those bids and make recommendations as to the most qualified responsive bidder.

The Engineer will prepare the construction contracts and documents for the contractor and City of Marble Falls to sign. Engineer will review and verify Contractor's bond and insurance documents and confirm with the City their Validity.

**City Responsibility during Bidding Process**

Receive and review bid documents from The Engineer. Advertise for bids for the work, attend pre-bid conference, attend bid opening, and award contract to lowest, responsive bidder.

**5. CONSTRUCTION ADMINISTRATION**

The Engineer shall be responsible for making sure that the payment and performance bonds and insurance certificate(s) required by the Bid and Contract Documents have been provided to and approved by City prior to the commencement of construction.

**5.1 Construction Assistance**

The Engineer will consult with the City and act as the City's representative as provided herein. The Engineer will participate in a pre-construction conference prior to commencement of work at the project site; prepare and print up to 6 half-sized and 3-full sized sets of conformed construction documents; receive, review, and determine the acceptability of any and all schedules that the Contractor is required to submit to the Engineer, including the progress schedule, schedule of submittals, and schedule of values; make site visits at intervals appropriate to the various stages of construction (averaging once per month for anticipated 6-month construction duration), as Engineer deems necessary, to observe the progress and quality of Contractor's executed work; issue necessary clarifications and interpretations of the contract documents (RFIs) as appropriate to the orderly completion of Contractor's work; recommend change orders and work change directives to the City, as appropriate, and prepare change orders and work change directives as required; review and approve or take other appropriate action in respect to shop drawings and samples and other data that Contractor is required to submit (up to 10 submittals anticipated); organize and attend pre-construction and monthly progress meetings; evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor; require such special inspections or tests of

Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required; render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's work; review applications for payment and accompanying supporting documentation from Contractor, and recommend appropriate payment to Contractor; receive, review, and transmit to the City maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the contract documents; promptly after notice from Contractor that Contractor considers the entire work ready for its intended use, in company with the City and Contractor, conduct an inspection to determine if the work is substantially complete; prepare preliminary and final punch lists, and conduct final inspection of the work; review and compile as-recorded drawings as received from the Contractor, and produce as-recorded drawings for the City.

The Engineer will work closely with Holt Engineering, a geotechnical testing company from Austin, Texas to evaluate the construction quality as well as the construction materials installed on the project.

Inspections: The Engineer shall record observations made on each job site visit and shall submit a report to the City. In addition, the Engineer's sub-consultants shall visit the site at appropriate stages of the Work related to their area of specialty, shall record observations made on each job site visit and shall submit reports to the Engineer and to the City through the Engineer. The Engineer will make at least twice weekly inspections at 6-hrs minimum per week allocated for site inspection, and review the monthly pay request and approve the contractor's quantities for payment. Inspection services shall be done by a qualified, experienced individual will be provided as noted above, or more frequently as necessary for critical construction activities. Inspector shall maintain a log of items inspected each inspection day and submit to the City on a monthly basis prior to the Contractor's application for payment.

Engineer shall record observations made on each job site visit and shall submit a report to the City. Engineer's inspector shall maintain an inspection log, noting items inspected during the inspection. In addition, the Engineer's sub-consultants shall visit the site at appropriate stages of the Work related to their area of specialty, shall record observations made on each job site visit and shall submit reports to the Engineer and to the City through the Engineer.

Reports, if handwritten, shall be written legibly; typed reports are preferred. Information reported shall reflect to the best of the Engineer's or sub-consultants' knowledge, information and belief, the following: trades at work, approximate manpower, temperature/weather conditions, variations from Contract Documents, defective work, percentage of contract time used compared with percentage of completion of construction, contract completion date, and other meaningful information. Reports for periods when no Work is in progress shall state "No Work in Progress."

Upon receipt of notification by the Contractor that the Work has been substantially completed, the City, Contractor, and Engineer and its sub-consultants shall conduct an on-site review and prepare a list of corrections needed to render the Project substantially completed. After the Contractor has performed the corrections, the Engineer shall notify the City in writing that the Work has been substantially completed. The Engineer shall review all warranties, guarantees, bonds, equipment operating instructions, and similar required material and documents for general compliance with the Contract Documents and shall present them to the City. The Engineer will also review the final pay request along with all release of lien's from the contractor and his subcontractors for final payment. After ascertaining that requirements of the Contract Documents have been met, and the City has no additional corrections or repairs required to be performed,

the Engineer shall prepare and issue a Certificate of Substantial Completion stating that the Project is in substantial compliance with the requirements of the Contract Documents.

Upon receipt by the Engineer of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment from the Contractor, the Engineer will promptly make an on-site review and, when the Work is found to be acceptable under the Contract Documents and the Contract fully performed, the Engineer will promptly sign the final Application for Payment certifying that the Work has been completed in general accordance with the terms and conditions of the Contract Documents and that final payment is due the Contractor. The Engineer shall require each engineer who prepares plans for the Project to certify, at the appropriate stage, that the Work has been performed in accordance with the engineer's plans.

Upon receipt from the Contractor of details of deviations from Contract Documents, which have been determined by the Engineer to be comprehensive and generally accurate, Engineer shall produce within thirty (30) days record documents for the City's use. The Engineer cannot and does not warrant the accuracy of the information provided by the Contractor.

After construction is complete the Engineer shall deliver to the city as-recorded drawings. The City requires the designer, to submit electronic record drawings (PDF format) to the City within 30 days of project completion. Record drawings shall reflect any changes or completed construction that differs from City approved drawings. The Engineer may submit record drawings containing field changes hand marked with red ink. In such case the drawings are to be accompanied with a signed letter that the field corrected markups are accurate and accurately depict as built conditions. The red ink hand marked drawings affected cannot exceed 20% of the pages from a set of drawings, otherwise a clean re-drafted and corrected set of drawings shall be submitted as record drawings.

### 5.2 Warranty Period Assistance

Under Basic Services, the Engineer shall assist and represent the City through the one year warranty period on matters involving malfunctions or deficiencies of the Work. The Engineer shall communicate with and assist the Contractor as necessary to correct all deficiencies in a timely manner and to reduce inconvenience to the City during this period. The Engineer agrees to require its sub-consultants (if any) to provide their assistance as necessary during the warranty period.

The scope of assistance referenced in this Section shall include, but not be limited to, the following: (1) Notifying the Contractor of deficiencies or failures in labor and materials and requesting corrective action; (2) Preparing correspondence and other written data as necessary to document, clarify, and resolve discrepancies; and (3) Meeting with the Contractor at the Project site or other local places when requested by the City.

The Engineer shall accomplish an on-site review of the Work accompanied by its sub-consultants, if applicable, approximately one month before the one year anniversary of the date of Substantial Completion. As a result of this on-site review, he shall prepare a list of items needing correction and request the Contractor to resolve them. After reviewing the Contractor's corrective actions and determining that deficiencies have been corrected, the Engineer shall so notify the City in writing. The Engineer shall provide in any draft contract prepared for the construction of the Project that this notification by the Engineer does not release the Contractor from its responsibilities set forth in the Contract Documents, and shall not be

construed as an implied or express warranty or representation by the Engineer, that the deficiencies have been corrected or that there are no other deficiencies on the Project.

Under Basic Services, the Engineer and its sub-consultants agree to provide a total of eight (8) hours for warranty period services. The Engineer shall provide accounting for time expended under Basic Services at the time these services are provided. Additional time for warranty period services shall be considered Additional Services in accordance with the Agreement.

**City Responsibility during Construction Process**

Attend pre-construction conference, construction progress meetings, and walk-through inspection of the work; provide clarifications regarding existing features and work as necessary; operate existing utilities as required to assist Contractor's work; process applications for payment and change orders as needed; provide construction materials testing for the work; and provide on-site inspection of the construction work.

## 6. ENGINEERING FEE

The Engineer shall provide the preliminary engineering, final design, bidding assistance and construction administration services described above for a lump sum fee of **\$92,000**. The following table itemizes the estimated fees for each project task.

<b>Task</b>	<b>Fee</b>
20% Design (Schematic)	\$ 5,000
60% Design	\$ 20,000
Final Design and Specification	\$ 30,000
TCEQ Design Submittal	\$ 2,000
Surveying	\$ 5,000
Geotechnical	\$ 5,000
Subtotal	\$ 67,000
<b>Bidding Assistance</b>	
Bidding	\$ 5,000
Construction Administration	\$ 3,000
Inspection Services	\$ 15,000
Operation and Maintenance Manual	\$ 2,000
<b>Total</b>	<b>\$ 92,000</b>

After the Notice to Proceed design is issued, this project shall have a 12 month project duration, which includes 4 months for design, 2 months for bidding process, and 6 months to construct the project. Schedule may change between bidding and construction phases depending on funding availability, thus overall project schedule may be different than the above.

Items not included in this work but are available from the Engineer at an hourly rate are:

1. Services related to construction materials testing.
2. Coordination with nearby property owners and/or general public.

EXHIBIT "B"

Any additional services not covered in the current scope of work, shall be performed by the Consultant, and will be compensated only after an amendment to this contract has been agreed upon in writing between the Consultant and the City of Marble Falls, Texas.

