

**CONCEPTUAL PLANNING AGREEMENT
(HOPKINS REDEVELOPMENT PROJECT)**

This **CONCEPTUAL PLANNING AGREEMENT** ("CPA" or "Agreement") is effective as of October 21, 2025 (the "Effective Date"), by and between the **CITY OF SAN MARCOS, TEXAS**, a home-rule municipality and political subdivision of the State of Texas (the "City"), and **UPWARD COMMUNITIES, LLC**, a Texas limited liability company (the "Developer"). The City and the Developer are collectively referred to as the "Parties" and individually as a "Party".

BACKGROUND:

A. The City desires to pursue a transformative redevelopment in downtown San Marcos known as the Hopkins Redevelopment Project (the "Project"), including a new City Hall, a potential public-private partnership for the redevelopment of the land the City Hall complex is currently on, corridor improvements along Hopkins Street, and improvements to the civic corridor on the north side of Hopkins Street.

B. The Developer is a mission-driven development firm focused on strategic land planning and vertical construction, working with public and private partners to create projects that meet community needs and deliver long-term value.

C. The Project will require extensive preliminary development work to determine the feasibility and scope of the Project, including design, entitlements, preliminary engineering, sources and uses of financing, and pre-construction planning and estimating before the City can make a determination as to whether to proceed with the Project.

D. The Parties wish to establish a formal relationship between them through which the Developer will perform certain Preliminary Development Activities (as defined herein), including developing the general design, construction, financial, budgetary, management, maintenance, and scheduling parameters that will serve as a guide for delivering the Project and comparing the Project to other City-owned sites contemplated for building a new City Hall.

E. The Developer's willingness to self-fund and incur costs relating to the Preliminary Development Activities is based on the City's willingness to reimburse the Developer for such costs as provided in this Agreement.

F. The City and the Developer wish to memorialize their agreement regarding these matters by executing this Agreement.

G. By action taken by on October 21, 2025, the City Council has approved and authorized the execution and delivery of this Agreement.

ACCORDINGLY, in consideration of the foregoing and the terms set forth in this Agreement, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties hereby agree as follows:

Section 1. General Description of the Project; Project Goals.

- (a) *General Description of the Project.* The Parties intend that the Project will be comprised of a mixed-use, multi-phase development along the Hopkins Street Corridor, including the property identified on EXHIBIT A attached hereto (the "Development Site"). As currently envisioned,

the Project includes a new City Hall, a potential public-private partnership for the redevelopment of the land the City Hall complex is currently on, corridor improvements along Hopkins Street, and improvements to the civic corridor on the north side of Hopkins Street.

- (b) *Project Goals.* The City's pursuit of the Project is motivated by the need to replace City Hall and to enhance public land and civic amenities throughout the Hopkins Street corridor. Specifically, the Parties acknowledge that the Project planning and implementation strategy should be designed to achieve the following Project goals:
- (i) Meet City Hall space needs
 - (ii) Address site constraints
 - (iii) Efficient phasing/financing
 - (iv) Feasible and appropriate delivery method
 - (v) Include opportunities for private development
 - (vi) Connect civic corridor to river, parks, and downtown
 - (vii) Create a more welcoming "gateway" experience
 - (viii) Activate City-owned property
 - (ix) Use public investment to catalyze nearby redevelopment
 - (x) Enhance San Marcos Plaza Park
 - (xi) Maintain the skate park
 - (xii) Explore options for enhancing the dog park, either maintained or relocated
 - (xiii) Build on nearby park and recreation amenities
 - (xiv) Respect Watershed Plan
 - (xv) Respect community perspectives

Section 2. Purpose and Scope of this Agreement; Exclusivity.

- (a) *Purpose and Scope.* The purpose and scope of this Agreement is to (i) establish the Parties' general understanding of the Project and the general roles and responsibilities of the Parties relating to the Project and the performance of the preliminary development activities to be performed by the Developer pursuant to this Agreement (the "Preliminary Development Activities"); and (ii) establish the terms and respective obligations of the City for the payment and reimbursement of the Preliminary Development Activities as described herein. The Parties anticipate the final terms of their relationship will be finalized and effectuated through the execution and delivery of a development agreement and other agreements relating to the financing and construction of the Project (collectively, the "Definitive Agreements"). The Definitive Agreements must be approved formally by City Council.

- (b) The Definitive Agreements will, collectively, contain the contractual terms for the final planning, programming, design, entitlements, development, financing/funding, construction, and as applicable, operation and acquisition of the Project. The number and breadth of the Definitive Agreements will be expanded and/or refined during the term of this Agreement as Project assumptions are vetted and refined. Delivery of the Definitive Agreements is contingent upon the performance and favorable outcomes of the Preliminary Development Activities. This Agreement is not a binding commitment of any of the Parties to ultimately proceed with the Project or the execution and delivery of the Definitive Agreements.
- (c) *Exclusivity.* In consideration of the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties agree to work together in an exclusive and cooperative manner to undertake and pursue the successful development of the Project. Specifically, the City agrees that it will not, directly or indirectly, solicit, entertain, or otherwise encourage any inquiries, offers, or proposals from, or continue or enter into any negotiations with, any party interested in contracting other than the Developer with respect to the performance of the Preliminary Development Activities or the development of the Project, or the lease, development, sale or other disposition of City-owned land within the Development Site or any portion thereof, from the Effective Date and continuing until the earlier of (i) Closing (as hereinafter defined) or (ii) the termination of this Agreement.

Section 3. Collaboration and Communication between the Parties.

- (a) *Collaboration of the Parties.* The Parties agree to work in a collaborative manner to timely achieve completion of the Preliminary Development Activities. The Parties agree to work cooperatively and diligently to procure and pursue the development of the Project in accordance with the terms of this Agreement.
- (b) *Meetings and Project Updates.* The Developer shall keep the City informed as to the progress of all Preliminary Development Activities, weekly, at minimum, and City staff will notify the Developer of a change to the cadence of meetings. These meetings will cover relevant Project topics including but not limited to project administration, project financing (sources of uses of public and private funds), technical issues (entitlements, planning, design, programming and construction scope, costs, schedule, etc.), real estate market and financial metrics, and community outreach. The Developer and the City agree to reasonably and timely cooperate with one another in connection with the Project, the performance of the Preliminary Development Activities, and the granting of any required approvals by the City.
- (c) *Designated Representatives.* For ease of communication and accountability, each of the Parties shall identify a primary point-of-contact for purposes of coordinating all matters relating to the Project and the Preliminary Development Activities as contemplated in this Agreement (each such person being a "Designated Representative"). The Designated Representatives or their designees shall participate in regularly scheduled planning and progress meetings relating to the Preliminary Development Activities, and will coordinate all communication, requests, reviews, and approvals relating to such matters. Each Designated Representative shall actively involve and make all members of such Party's project team available to participate in regularly scheduled planning and progress meetings, and for all other purposes set forth in this Agreement.

Section 4. Concept Refinement Phase; Final Development Proposal.