Bill Rate Schedule  
October 2016

<b>Resource Category</b>	<b>Standard Hourly Bill Rate</b>
Principal Engineer	\$ 150.00
Engineering Professional VI	\$ 130.00
Engineering Professional IV	\$ 125.00
Engineering Professional III	\$ 120.00
Engineering Professional II	\$ 115.00
Project Manager	\$ 110.00
Engineering (EIT)	\$ 85.00
Engineering Technician I	\$ 75.00
Resident Project Inspector	\$ 55.00
CAD Technician	\$ 55.00
Administrative Assistant	\$ 40.00
Mileage (per Mile)	\$ 0.55

Services of authorized specialized sub-consultants or technicians will be invoiced to you at cost plus 10%.

Reimbursable expenses such as reproduction, printing, fax and long distance telephone work will be invoiced to the City at cost.

Rates are subject to change during January each year and will be submitted annually for Owner's review and acceptance.

EXHIBIT "C"

INSURANCE

A. Engineer shall provide the following insurance coverage :

- 1 Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat.) or proof of compliance with the State of Texas' Workers Compensation Act (2009) for self-insured employers. The Engineers policy shall apply to the State of Texas and include these endorsements in favor of the City:
  - (a) Waiver of Subrogation, form WC 420304.
  - (b) 30 day Notice of Cancellation, form WC 420601.
  
- 2 Commercial General Liability Insurance with a minimum combined bodily injury and property damage per occurrence limit of \$1,000,000, and \$2,000,000 annual aggregate for coverages A & B. The policy shall contain the following provisions:
  - (a) Blanket contractual liability coverage for liability assumed under this Contract and all contracts relative to this Project.
  - (b) Independent Sub-consultants' coverage.
  - (c) City listed as an additional insured, endorsement CG 2010.
  - (d) 30 day Notice of Cancellation in favor of the City, endorsement CG 0205.
  - (e) Waiver of Transfer Right of Recovery Against Others in favor of the City, endorsement CG 2404.
  
- 3 Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a combined single limit of \$1,000,000 for each accident. The policy shall contain the following endorsements in favor of the City: The policy should name the city as an additional insured with the riders attached as described below.
  - (a) Waiver of Subrogation endorsement TE 2046A.
  - (b) 30 day Notice of Cancellation endorsement TE 0202A.

- 4 Engineers Professional Liability Insurance with a minimum limit of one million (1,000,000) dollars per claim and in aggregate to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the insured. The policy shall provide for 30 day notice of cancellation in favor of the City.

## B. GENERAL REQUIREMENTS

- 1 The Engineer must complete and forward the City's standard certificate of insurance to the City before the Contract is executed, as verification of coverage. The Engineer shall not commence services until the required insurance has been obtained and until such insurance has been reviewed by the City's Representative. Approval of insurance by the City shall not relieve or decrease the liability of the Engineer hereunder and shall not be construed to be a limitation of liability on the part of the Engineer.

- 2 Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this Contract and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The Engineer shall maintain continuous coverage for the duration of this Contract and for not less than twenty-four (24) months following substantial completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Engineer shall, on at least an annual basis, provide the City with a certificate of insurance as evidence of such insurance.

- 3 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance shall indicate the name of the City Manager at the Marble Falls City Hall address:

- 4 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Contract, covering both the City and the Engineer, shall be considered primary coverage as applicable.

- 5 If insurance policies are not written for amounts specified above, the Engineer shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

- 6 The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

7 The City reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Engineer.

8 The Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

9 The Engineer shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.

10 The Engineer shall provide the City thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

11 The insurance coverages required under this Contract are required minimums and are not intended to limit the responsibility or liability of the Engineer.

**December 6, 2016**

**7. REGULAR AGENDA**

- (e) Discussion and Action on the recommendation from the Hotel Motel Tax Advisory Committee regarding the allocation of HOT funds for Victory Publishing/101 Highland Lakes.com. **Mike Hodge, City Manager**
- 

Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



**Council Agenda Item Cover Memo  
December 6, 2016**

**Agenda Item No.: 7(e)  
Presenter: Mike Hodge, City Manager  
Department: Administration  
Legal Review: N/A**

**AGENDA CAPTION**

Discussion and Action on the recommendation from the Hotel Motel Tax Advisory Committee regarding the allocation of HOT funds for Victory Publishing/101 Highland Lakes.com.

**BACKGROUND INFORMATION**

The Hotel Occupancy Tax Advisory Committee convened on November 17 to discuss the overall marketing plan for the City. At the meeting, the committee was provided an update on the current marketing strategy from Door No. 3 as well as discussion regarding the distribution of funds for marketing from the HOT budget and a revisiting of the request by Victory Publishing in the amount of \$20,000 from the FY 16/17 Hotel Occupancy Tax Budget to be used for lodger advertisements in the 101 Things to Do publication as well as on 101HighlandLakes.com.

The 101 Fun Things to Do is a print magazine launched in 1997 highlighting various businesses and events in the Highland Lakes area semi-annually. In May 2015 this publication took on a web-based presence and is attempting to reach a much broader readership across the state. As part of that effort, Victory Publishing indicated in their initial request last year that there would be a large amount of data to be analyzed that is derived from the traffic that visits their website and from the booking engine on the lodging section of the site that allows users to book rooms directly with local hoteliers. The data could then be collected and utilized to develop user preferences and help drive a marketing strategy. The analysis provided in the [FY 16/17 Marketing Plan](#) and the [proposed contract](#) are attached.

The Committee approved a motion to fund the Victory Publishing Contract as stated with future requests by Victory Publishing to be considered as part of the overall marketing strategy and allocated funding for that line item. Additionally, the Committee recommended that the accountability component of the marketing plan submitted by Victory Publishing should be assessed by the Council. If approved by Council, this contract would be paid from reserves and not from monies set aside for special events.



## Hotel/Motel Tax Lodgers Marketing Contract

The following is an agreement between Marble Falls, herein after referred to as “City” and 101HighlandLakes.com, herein after referred to as “101HL/STAY”. The term of this agreement is for one year, beginning on October 1, 2016 and ending on September 30, 2017.

Under Chapter 351.002 (a)(Vernon 2011) of the Texas Tax Code, Marble Falls is authorized to collect hotel occupancy taxes.

The City strives to promote quality travel-related resources and information about the City of Marble Falls area, and to be a reliable and good steward in the hospitality industry. The City is a governmental entity and has the responsibility to promote tourism in order to increase occupancy rates for its’ lodging entities.

101HighlandLakes.com is a regional destination marketing organization entering into this contract with the City to promote travel and tourism to Marble Falls.

Under this marketing contract, 101HL/STAY will advertise and promote City lodging properties on behalf of the City. Such entities are considered to be “City Lodging Properties”, referred to as “CLP”.

Marketing Plan will include:

- Online, mobile and printed marketing avenues.
- Online marketing includes desktop, tablet and mobile devices.
- All lodgers included on the 101HighlandLakes.com/STAY website.
- Advertising placement of the City Lodging Properties on the official 101HighlandLakes.com website, to be approved by lodger.
- Website will include: online booking, WHERE TO STAY Guide icon, and window shade with upgraded tabs package (WS Tabs are a new feature developed and deployed in June 2016)
- Lodger ads will be included in “101 Fun Things To Do in the Highland Lakes” magazine, which is published in the Fall of 2016 and Spring of 2017 and distributed throughout the region and five points of entry in Texas.
- Analytics will be provided upon request. 101HL/STAY project leaders will meet with H.O.T. Committee members to identify important information to report.

Upon execution of this contract, 101HL/STAY will make contact with current lodgers regarding marketing details and with the opportunity to customize their lodging information. Each lodging venue will be responsible for reviewing and providing information and updates to 101HL/STAY by stated deadlines to meet publication deadlines.

The City has the right to review all information listed on 101HighlandLakes.com/STAY and 101 Fun Things To Do in the Highland Lakes magazine for accuracy prior to publication and/or posting. New lodging venues will be updated on 101HighlandLakes.com/STAY as information is received and will be updated in the next printed magazine publication of 101 Fun Things To Do in the Highland Lakes.

Should either party provide notice to terminate the agreement, the parties will then negotiate in good faith, to determine what, if any, of the total contract amount should be returned to the City.

The City agrees to pay \$20,000 for Advertising Package. Payment in the amount of \$12,903 by Nov 1, 2016 for F/W Magazine and Online and \$7,097 by April 1, 2017 for S/S Magazine.

The intent is to enter into a long term marketing relationship to become a provided for components of the current marketing program from collaboration with the Marble Falls Chamber of Commerce, Marble Falls Economic Development Council, and the City of Marble Falls.

The agreement is signed on this \_\_\_\_ day of August, 2016.