- (a) *General.* The Preliminary Development Activities will be conducted in two phases described herein as the "Concept Refinement Phase" and the "Predevelopment Phase", each as further described below.
- (b) *Concept Refinement Phase.* The Concept Refinement Phase shall commence on the Effective Date and conclude upon the Developer's delivery and presentation of the Final Development Proposal (defined below). During the Concept Refinement Phase, the Parties will establish a comprehensive development concept and feasibility plan, which will culminate with a final development proposal (the "Final Development Proposal") to be prepared and submitted by the Developer for consideration and approval by the City Council. During the Concept Refinement Phase, the Developer will perform the following Preliminary Development Activities:
- (i) Preliminary feasibility due diligence activities with respect to the Development Site, including environmental assessments, title and survey review, utility studies, traffic and parking analysis, and floodplain analysis (the "Diligence Reports");
 - (ii) In coordination with City staff, prepare a community engagement plan and conducting up to two community engagement meetings for purposes of receiving community and stakeholder input regarding the Project;
 - (iii) Defining the first phase for the Project, which shall include the design, development, and construction of a new City Hall complex ("Phase One");
 - (iv) Preparation of a site plan and conceptual designs, specifications and renderings for Phase One;
 - (v) The preparation of a definitive plan of finance for Phase One of the Project and its respective components, including a high-level summary of the sources and uses of funds for each thereof;
 - (vi) The Preparation of a budget and schedule for the Predevelopment Phase for additional Preliminary Development Activities to be conducted prior to the execution of the Definitive Agreements; and
 - (vii) The Parties' negotiation of the principal business and legal terms for the Definitive Agreements.
- (c) *Preliminary Development Schedule.* EXHIBIT B attached hereto (the "Preliminary Development Schedule") establishes general timelines and milestones for the performance of the Preliminary Development Activities, as well as target dates for the delivery of the Final Development Proposal and the negotiation, execution and delivery of Definitive Agreements. Subject to the terms of this Agreement, the Parties agree to allocate sufficient staff resources and exercise good faith efforts to perform their respective obligations in a manner that will enable the Parties to achieve the milestones described in the Preliminary Development Schedule. However, the Parties also recognize and agree that the successful completion of the Preliminary Development Activities is contingent on facts and circumstances not yet known to the Parties or beyond their reasonable control, and the Parties may mutually agree to revise the Preliminary Development Schedule from time to time due to changing circumstances or force majeure.
- (d) *Final Development Proposal.* The Concept Refinement Phase will culminate in the preparation and delivery of the Final Development Proposal by the Developer, which will:

- (i) Summarize the outcomes of all feasibility and due diligence work;
- (ii) Include a site plan and conceptual designs, specifications and renderings for Phase One;
- (iii) Propose principal real estate, business and legal terms for the Definitive Agreements (the "Deal Terms"); and
- (iv) Include a high-level project budget estimate for the design and construction of Phase One, inclusive of all hard costs and soft costs; and
- (v) Financing options.

The purpose of the Final Development Proposal is to ensure that the Parties principally agree on the scope of Phase One and the feasibility of the Project and the Deal Terms prior to continuing in earnest with the negotiation and execution of the Definitive Agreements.

- (e) *Predevelopment Phase.* The Predevelopment Phase will commence upon the City's approval of the Final Development Proposal, and conclude upon the Parties' execution of the Definitive Agreements. During the Predevelopment Phase, the Parties will proceed with the preparation, execution and delivery of the Definitive Agreements. During the Predevelopment Phase, the Developer will perform the following Preliminary Development Activities:
 - (i) Preparation of a preliminary conceptual master plan and preliminary conceptual Development Site infrastructure design informed by the market, financial, technical, construction cost, and schedule studies relating to the Project;
 - (ii) Program verification for the new City Hall and other City-owned facilities comprising Phase One for cost estimating purposes;
 - (iii) To the extent deemed necessary by the Developer, commissioning any additional Diligence Reports relating to the Project or the Development Site, including but not limited to boundary/topographical surveys, soil borings and geotechnical testing, landscape peer review, flood plain, transportation, egress, ingress, parking, water analysis, civil engineering analysis, and/or environmental site assessments;
 - (iv) Taking any commercially reasonable actions necessary to address any due diligence issues identified as a result of the Diligence Reports;
 - (v) Preparation of a detailed development and construction schedule for Phase One;
 - (vi) Prepare contracts with all professionals, consultants, and contractors for the performance of all design, construction, and related services necessary for the delivery of Phase One;
 - (vii) Prepare the preliminary plans and specifications, preliminary construction pricing, and a preliminary schedule of values for Phase One as needed for the Developer to deliver a guaranteed maximum price (GMP) for Phase One; and
 - (viii) Develop a preliminary financial model and plan of finance demonstrating the financial feasibility of the various components of the entire Project, and working with the City to

identify the mix of public and private financing sources within the City's established budgetary or financial limits based on projected tax and other revenue sources derived from the Project and/or other funding sources.