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Mike Hodge, Marble Falls City Manager

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Amber Weems  
101HighlandLakes.com/STAY  
Victory Publishing Co., Chief Operating Officer



*HighlandLakes.com*

**CITY OF MARBLE FALLS  
MARKETING PLAN  
FISCAL YEAR 2016-2017**

# 101HIGHLANDLAKES.COM/STAY

PRINT

**101fun** things to do in the **HIGHLAND LAKES**  
 SPRING SUMMER 2016

**TASTE WINES** THE WINE CLASS AT THE HIGHLAND LAKES

**TEE OFF** IN A GOLFER'S PARADISE

**TAKE A HIKE**

**STROLL AND SHOP HISTORIC DOWNTOWNS**

**SET UP CAMP** THE PERFECT PLACE TO

**101fun** things to do in the **HIGHLAND LAKES**

FREE

101HighlandLakes.com

ONLINE

**PLAY** Highland Lakes Events Calendar Sponsored By BROWSE LOCAL EVENTS OR CLICK

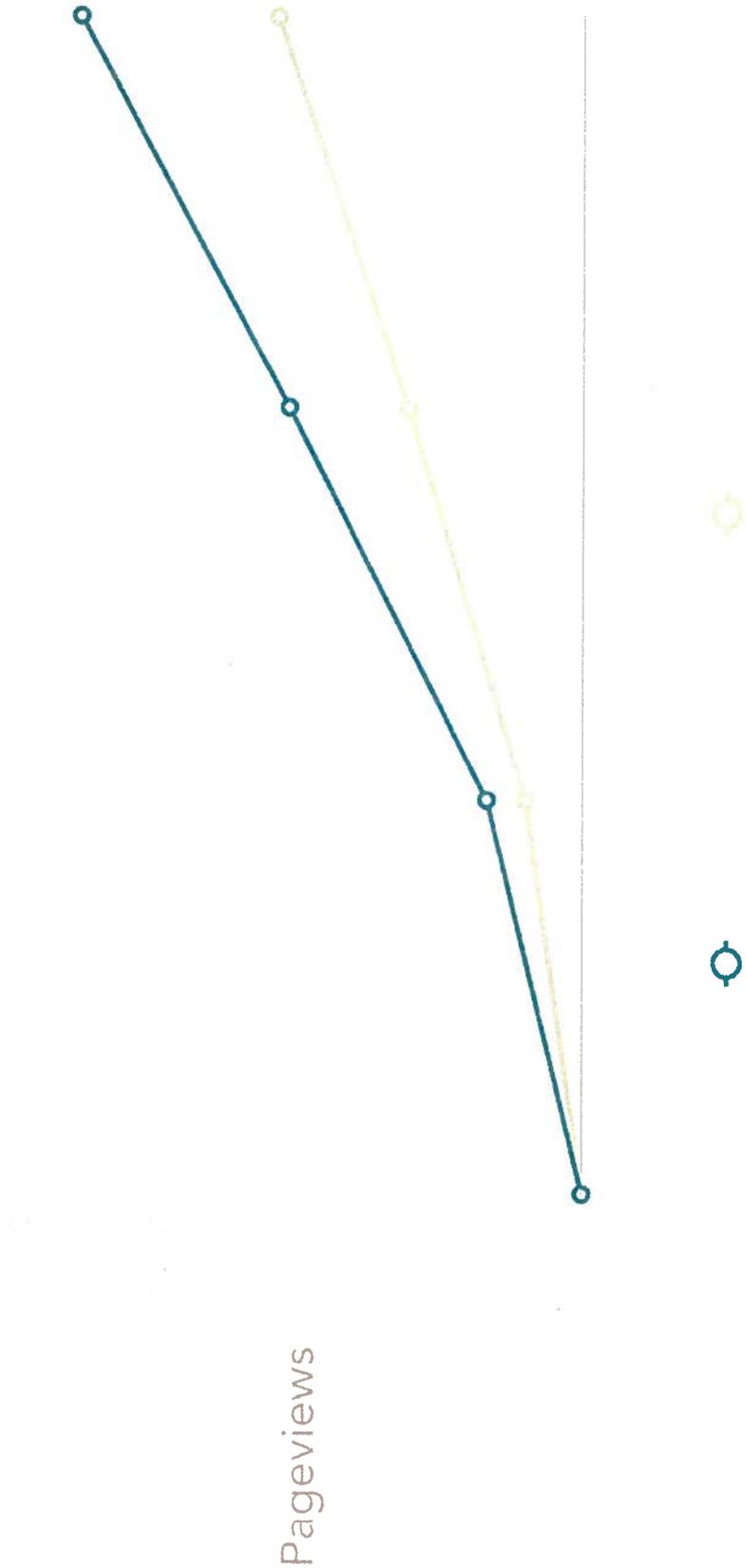
**STAY** Where to STAY

Hill Country Inn  
 Holiday Inn Express & Suites  
 Best Western  
 Quality  
 Hampton Inn  
 The Quality Inn  
 The Quality Inn

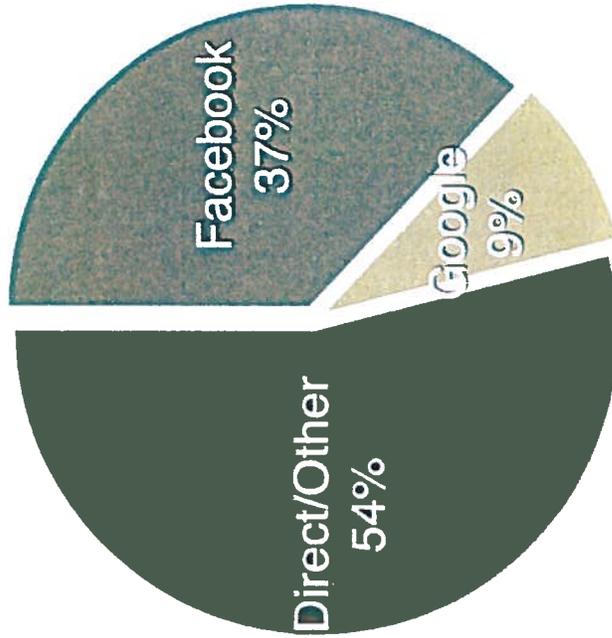
Escape Austin for a Hill Country retreat  
 Treat your honey to a romantic retreat  
 10 ways to have fun with your dog around Marble Falls

BOOK YOUR STAY

# WEBSITE GROWTH 164% BETTER THAN PROJECTED

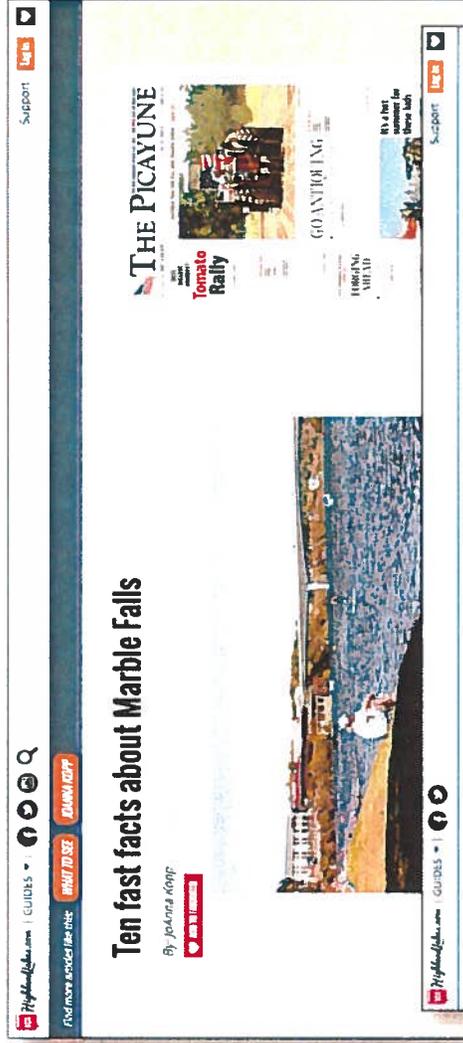


# WHERE OUR TRAFFIC COMES FROM



## Top Cities:

Marble Falls, Houston, Austin, Burnet, San Antonio, Dallas



# Before

Home | Hotels & Destinations | Resorts | Vacation Rentals | Support | TV

Where to **STAY**  
Where to Stay in the Highway Lane

Lyn Country Inn | Canyon of the Eagles | La Quinta | Sageo Springs | Hampton Inn | Quality Inn

Hampton Inn  
Book Now!

# Now

Home | Hotels & Destinations | Resorts | Vacation Rentals | Support | TV

Where to **STAY**

La Quinta | Hampton Inn | Quality Inn | Best Western | Holiday Inn | Hill Country Inn

Holiday Inn Express & Suites  
Free Breakfast Bar • Outdoor Pool • Fitness Center • Event Facilities • Free WiFi

# WHY CUSTOM CONTENT?

Content marketing has become an important piece of a modern digital marketing plan.

Marketing teams are producing more content than ever, all to attract more potential buyers to their web properties.

In this new digital landscape, writers and content marketers are key players in the search optimization equation, but most don't yet know the rules of the SEO road.

# Ten fast facts about Marble Falls

By [Jacquie Kopp](#)

[Add to Favorites](#)



Look at Marble Falls on a relaxing summer day. (Sally Priddy/TravelTrends)

1. Marble Falls claims one of the most fascinating histories in the state. The small city has an interesting background — from granite mining to secret waterfalls to 20th-century feminism. Take a look at these 10 quick facts about Marble Falls.
2. The population of a little more than 6,000 people gives it a small-town feel, but the city is in the center of a network of communities called the Highland Lakes. With a 40-mile radius, the population is 71,500.
3. The city of Marble Falls was founded by Confederate Gen. Adam R. "Stovall" Johnson on July 12, 1857. His nickname came from the "fire cannons" he confiscated from storekeepers and wagon wheels during the Civil War.
4. Dead Men's Hole is the city's creepiest — and damnest — landmark. Seven feet wide and 160 feet deep, the hole was used during the Civil War to send Union sympathizers to a most unfortunate fate. At least 17 bodies were confirmed to be at the bottom, though some speculate it was more than 30.
5. Marble Falls is more than 13 square miles. Austin is 20.1, most that's so.
6. The city is named after materials on the banks of what is now Lake Marble Falls. Today, the waterfalls are impossible to see unless the lake is lowered for maintenance on the dam. On these rare occasions, the water level comes out to within 100 feet of the falls.
7. Lakefest, held in August each year, is one of the biggest fall races in the United States. It celebrates its 25th anniversary in 2015.
8. In 1947, Marble Falls elected the first female mayor in the nation (Dorothy Crayth-Judge). After just one year, she couldn't even re-yeet!
9. Granite Mountain is one of the city's most important landmarks. The pink granite — similar to the granite at Enchanted Rock in Fredericksburg — was used for the construction of the Texas State Capitol in 1885.
10. The U.S. 251 bridge that crosses Lake Marble Falls, completed in 2014, was a replacement for a steel bridge from the 1930s. The catwalk bridge was demolished in 2012, and the whole town came out to watch the largest bridge demolition in Texas history. Watch a video [here](#).
11. The economy is based on tourism. It's a laid-back town perfect for people who love boating, fishing, golfing, hunting, camping, stargazing, bird-watching, geology and more. There is truly something for everybody in Marble Falls.

**THE PICAYUNE**  
 THE WEEKLY NEWS PAPER OF MARBLE FALLS, TEXAS  
**Tomato Rally**  
 10:00 AM - 1:00 PM  
 1000 N. W. 10th St. Marble Falls, TX 78758  
 \$10.00  
 Tickets available at [www.marblefalls.com](#)

**GO ANTIQUING**  
 10:00 AM - 1:00 PM  
 1000 N. W. 10th St. Marble Falls, TX 78758  
 \$10.00  
 Tickets available at [www.marblefalls.com](#)

**It's a hot summer for these kids**

## BOOK YOUR STAY

**HOTELS**

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**Check Out:** 06/28/2016

**Rooms:** 1  
**Adults:** 1  
**Kids:** 0

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BY THE ITH



**Marble Falls is a hot summer for these kids**

## Five reasons to choose a Marble Falls hotel

By Joanna Kopp

5 min read

Marble Falls may be a small town, but it offers so much to [see and do](#).

All of the locals know each other, and they treat newcomers with warmth and respect — more commonly known as “Texas hospitality.”

In terms of how the town feels, though, it's quite big. There are so many places to visit and things to do. So much so that it makes sense to plan a weekend outing rather than a day trip. Here are five reasons you should consider [staying the night](#) at a Marble Falls hotel.

### 1. The lake is at your doorstep



Hampton Inn sits on Lake Marble Falls and is the closest to restaurants. It's location sets it apart from other hotels.

Hampton Inn is only steps away from Lake Marble Falls, putting you in the perfect spot for water sports and activities. Spend the day boating, swimming, fishing, standup paddle boarding and kayaking. Watch the sunset over the lake before you call it a day.

[Hampton Inn Marble Falls: On the Lake — 704 First St.](#)



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## RECENT STORIES

## 10 ways to have fun with your dog around Marble Falls

By Johanna Kopp



Don't leave your best friend at home. Plan a trip to Marble Falls with your dog. Save stress by Johanna Kopp. Your dog wants to come with you everywhere you go, and you know it. Don't close the door on those wide eyes — plan a dog-friendly trip to Marble Falls that you and your best friend are sure to enjoy.

### 1. First and foremost, find a place to stay

Don't fret: Several hotels in Marble Falls are dog-friendly.

- **La Quinta Inn & Suites** allows a maximum of two pets up to 30 pounds each. **Locations at 507 RS 7147 West.**

- **Holiday Inn Express & Suites** allows dogs up to 50 pounds with a pet fee of \$50 the first night and \$10 each additional night. Located at **714 Coronado Drive.**

- **Marble Falls** always lets well-behaved pets stay free. Located at **1400 Old Line Rd, U.S. 281.**

- **Quail Run Motel Lake Marble Falls** allows up to two pets no more than 50 pounds each and charges a \$10 pet fee per night. Located at **2206 U.S. 281 North.**

### RECENT STORIES



Escape Austin (TX) with County retreat



10 ways to spend Spring Break in the highland lakes



Save the 87th annual fireworks



Summer days in the highland lakes



## Marble Falls Christmas gift guide

By Joanna Koop

ADD TO FAVORITES



### Marble Falls Christmas Gift Guide

Do you have holiday spirit, or are you suffering from anxiety as you try to figure out what gifts to give to your family, friends, co-workers and even one else on your shopping list?

We have you covered with this handy Marble Falls Christmas gift guide. Plus, you can see all of your holiday shopping locally.

## THE PICAYUNE



## GO ANTICIPING



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 Rooms: 1 Adults: 1 Kids: 0

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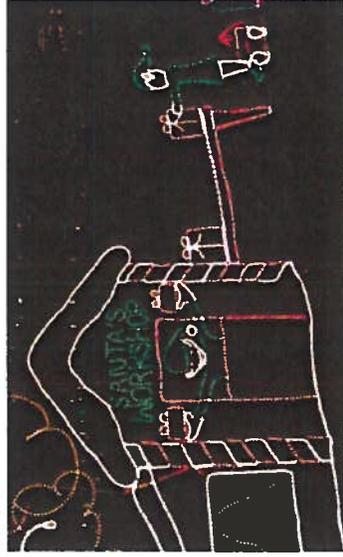
Call 800-368-7642 for details  
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## RECENT STORIES

# Walkway of Lights a winter wonderland in Marble Falls

By Joanna Kopp

ADD TO FAVORITES



Favorite sculpture of their all, an elf delivering a package to Santa's workshop. Photo by Jody in a scrup

The final night in November, I went to Walkway of Lights in Marble Falls. Maybe it's cliché or maybe it's just the Christmas spirit getting to me, but "let it be" was living in the song "Walking in a Winter Wonderland" — minus the snow, of course, because this is Central Texas.

I'm over my time at Walkway of Lights and absolutely recommend going on a weeknight. There was no crowd in lights and at times, we let it go and had the whole place to ourselves. The light sculptures reflecting in the serene water was wonderful. The only 24k bridge lit up the dark ground. It was a beautiful way to spend a Monday night.



## BOOK YOUR STAY

### Hotels

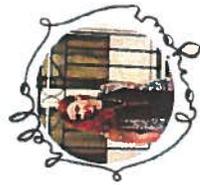
Check In: 06-27-2016 Check Out: 06-28-2016

Rooms: 1 Adults: 2 Kids: 0

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See all hotels in Marble Falls, Texas

## RECENT STORIES



### 101 Texas Travel Reporter Joanna Kopp

Young and locally tech savvy, 101 Texas travel reporter Joanna Kopp brings an insightful, astute perspective to her coverage of things to see, do and play, and where to eat and stay in the Lone Star State.

Her travel tales began as a personal blog just a year ago, documenting her year-in-Europe trip. A student, now and some, home to take a closer look at the adventures in her own backyard.

"When I was writing about France and Germany and Switzerland, I was cramming multiple days into one blog post." Kopp said of her blog ForeverinParadise.net. "What's cool about what I'm doing now -- writing about Texas -- is that I can take the little things that make the communities here so fun and embody them. I can tell the stories that make up the heart and soul of my home state."

Kopp grew up in San Antonio but moved to Austin when she was 17. She graduated from St. Edwards University with a Bachelor of Art in English literature, specializing in creative writing. Fresh out of college, she spent a six-month apprenticeship with the Austin Film Festival. Now she's on the road to towns such as Burnet, Marble Falls, Llano, Kinisville and Corpus Christi, working for Texas Publishing Co.

The real draw of her new job, a step with the immediacy of digital publication, is the opportunity to further explore the melding of print and digital mediums, she said.

"You can publish what you've seen and experienced in five minutes and the whole world can see it," she said. "A family traveling to Marble Falls for the first time can find out where to eat, where to stay, what to see and do instantly. You can host your next vacation adventure in the palm of your hand."

#### ARTICLES BY JOANNA KOPP



**TIPS FOR A DAY BOATING ON LAKE LB**  
Lake LB is a beautiful area for boating, and just a short drive from the heart of Austin. Here are some tips for boating on Lake LB.

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**THE TEXAS TRAIL TOWN MARKS YOUR BIRTHDAY WITH HERITAGE FESTIVAL**  
Celebrate your birthday in a unique way at the Texas Trail Town Heritage Festival. The festival is held in the heart of the Texas Trail Town.

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**CAMP BRENDAHA ZIP LINES, ARCHERY AND A LOT OF FUN**  
Camp BrendaHa is a fun-filled outdoor camp for children. It offers a variety of activities including zip lining, archery, and more.

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**MARIST SPRINGS AND SPINWOOD**  
Marist Springs and Spinwood are beautiful areas for outdoor recreation. They offer scenic views and recreational opportunities.

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**5 REASONS TO STAY ON LAKE LB THIS SUMMER**  
There are many reasons to stay on Lake LB this summer. From the beautiful views to the recreational opportunities, it's a great choice.

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**GO ON A HILL COUNTRY SAUNA AT THE EXOTIC RESORT, TOO**  
Experience the ultimate relaxation at the Exotic Resort. Enjoy a sauna and other amenities in a beautiful setting.