- (f) *Limitations on Agreement.* Notwithstanding anything in this Agreement to the contrary, the execution and delivery of this Agreement by the Parties shall not be construed as an offer or an acceptance by any of the Parties to proceed with the execution of any Definitive Agreements.

Section 5. Roles and Responsibilities of the Parties.

- (a) *Responsibilities of the Developer.* Subject to the City's reimbursement obligations set forth in Section 7, the Developer will be responsible for the payment and performance of all of the Preliminary Development Activities, as described in Section 4 above, including the services required for the deliverables. The Developer will be responsible for the selection, contractual engagement, and supervision of all third-party design professionals, contractors, service providers and consultants (the "Developer Parties").

- (b) *Responsibilities of the City.*

- (i) General. The City recognizes that its participation, review, evaluation, and input is necessary in order for the Developer to conduct the Preliminary Development Activities. The City agrees to dedicate adequate staff and resources toward participation in the Predevelopment Activities as it deems appropriate or as reasonably requested by the Developer.
 - (ii) Review and Response to Submittals. Certain work product of the Developer derived from the Preliminary Development Activities will be submitted to the City for review, comment, and approval, as the Developer deems reasonably appropriate and necessary (collectively, the "Submittals"). Any Submittals for which the City's approval is legally required under the existing rules, regulations, codes, and ordinances of the City relating to land development (the "City Legal Requirements") shall be subject to City review and approval in accordance with such City Legal Requirements. Nothing in this Agreement shall constitute a waiver of the City Legal Requirements or the City's non-ministerial obligations under State law, and the Developer shall ultimately be responsible for ensuring that such Submittals conform to any and all City Legal Requirements.

Any Submittals that are not subject to the City Legal Requirements but for which the City's review and comment is nevertheless deemed reasonably necessary or appropriate by the Developer, shall not be subject to formal City approval. However, the City may elect, in its reasonable judgment, to provide informal comments and input to such Submittals as so requested by the Developer.

- (iii) Timely Response to Information Requests. To the extent permitted by State law, at the request of the Developer, the City agrees to timely provide to the Developer any relevant data, surveys, documentation and information in possession of the City and which, in the reasonable judgment of the City is reasonably necessary or appropriate in connection with the Developer's performance of the Preliminary Development Activities.

- (iv) AHJ Approvals. The City will provide reasonable assistance to the Developer with all contacts, meetings, and approvals with all Authorities Having Jurisdiction ("AHJs") in connection with the Preliminary Development Activities.

Section 6. Preliminary Development Costs; Reimbursement.

- (a) *General*. The Developer shall be responsible for the payment of all Preliminary Development Costs (as defined below) out of its own funds but subject to reimbursement by the City as provided herein; provided, however, that City may elect to fund all or any portion of the Preliminary Development Costs prior to when reimbursement is due under Section 7(c). The Preliminary Development Activities shall be performed directly by the Developer or the Developer Parties.
- (b) *Concept Refinement Phase Budget*. The Developer has prepared a budget and schedule of its estimated Preliminary Development Costs for the Concept Refinement Phase. The Concept Refinement Phase Budget may be amended or revised by the mutual agreement of the Parties. The Developer may reallocate amounts between budget line items to the extent that it does not change the overall mutually agreed upon scope, except for the Developer's fixed fee, which will be fixed.
- (c) *Predevelopment Phase Budget*. As part of the Final Development Proposal, the Developer will prepare a detailed budget and schedule of its estimated Preliminary Development Costs for the Predevelopment Phase (the "Predevelopment Phase Budget" and together with the Concept Refinement Phase Budget, the "PDA Budgets"). The City's approval of the Final Development Proposal will be deemed the City's approval of the Predevelopment Phase Budget. The Predevelopment Phase Budget may be amended or revised by the mutual agreement of the Parties. The Developer may reallocate amounts between budget line items to the extent that it does not change the overall mutually agreed upon scope, except for the Developer's fixed fee, which will be fixed.
- (d) *Preliminary Development Costs*. For purposes hereof, "Preliminary Development Costs" are limited to and include only (i) the third-party costs set forth in the CPA Budget and actually incurred or expensed by the Developer for contractors (and their subcontractors), design professionals, consultants (and their subconsultants), other architectural and engineering design professionals (including costs of preconstruction services of third party project contractor(s)) (collectively, "Third-Party Costs"); and (ii) the Developer's fixed fee as set forth in the PDA Budgets.
- (e) *Reimbursement by the City*. The City agrees to reimburse the Developer for its Reimbursable Preliminary Development Costs (defined below), subject to and in accordance with the terms of this Agreement, as follows:
 - (i) Concept Refinement Phase. The City shall reimburse the Developer for all Reimbursable Preliminary Development Costs incurred during the Concept Refinement Phase, pursuant to monthly invoices, in an amount not to exceed \$767,970.00. City staff shall confer with Developer prior to commencement of conceptual refinement phase to finalize a detailed scope of work and finalized concept refinement budget. Finalized scope of work and finalized budget shall be completed