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**ATLANTA SUMMER CAMP FOR ADULTS AT CAMP BRENDAHA**  
Camp BrendaHa offers a unique summer camp experience for adults. It features a variety of activities and a beautiful setting.

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**December 6, 2016**

**7. REGULAR AGENDA**

- (f) Discussion and Action on a Hotel Occupancy Tax Reimbursement Agreement with Novak Cobalt Partners for 50 percent of the taxes collected from the Hotel.

**Mike Hodge, City Manager**

---

Background information is attached as follows:

[Cover Memo and Supporting Documentation](#)



**Council Agenda Item Cover Memo  
December 6, 2015**

**Agenda Item No.:** 7(f)  
**Presenter:** Mike Hodge, City Manager  
**Department:** Administration  
**Legal Review:**

**AGENDA CAPTION**

Discussion and Action on a Hotel Occupancy Tax Reimbursement Agreement with Novak Cobalt Partners for 50 percent of the taxes collected from the Hotel.

**BACKGROUND INFORMATION**

Section 351.101 of the State Tax Code concerning Motel Hotel Occupancy Tax, details appropriate use of revenue collected by municipalities as it relates to the promotion of tourism and the convention and hotel industry. The acquisition of sites for construction, improvement, enlarging, equipping, repairing, operation and maintenance of convention center facilities is an allowed use of HOT revenue.

In line with the statute, Novak Cobalt Partners, as part of their plan to develop the Hotel and Conference Center on the property owned the Marble Falls Economic Development Corporation, has requested that the City reimburse half of the Hotel Occupancy Tax collected from the proposed Hotel. The revenues generated will go toward reimbursing the developer a portion of the costs expended for the construction and operation of the conference center

The City will reimburse Novak Cobalt Partners 50% of the Hotel Occupancy Tax generated by the hotel. Payments are to be made quarterly and only after actual collections for the preceding quarter, in accordance with reports filed with the State Comptroller's office, are received. The term of the agreement is 5 years.

During the term of the agreement and as part of the annual budget process, the City will project and budget for the collection of and reimbursement of hotel occupancy tax revenue attributed to the Novak Cobalt Partners project.

**Action:**

Approve HOT Funding Agreement for the reimbursement of 50% of the Hotel Occupancy Tax collected from and attributed to the NCP project for a term of 5 years.

## **MUNICIPAL HOTEL OCCUPANCY TAX FUNDING AGREEMENT FOR CONSTRUCTION AND OPERATION OF A CONVENTION CENTER**

This Municipal Hotel Occupancy Tax Funding Agreement for Construction and Operation of a Convention Center (the "Agreement"), dated as of \_\_\_\_\_, 2016, is between the City of Marble Falls, a Texas home-rule municipal corporation (the "City"), and Novak Cobalt Partners, LLC, a Texas limited liability corporation (the "Recipient"), pursuant to Chapter 351 of the TEXAS TAX CODE.

As authorized by TEXAS TAX CODE §§ 351.002 and 351.003(a), the City, by ordinance, has enacted a municipal hotel occupancy tax of seven percent (7%).

TEXAS TAX CODE § 351.101(a) authorizes the City to reimburse the Recipient, by contract, for construction, improvements, equipping, repairing, operation and maintenance of convention center facilities with revenue from the municipal hotel occupancy tax.

This Agreement provides for the Recipient's construction and operation of a convention center facility (the "Convention Center") in conjunction with the construction of a hotel (the "Hotel") which will be adjacent to the Convention Center, pursuant to Chapter 351 of the Texas Tax Code, as described in Exhibit "A", attached hereto. Accordingly, the parties agree as follows:

**1. Performance by the Recipient.** The Recipient shall construct the Hotel and Convention Center as depicted and shall operate the Convention Center in accordance with Exhibit "A," attached hereto, and in compliance with the terms of this Agreement, as amended from time to time and the agreement between the Marble Falls Economic Development Corporation and Recipient dated September 14, 2016, as amended from time to time (the "EDC Agreement"). City's obligation to make payments is contingent on Recipient's construction, successful completion of the Hotel and Convention Center and operation of the Convention Center.

### **2. Allocation and Disbursement of Payments.**

**2.1 Initial Payment.** Subject to the provisions of this Agreement, the City shall begin making payments to the Recipient within thirty (30) days after the date that the Recipient completes and opens the Convention Center and the City receives hotel tax revenue attributable to the Hotel.

**2.2 Term and Amount of Payments.** After the initial payment, the City shall make payments to the Recipient every quarter for five years from the date of the first payment whenever hotel tax revenue attributable to the Hotel is received by the City. The amount of each payment to Recipient shall be calculated at 50% of the hotel tax revenue collected by the City in the preceding quarter and attributable to the Hotel.

**2.3 Use of Payments.** Subject to the provisions of this Agreement and in accordance with Chapter 351 of the TEXAS TAX CODE, the Recipient shall use the payments as reimbursement for the costs of construction and operation of the Convention Center during the Term of this Agreement.

### **3. Budgets, Recordkeeping, and Reporting Requirements.**

**3.1 Annual Budget.** Each year that payments are due Recipient under this Agreement, in accordance with its annual budget process, the City shall consider and set aside sufficient funds to make the payments due Recipient under this Agreement and based upon the estimated hotel tax revenue expected to be received from the Hotel between October 1 and September 30th of each year (the “Fiscal Year”). In addition, the City shall consider amendments to the estimated amount of funds in accordance with its actual receipt of hotel tax revenue generated by the Hotel and received during the Fiscal Year. Regardless of the amount of the estimated funds set aside in the budget process, or any amendments to the estimated amount of funds, the City’s obligation to make payments to Recipient shall be determined based solely upon 50% of the amount of hotel tax revenue actually received by the City and attributable to the Hotel. Payments are contingent on the successful construction, opening and operation of the Convention Center.

**3.2 Financial Records.** The Recipient shall maintain complete and accurate financial records of the expenditures related to construction and operation of the Convention Center and, on request of the City Manager or the City Manager's designee, or as may be required by law, the Recipient shall make the records available for inspection and review between 8:00 am and 5:00 pm Monday through Friday. Recipient shall retain its records concerning construction and operation of the Convention Center for at least four (4) calendar years from and after the last day of the Fiscal Year of the applicable record year.

**3.3 Quarterly Reports.** The Recipient shall submit a quarterly report to the City, describing the progress of construction of the Hotel and Convention Center. The Recipient shall include construction costs and related expenses in each quarterly report. Upon completion of construction, quarterly reports shall be submitted throughout the Term of this Agreement of the amount of hotel tax revenue generated by the Hotel for the previous quarter. Such reports shall be based upon reports filed by the Recipient with the State Comptroller's office and copies of such reports shall be made available to the City. In addition, such reports shall include Convention Center operational costs and expenses and identify activities and events held in the Convention Center during the quarter.

**4. Effective Date.** This Agreement is effective on the Effective Date.

**5. Term and Appropriation.**

**5.1 Term.** Subject to the provisions of this Agreement, the term of this Agreement begins on the Effective Date and terminates upon the City’s final payment which is five years from the date of the first payment or upon Termination as described in Section 7. The Recipient's obligation to submit a quarterly report to the City under Section 4.3 of this Agreement for the final quarter of the Fiscal Year survives the end of the term of this Agreement.

**5.2 Appropriation of Occupancy Tax Funds.** Notwithstanding anything to the contrary in this Agreement, the parties agree the City's financial obligations under this Agreement are contingent on City’s actual receipt of hotel tax revenue generated from the Hotel and Recipient’s successful completion and operation of the Convention Center as described in Exhibit “A” and upon City’s appropriation each Fiscal Year of the estimated funds necessary to make the payments due to Recipient pursuant to this Agreement.

**5.3 Limitation on Source of Funds.** The City's obligation to make payments under this Agreement constitutes a special obligation of the City payable solely from hotel tax revenues received by the City and generated by the Hotel. Recipient shall never have the right to demand payment out of any funds raised or to be raised by ad valorem taxation or any other revenues of the City for payment to Recipient. If any payment to Recipient would cause the estimated amount of funds set aside in a particular Fiscal Year to be exceeded, the City shall not be obligated to make payments to Recipient, unless and until the estimated amount of funds needed for payment is amended by the City. In the event the City pays any amount to Recipient which exceeds 50% of the actual amount of hotel tax revenue attributable to the Hotel and received by the City in a particular Fiscal Year, Recipient agrees to promptly repay to the City all such amounts within 30 days after written demand for repayment by the City.

## **6. Termination and Remedies.**

**6.1 Termination for Cause.** It shall be grounds for termination of this Agreement by City if Recipient fails to complete construction of the Hotel and Convention Center or upon completion of construction Recipient fails to operate the Convention Center in accordance with Exhibit "A". It shall be grounds for termination by Recipient if City fails to appropriate in a Fiscal Year, the amount of funds necessary to make the payments to Recipient as required by this Agreement, or for City to fail to make the payments owed to Recipient in a Fiscal Year. It shall be a default by a party, if such party shall fail to perform any of its obligations under this Agreement and such failure shall remain uncured following the expiration of ten (10) business days from and after the date the failing party receives written notice of such failure from the non-defaulting party; provided, however, that in the event the default is of a nature that cannot be cured within said ten (10) business day period, the defaulting party shall notify the non-defaulting party in writing as to the amount of time necessary to cure the default, which period of time shall be only as long as may reasonably be necessary to cure the default in question; but, in no event shall either party have more than forty-five (45) days to cure any specific default unless caused by acts of force majeure in which event such party's time to cure the default shall be extended by the length of time the force majeure is in effect.

**6.2 Remedies.** Should any default or failure remain uncured following the expiration of the applicable cure period, the non-defaulting party shall be entitled to either (i) seek specific performance of the obligation in question from the defaulting party or (ii) terminate this Agreement (including, in the case of a default by Recipient, termination of the obligation of City to make any further payments under this Agreement), (iii) pursue an action against the defaulting party for actual damages (but not incidental, consequential or special damages) suffered or incurred by the non-defaulting party as a result of the default in question.

**6.3 Limitation on Liability.** ANY PROVISION IN THIS AGREEMENT, OR IN ANY AGREEMENT EXECUTED IN CONNECTION WITH OR PURSUANT HERETO TO THE CONTRARY NOTWITHSTANDING, MONETARY LIABILITY OF CITY FOR DEFAULT UNDER THIS AGREEMENT SHALL NEVER EXCEED 50% OF THE UNPAID HOTEL TAX REVENUE ATTRIBUTABLE TO THE HOTEL PAYABLE

TO RECIPIENT UNDER THE TERMS OF THIS AGREEMENT FOR THE PORTION OF THE TERM REMAINING AFTER THE DATE OF DEFAULT. UNLESS EXPRESSLY PROVIDED BY THIS AGREEMENT TO THE CONTRARY, EACH PARTY EXPRESSLY WAIVES AND DISCLAIMS ANY RIGHT IT MAY NOW HAVE OR THAT MAY HEREAFTER ARISE IN FAVOR OF THE PARTY TO RECOVER DAMAGES FROM THE DEFAULTING PARTY THAT ARE IN THE NATURE OF SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND DUE TO A BREACH OF THIS AGREEMENT.

**6.4 Agreement Provisions Subject to Survival upon Termination.** Termination shall not relieve Recipient of (i) any duty to maintain and retain records, or to permit inspection of such records by the City or as required by law; (ii) any duty to provide reports; or (iii) its fiduciary duty respecting use of hotel tax revenue.

## **7. General Provisions.**

**7.1 Governing Law.** The laws of Texas govern all matters relating to this Agreement, including torts, without regard to its conflict of law principles. This Agreement is performable in Burnet County, Texas. Venue for any legal actions arising out of this Agreement shall lie exclusively in the federal courts of Travis County and state courts of Burnet County, Texas.

**7.2 Counterparts.** This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

**7.3 Merger.** This Agreement states the full agreement between the parties and supersedes all prior negotiations and agreements.

**7.4 Severability.** It is the intention of the parties that the provisions of this Agreement will be enforceable to the fullest extent permissible under Texas law. If any clause or provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, that provision is severed from this Agreement and the other provisions remain in force.

**7.5 Successors and Assigns.** This Agreement binds and benefits the parties and their respective permitted successors and assigns. This Agreement is not assignable except upon approval of the City.

**7.6 Amendments.** The parties shall not amend this Agreement, except by an agreement in writing signed by both parties.

**7.7 No Waiver.** Failure of a party to give notice of any breach by the other party of any provision of this Agreement will not be deemed a waiver of any prior or subsequent breach.

**7.8 Authority.** Each party represents and warrants that it has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

The persons executing this Agreement represent that they have authorization to sign on behalf of their respective organizations.

**7.9 No Joint Venture or Partnership.** It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the performance of the Agreement by Recipient.

**7.10 Attorney's Fees.** In the event it becomes necessary for either party hereto to file a suit to enforce this Agreement or any provisions of this Agreement, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred by such prevailing party in such suit.

**7.11 Headings.** The headings contained in this Agreement are for convenience and reference only and should not affect the meaning or interpretation of any provision of this Agreement.

**7.12 Notice.** The parties must send all notices and consents in writing by certified mail. A notice or writing is effective when the intended recipient receives it. If a party's address for notice changes, that party must send a signed notice in writing by certified mail to the other party within ten (10) business days of the address change. The current address for notice for each party is as follows:

**City:** City of Marble Falls  
Attn: Marble Falls City Manager  
800 3<sup>rd</sup> Street  
Marble Falls, Texas 78638

**Recipient:** Novak Cobalt Partners, LLC  
Attn: Thomas Mote, Principal  
204 Adams Street  
Georgetown, Texas 78628

Executed this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**CITY OF MARBLE FALLS, TEXAS**

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

Printed Name: John Packer

Title: Mayor

Date: \_\_\_\_\_

**MARBLE FALLS RECIPIENT – Novak Cobalt Partners, LLC.**

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

Printed Name: Thomas Mote

Title: Principal

Date: \_\_\_\_\_

[View Exhibit A – Performance Agreement](#)

## **ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT**

This **ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT** ("**Agreement**") is entered into to be effective as of the 14th day of September, 2016 (the "**Effective Date**") by and between **NOVAK COBALT PARTNERS, LLC** ("**Novak Cobalt**," or "**Developer**"), a Texas limited liability corporation, and the **MARBLE FALLS ECONOMIC DEVELOPMENT CORPORATION** ("**MFEDC**"), a Type B Texas Economic Development Corporation.

### **RECITALS:**

**WHEREAS**, the MFEDC currently owns or controls several tracts of land, located in the central business district, and the Downtown Tax Increment Reinvestment Zone ("**TIRZ**") of the City of Marble Falls ("**City**"), in Burnet County, Texas ("**County**"), such tracts being referred to hereinafter in this Agreement as the "**Project Site**," being more fully described in the attached Exhibit "A," entitled "Description of Project Site," and being referenced in the attached Commercial Lease Agreement with Option to Purchase as the "**Lease Property**"; and

**WHEREAS**, Novak Cobalt submitted a Letter of Interest on February 22, 2016 related to developing a hotel and conference center on the Project Site; and

**WHEREAS**, as required by law, the MFEDC published notice on May 2, 2014, and conducted a public hearing on May 7, 2014, at which it approved as projects the acquisition of real property; the construction of buildings and structures associated with a community facility or facilities for tourist, auditorium, and convention purposes; a recreational project for public park, entertainment, or tourist purposes; related store, restaurant, and concession services; open space improvements; automobile parking facilities, area transportation facilities, and related roads, streets and other improvements; other related improvements; and the maintenance and operation costs for such property and facilities (collectively, the "**MFEDC Projects**"); and

**WHEREAS**, as required by law, the City Council of Marble Falls has approved or will approve the MFEDC Projects by the reading of a resolution on two separate occasions; and

**WHEREAS**, the MFEDC wishes to redevelop (or cause to be redeveloped) the downtown area of the City over time in a comprehensive, predictable, and strategic manner to maximize the added value and the environment of the downtown area; and

**WHEREAS**, certain affiliates and principals of Novak Cobalt are in the business of planning, financing, and developing commercial, residential, park and public realm, and special use real estate assets with uses and functions similar to those desired by the MFEDC for the Project Site; and

**WHEREAS**, the MFEDC wishes to retain Novak Cobalt to develop certain components of the MFEDC Projects, specifically a hotel and conference center, retail amenities, and certain integrated recreational facilities on the Project Site (the "Project"), which will be owned by Novak Cobalt and operated by the company determined during the predevelopment period ("Operator"); and

**WHEREAS**, the MFEDC and Novak Cobalt executed a Predevelopment Agreement on March 7<sup>th</sup>, 2016 and successfully completed substantial planning, feasibility, schematic design, and other pre-development exercises; and

**WHEREAS**, pursuant to the requirements of Sec. 501.158, Texas Local Government Code, Novak Cobalt and the MFEDC desire to enter into this Performance Agreement in regard to the funding, construction and operation of the Project, including the specification of the number of new, full-time jobs or job equivalents and capital investment directly related to the Project.

## **AGREEMENT**

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

### **ARTICLE 1** **MFEDC OBLIGATIONS**

1.1 The MFEDC shall contribute funds to Novak Cobalt in the total amount of Six Million Five Hundred Thousand Dollars (\$6,500,000.00) ("the MFEDC Funds") to be used for the purpose of designing and constructing the Project and around the Project Site. Such funds shall be paid to Novak Cobalt in the amounts and at the times described in Article 3 hereof, provided, however, that draws will not commence until Novak Cobalt has provided MFEDC with sufficient proof of available financing for its portion of the capital contribution toward Project costs. The Parties acknowledge that the MFEDC Funds must be raised, in hand, and available for independent third-party verification by potential lenders prior to the time Novak Cobalt's loan facility can close. Such funds shall be in place but not available for usage until such time.

1.2 The MFEDC shall execute a ground lease agreement with Novak Cobalt in a form substantially similar to the Ground Lease with Option to Purchase, attached hereto as Exhibit "B" (hereinafter the "Ground Lease"). This Ground Lease shall grant to Novak Cobalt the option to purchase the Project Site from the MFEDC according to the terms described in the Purchase Agreement described in Exhibit "C", attached hereto.