no later than November 12, 2025. By mutual agreement, City staff and the Developer can execute an extension of this date.

- (ii) Predevelopment Phase. If the City elects to proceed with the Project, on a monthly basis pursuant to monthly invoices submitted to the City by the Developer, the City shall reimburse the Developer for all Reimbursable Preliminary Development Costs incurred during each month of the Predevelopment Phase in an amount not to exceed \$1,025,550.00.
- (f) *Reimbursable Preliminary Development Costs*. The City's reimbursement obligation is expressly limited to the payment of those Preliminary Development Costs that meet the conditions and requirements set forth below, and which are not otherwise expressly excluded as set forth below ("Reimbursable Preliminary Development Costs"):
 - (i) All Third-Party Costs shall be limited to those costs generally described in the CPA Budget, and must be evidenced by documentation satisfactory to the City demonstrating that such costs were actually incurred by the Developer, such as contracts, subcontracts, invoices, work orders, receipts, and evidence of payment. The Developer shall have sole responsibility for keeping and preserving all records and correspondence for purposes of documenting payment.
 - (ii) Notwithstanding the Developer's right to reallocate amounts among line items within the PDA Budgets, the City shall not be required to pay any Preliminary Development Costs that are not reflected as a line item in the PDA Budgets, unless expressly approved by the City in writing in the City's sole discretion; provided, however, that the Developer may use its contingency line item for costs that are not reflected as a line item in the PDA Budgets (as well as reallocating the contingency to other line items in the PDA Budgets).
 - (iii) Third-Party Costs are inclusive of legal expenses incurred and reasonably necessary in connection with the performance of the Preliminary Development Activities. However, the City shall not be responsible for any legal costs or expenses of the Developer relating to the preparation or negotiation of this Agreement or any Definitive Agreements, or the enforcement thereof.
- (g) *Monthly Expense Reports*. The Developer shall deliver to the City on a monthly basis commencing on the fifteenth (15th) day of each calendar month (or the immediately following business day) beginning on the first full month after the Effective Date, a report (each an "Expense Report") detailing all Preliminary Development Costs incurred or applied since the Effective Date (in the case of the first Expense Report) or all Preliminary Development Costs since the last Expense Report. The Expense Report will provide an accounting of the incurred and/or expended Preliminary Development Costs of the prior calendar month on a line-item basis matching the CPA Budget format reasonably acceptable to the City. The Expense Report may also include a narrative summary of any financial commitments for third-party services that have accrued but not applied against the PDA Budgets to date. Within thirty (30) calendar days following the expiration of the Term or earlier termination of this Agreement, the Developer shall deliver to the City the final Expense Report. The provisions of this Section 7(g) will survive the expiration or earlier termination of this Agreement.

Section 7. Instruments of Service.