1.3 The MFEDC shall ensure that the funds are expended in strict compliance with Chapter 501 and Chapter 505 of the Texas Local Government Code, and shall take action to recover such funds if it is determined that Novak Cobalt is not meeting the performance

requirements of this Agreement and such failure continues beyond applicable notice and cure periods.

1.4 Following receipt of each draw request from Novak Cobalt described in 2.2 hereof, the MFEDC will issue a check within 14 days and in such amount, for contribution toward the Project, as described in Article 3 hereof. The MFEDC shall have the right to review and audit any or every draw request and use a third party service to verify completion status.

## **ARTICLE 2** **NOVAK COBALT OBLIGATIONS**

2.1 On or before November 15, 2016, Novak Cobalt shall obtain and secure a commitment for construction financing in the amount of Twenty Million Dollars (\$20,000,000.00) to fund costs of design and construction of the Project, provided, however, that if the actual design and construction costs of the Project are less than Twenty Six Million Five Hundred Thousand Dollars (\$26,500,000.00), Novak Cobalt is only obligated to finance the costs of design and construction actually needed to design and construct the Project less the MFEDC Funds. The Project shall include the development, construction and operation of a select-service-level resort hotel of approximately 150 rooms and an adjacent full-service conference center, restaurant, and bar of approximately 16,000 square feet of gross building area on two levels. The Conference Center will be designed and developed to maximize the appeal of the space for corporate meetings and for private events, and will contain: lobby/pre-function areas, breakout and board room facilities, a three-meal destination quality restaurant and bar with indoor/outdoor service, and a commercial kitchen area on one level; and a junior ballroom of approximately 8,000 square feet on the other. The Project will be operated by the Operator. The Parties acknowledge that, at the time of this Agreement, the definitive agreements between Novak Cobalt and the Operator have not yet been executed, and in the event, for whatever reason, such agreements cannot be reached, the Parties will work collaboratively in good faith to find a suitable replacement operator for the Project. Furthermore, Novak Cobalt shall ensure the creation of thirty-five new, full-time jobs or full-time job equivalents, as well as part-time and seasonal employees. Novak Cobalt shall provide proof to MFEDC when financing is obtained and when a schedule of jobs is obtained from the Operator.

2.2 Novak Cobalt shall ensure that the funds provided by MFEDC are expended in strict compliance with Chapter 501 and Chapter 505 of the Texas Local Government Code, and shall take action to recover such funds if it is determined that such funds have not been spent in compliance.

2.3 Novak Cobalt shall ensure that, commencing on the Opening Date as such term is defined in the Ground Lease, no less than \$250,000 per year is spent on marketing and promotion efforts for the Project.

2.4 Novak Cobalt shall document progress to the MFEDC toward design and construction of the Project with the submittal of each draw request. Design of the Project shall commence on or before October 15, 2016 and be completed on or before July 31, 2017. Subject to Novak Cobalt obtaining the Entitlements (as defined below), construction of the Project shall

commence on or before September 1, 2017 and shall be completed by September 1, 2019, subject however, to Force Majeure (as defined below). The term "Force Majeure" shall mean and be limited to catastrophic events such as war, civil disturbances, terrorist attacks, revolts, insurrections or sabotage, abnormal, and severe weather, acts of God, delayed issuance of permits, strikes, or other ; provided that such act or event (i) is beyond the reasonable control of the party claiming Force Majeure, (ii) could not have been prevented or avoided by the party claiming Force Majeure through the exercise of due diligence, including expenditures of reasonable sums, and (iii) would require an adjustment in time that would be essential to the general contractor or such performing party's timely performance.

2.5 In order to determine compliance with this Agreement, Novak Cobalt shall allow the MFEDC to conduct an audit (at MFEDC's sole cost and expense) of the relevant financial and business information of Novak Cobalt related to terms of this Agreement and the use of any funds provided by MFEDC to Novak Cobalt. Such audit may be performed no more often than once per fiscal year and may be initiated only by majority vote of the Board of Directors of the MFEDC. MFEDC shall use commercially reasonable efforts to cause the information received during such audit that is not otherwise available to the public to be kept confidential.

2.6 In the event Novak Cobalt fails to perform according to the covenants set forth in this Section 2, or abandons the Project, or refuses to or fails to complete the Project as outlined herein, MFEDC shall be entitled to any and all remedies provided by law, including the recovery of any costs or expenses necessary to complete the Project.

### **ARTICLE 3**

#### **PROJECT CONTRIBUTION SCHEDULE AND PERFORMANCE**

3.1 MFEDC shall contribute funds for the design and construction of the Project in conjunction with various draw requests submitted by Novak Cobalt. Each request shall provide sufficient information and documentation regarding the work for MFEDC to determine that the amount requested is justified and representative of the work that has been completed and shall demonstrate that Novak Cobalt has contributed Seventy-Five Percent (75.00%) of the costs associated with the work described in the draw request. MFEDC's percentage of contribution in any single draw request shall not exceed 25% of the costs identified in the draw request. In no event shall MFEDC be obligated to contribute more than the total amount of the MFEDC Funds, or Six Million Five Hundred Thousand Dollars (\$6,500,000.00).

3.2 In the event that the costs to construct and complete the Project exceed the original capital contributions of the parties, Novak Cobalt shall be required to obtain whatever additional funding is necessary to complete the Project. Such additional funding may be obtained through additional financing by Novak Cobalt or through participation with third party investors. In no event will MFEDC be responsible for contributing any additional funds to the Project. If additional capital contributions are needed to complete the Project, Novak Cobalt shall notify MFEDC of the amount of funds needed and the terms and conditions by which such funds will be obtained. Novak Cobalt shall be entitled to a reduction in Additional Rent as described in the Ground Lease Agreement attached hereto as Exhibit "B".

3.3 The parties acknowledge that the Project may require additional capital in excess of the MFEDC Funds and the construction financing, referred to hereinafter as "Bridge Capital," which will be sourced and provided by Novak Cobalt or a third party. In the event that Bridge Capital is necessary, and in the event that Novak Cobalt fails to obtain a commitment for Bridge Capital financing by December 15, 2016 (but not for third party construction financing, which may be evidenced by a loan commitment or term sheet signed by a financial institution), or in the event Novak Cobalt fails to commence construction of the Project by September 1, 2017 ("Construction Commencement Date"), subject to obtaining Entitlements and the Force Majeure provisions contained herein, then MFEDC shall have the right, but not the obligation, to terminate this Agreement, or extend the deadline by mutual agreement of the parties. If Novak Cobalt fails to complete construction of the Project by September 1, 2019 ("Construction Completion Date"), as evidenced by a Certificate of Occupancy, Novak Cobalt shall diligently pursue completion of the Project until the Project is completed and a Certificate of Occupancy is issued, and will reimburse MFEDC an amount equal to One Thousand Dollars (\$1,000.00) per calendar day for each day that the Project is not completed, up to the amount of the MFEDC Funds, as liquidated damages. If Novak Cobalt abandons the Project, refuses to or fails to complete the Project as outlined herein, MFEDC shall be entitled to any and all remedies provided by law, including the recovery of any costs or expenses necessary to complete the Project.

3.4 Upon completion of the Project, Novak Cobalt shall be responsible for operation and maintenance of the Project and any and all costs associated with operation and maintenance of the Project. In addition, any costs or expenses for remodeling, repairs or furnishings of the Project are the sole responsibility of Novak Cobalt and MFEDC shall have no obligation to contribute to such costs or expenses.

3.5 During the period of time commencing on the Effective Date and continuing until that date that is ninety (90) days from the Effective Date ("Feasibility Period"), Novak Cobalt shall review MFEDC's title commitment, review exceptions to such commitment, perform and accept survey, perform soil and geotechnical testing, and conduct Phase I environmental study (and Phase II study as necessary).

3.6 During the period of time commencing after the expiration of the Feasibility Period and continuing until that date that is one hundred eighty (180) days thereafter (the "Approvals Period"), Novak Cobalt shall diligently apply for any entitlements or permits necessary for Novak Cobalt to develop and construct the Project, including without limitation, (a) any applications for service of utilities or utility capacity; (b) a plat of the Project Site (the "Plat"), (c) any variances from or changes to applicable zoning ordinances or other regulatory laws necessary to permit Purchaser to construct and/or operate the Project; (d) any site development permit, or other approvals or permits required by governmental or quasi-governmental entities, and (e) to the extent necessary for the Project and for MFEDC to commit the funds to the Project costs, other documents, agreements or approvals with the City of Marble Falls and/or the MFEDC (collectively, the "Entitlements"). MFEDC agrees to cooperate fully and promptly with Novak Cobalt's efforts to acquire the Entitlements for the Project, to expedite, to the extent MFEDC can legally do so, such requests so that these efforts are completed in a timely and expeditious manner while observing all public duties in the process. The parties acknowledge

that outside parties will be involved in the Entitlements, which parties are not under the control or authority of the MFEDC, but that the parties will mutually and in good faith use all diligent efforts to obtain the Entitlements on or before the expiration of the Approvals Period. In the event Novak Cobalt cannot complete the Entitlement process during the Approvals Period, Novak Cobalt shall request an extension of the Approvals Period in writing prior to the expiration of the Approvals Period, citing the estimated date for the completion of the Entitlements and the reasons for such request. Novak Cobalt shall have the right to extend the Approvals Period for an additional sixty (60) days from the expiration of the Approvals Period, or may terminate this Agreement in the event such extension is not granted by the MFEDC. In the event that Novak Cobalt extends the Approvals Period and is unable to, despite its good faith efforts, obtain the Entitlements on or before the expiration of the extended Approvals Period, Novak Cobalt shall have the right to terminate this Agreement and the Ground Lease attached hereto as Exhibit "B."

3.7. In the event that MFEDC determines that Developer is in default of any of the terms or conditions contained in this Agreement for which no specific procedure to resolve or cure is otherwise provided, then in such event MFEDC shall give Developer thirty (30) days written notice to cure such default. In the event such default is not cured to the satisfaction of MFEDC within the thirty (30) days notice period and Developer has not demonstrated to MFEDC that it is working diligently to accomplish such cure, or the parties have not agreed in writing to extend the period allowed for cure, the MFEDC may institute any remedy available, as provided in Section 5.5, including termination of this Agreement.

#### **ARTICLE 4**

#### **REPRESENTATIONS AND WARRANTIES**

4.1 *Representations and Warranties of Developer.* Novak Cobalt and the MFEDC, as of the Effective Date, represent and warrant, one to the other, as follows:

4.1.2 *Authority.* The execution, delivery and performance by each is with the legal power and authority of each and has been duly authorized by all necessary action of the governing bodies of each.

4.1.3 *No Conflicts.* Neither the execution and delivery of this Agreement nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the organizational documents of Novak Cobalt or the MFEDC or any provision of law, statute, rule or regulation to which Novak Cobalt and/or the MFEDC is subject, or any judgment, decree, license, order or permit applicable to Novak Cobalt and/or the MFEDC, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of Novak Cobalt and/or the MFEDC pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the either is bound.

4.1.4 *No Consents.* Except for approval of the City Council of the City of Marble Falls for a project of the MFEDC, no consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution, delivery and performance by Novak Cobalt and/or the MFEDC of this Agreement.

4.1.5 *Valid and Binding Obligation.* This Agreement is the legal, valid and binding obligation of Novak Cobalt and/or the MFEDC enforceable in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

4.1.6 *No Pending Litigation.* There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or to the best knowledge of Novak Cobalt and/or the MFEDC threatened against or affecting either, questioning the validity of any action taken or to be taken by either in connection with the execution, delivery and performance by either of this Agreement.

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

## **ARTICLE 5** **MISCELLANEOUS**

5.1 *Article, Section or Other Headings.* Article or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

5.2 *Amendment.* This Agreement may only be amended, altered or revoked by written instrument signed by all parties.

5.3 *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

5.4 *No waiver.* The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed as waiver of such terms and conditions on any future occasion. No waiver shall be implied by any isolated or repeated action or non-action. To be effective, any waiver must be in writing executed by the party to be bound thereby.

5.5 *Remedies.* Upon breach of any of the commitments and obligations contained in this Agreement in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the aggrieved party shall have such remedies as are available in law or

equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages.

5.6 *Notices.* Any notice, statement and/or other communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, messenger, telecopy, or reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties hereto:

Novak Cobalt:            Novak Cobalt Partners, LLC  
                                  Attn: Thomas Mote, Principal  
                                  204 Adams Street  
                                  Georgetown, Texas 78628  
                                  Telephone: (512) 375-2750  
                                  Email: tom@cobaltdevco.com

MFEDC:                    Marble Falls Economic Development Corporation  
                                  Attn: Christian Fletcher, Executive Director  
                                  801 Fourth Street  
                                  Marble Falls, Texas 78654  
                                  Telephone: (830) 798-7079  
                                  Email: cfletcher@marblefallseconomy.com

5.7 *Applicable Law.* This Agreement is made and shall be construed under the laws of the State of Texas, and venue shall lie in State courts located in Burnet County, Texas.

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

5.9 *No Third-Party Beneficiaries.* Novak Cobalt, the MFEDC, the City, or the permitted assignees of the Parties intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than Novak Cobalt, the MFEDC, or permitted assignees of such parties.

5.10 *No Joint Venture.* Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any party as an agent of any other party for any purpose whatsoever. Except as otherwise specifically provided herein, no party shall in any way assume any of the liability of any other for acts of any other party or obligation of any other party.

5.11 *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

5.12 *Assignment.* The MFEDC may not assign any portion of its interest in this Agreement without the prior written consent of Novak Cobalt, except that the MFEDC may assign its interest herein to another public entity affiliated with the City of Marble Falls, Texas, as needed to satisfy state laws regarding public entity investments. Novak Cobalt may not assign or otherwise transfer all or any portion of its interest in this Agreement or delegate its duties hereunder without the prior written consent of the MFEDC, except that Novak Cobalt may assign its rights and obligations hereunder to an affiliate or subsidiary of Novak Cobalt under majority common control without consent of the MFEDC.

5.13 *Survival.* Upon the expiration or earlier termination of this Agreement, neither party shall have any further rights or obligations under this Agreement, except for those obligations which expressly survive the expiration or termination of this Agreement.

5.14 *No Constraint on Competition; No Partnership.* Novak Cobalt and its Affiliates may engage in other activities for profit, whether in the real estate business or otherwise, including, without limitation, the ownership, operation, development, leasing and/or management of other properties similar to the Project, including those of a competitive nature, and may in the future enter into development, management and leasing agreements or participate in partnerships or other ventures for such purposes. The MFEDC shall not have any right by virtue of this Agreement in or to such independent ventures or to the income or profits derived therefrom.

5.15 *Books and Records.* Novak Cobalt shall maintain at the Project Office a complete and detailed set of financial books, records and accounts relating to the Project. The MFEDC, upon prior notice, shall have access to such financial books, records and accounts at all reasonable times during regular business hours, and the MFEDC and its representatives may inspect, duplicate and/or audit such financial records at any time at the MFEDC's cost.

5.16 *Attorney Fees.* If Novak Cobalt or the MFEDC obtains a judgment against the other with respect to a dispute arising under to this Agreement, reasonable attorneys' fees and costs as fixed by the court shall be included in the judgment.

5.17 *Pronouns.* The pronouns used in this Agreement referring to Novak Cobalt or the MFEDC shall be understood and construed to apply whether Novak Cobalt or the MFEDC is an individual, partnership, corporation or an individual or individuals doing business under a firm or trade name, and the masculine and neuter pronouns shall each include the other and may be used interchangeably with the same meaning.

5.18 *Further Assurances.* Each party agrees to execute, acknowledge, deliver, file, record and publish such further instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the purposes and intent of this Agreement. The MFEDC recognizes that Novak Cobalt will be required to pledge or collaterally

assign its right, title and interest herein to the provider of construction financing for the Project. Subject to a commercially reasonable pledge agreement or collateral assignment agreement, the MFEDC shall not unreasonably withhold its consent in writing to such pledge or collateral assignment.

5.19 *Rights of the City of Marble Falls.* To the extent that this Agreement, including the description of the Project or the Project Site, attempts to describe property owned or under the control of the City or attempts to described obligations that can only be performed by the City, such rights or property of the City are in no way impaired or made a part of this Agreement nor are any obligations or responsibilities in this Agreement intended to be imposed or be binding on the City. To the extent that the MFEDC's objectives, goals or representations relate to matters outside of the jurisdiction of the MFEDC or that the Novak Cobalt's proposal relates to matters outside the jurisdiction of the MFEDC such objectives, goals, representations and matters are for informational purposes only and shall not constitute obligations or rights of either Party to this Agreement.

5.20 *Time of the Essence.* The Parties acknowledge that time is of the essence in the performance of their respective duties and covenants contained herein, and will engage in these duties in good faith and in strict compliance with the times of performance as outlined herein.

5.21 *Term of this Agreement.* It is the intent of the Parties that this Agreement and the underlying Ground Lease (attached hereto as Exhibit "B") shall be coterminous. This term of this Agreement ("Term") shall commence upon the Effective Date and shall continue in full force and effect until the earlier of: a) the termination of this Agreement as set forth herein; b) the termination of the Ground Lease; c) the execution and closing of a purchase transaction between the Parties as set forth in the Purchase Agreement, attached hereto as Exhibit "C"; or d) the expiration of the Ground Lease.

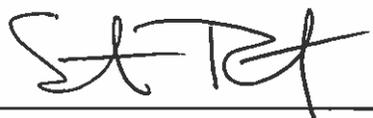
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**EXECUTED** to be effective as of the Effective Date.

**NOVAK COBALT PARTNERS, LLC**

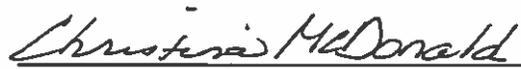
By:   
Thomas Mote, Manager

**MARBLE FALLS ECONOMIC  
DEVELOPMENT CORPORATION**

  
Steve Reitz, President



**Attest:**

  
Christina McDonald, Secretary MFEDC

**EXHIBITS:**

- Exhibit "A" – Description of Project Site
- Exhibit "B" – Commercial Lease Agreement with Option to Purchase
- Exhibit "C" – Purchase Agreement

**EXHIBIT A**

Description of Project Site

**EXHIBIT B**

Commercial Lease Agreement with Option to Purchase  
Between the Marble Falls Economic Development Corporation, as Lessor,  
and Novak Cobalt Partners, LLC, as Lessee

**EXHIBIT C**

**Purchase Agreement**



EXHIBIT "A"

Google

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