- (a) *Ownership of Instruments of Service.* All instruments of service prepared by the Developer and its consultants in connection with the performance of the Preliminary Development Activities (the "Instruments of Service"), shall be and remain the property of the Developer until and unless the City reimburses the Developer for its Reimbursable Preliminary Development Costs in accordance with Section 7 above. "Instruments of Service" shall include any drawings, specifications, models, renderings, professional studies, professional reports, or other proprietary materials prepared in connection with or as part of the Preliminary Development Activities. However, "Instruments of Service" shall expressly exclude, and the City shall retain all rights to (irrespective of payment or nonpayment) any and all work product of the City, including any contracts, agreements, plans, notes, research, reports, summaries, concepts, and ideas conceived, developed, or prepared directly by or through the joint participation of the City and its representatives, that is not customarily deemed as "work made for hire" (collectively, "City Work Product"). The Developer hereby waives and releases all rights relating to the City's continued use and ownership of any City Work Product.
- (b) *Transfer of Instruments of Service.* Immediately upon the City's reimbursement of the Developer for its Reimbursable Preliminary Development Costs in accordance with Section 7 above, all of the Developer's right, title, and interest, including licenses, in and to all Instruments of Service, whether or not used or accepted by the City, shall immediately become the property of the City without any further evidence of transfer or assignment. However, to the extent that the City determines that further documentation or assurances are necessary to evidence the transfer, assignment, or licensing of any Instruments of Service, the Developer shall fully cooperate with the City and use all reasonable and lawful means to deliver written documentation or assurances, including those to be executed by any member of the Developer's team, to evidence the transfer, assignment, or licensing of the Instruments of Service to the City.

The City acknowledges that the Developer will typically only receive licenses to Instruments of Service prepared by the Development team, and that assignment of such licenses (if that is the only right that the Developer has to such Instruments of Service) will satisfy the Developer's obligation to grant such Instruments of Service to the City.

Section 8. Term and Termination.

- (a) *Termination for Cause.*
 - (i) *Notice of Default.* If either Party materially fails to comply with any of its obligations under this Agreement, the other Party (the "Noticing Party") may provide the Defaulting Party (the "Defaulting Party") written notice of default describing the default and approximate date(s) of occurrence and other relevant circumstances as well as a requested remedy to reasonably cure commensurate with the seriousness of the default.
 - (ii) *Opportunity to Cure.* Upon receiving a notice of default, the Defaulting Party shall have thirty (30) calendar days to reasonably cure the default to the reasonable satisfaction of the Noticing Party. However, if the default is of such nature that it cannot be reasonably cured within thirty (30) days, then the Defaulting Party shall have an additional ninety (90) calendar days to cure the default, during which it must diligently pursue actions to cure said default, evidenced by weekly written updates to the

Noticing Party. The Noticing Party may also in their sole discretion extend the cure period for such additional amount of time that they determine to be reasonably necessary. If the Defaulting Party fails to cure the default to the reasonable satisfaction of the Noticing Party within the cure period described above, the Noticing Party may provide written notice to the Defaulting Party of its election to terminate this Agreement, and termination shall take effect immediately upon delivery of such notice; however, the City's payment obligations described in Sections 9(a)(iii)(A) and 9(a)(iii)(B)(2) below shall survive termination. The City shall use all reasonable and lawful means to pay such Preliminary Development Costs within 30 days of termination and receipt of the final Expense Report.

- (iii) *Reimbursement of Preliminary Development Costs.*
 - A. *Termination by the Developer.* If the Developer terminates this Agreement under this Section 9(a), the City agrees to reimburse the Developer, and the Developer agrees that its damages shall be limited to, the amount of Reimbursable Preliminary Development Costs incurred prior to the City's receipt of notice of termination through the date of payment.
 - B. *Termination by the City.* If the City terminates this Agreement under this Section 9(a), the City's obligation to pay Preliminary Development Costs shall be dependent on the materiality of the Developer's breach, as follows:
 - 1. *Bad Acts.* In the event of a termination due to a default arising out of the Developer's fraud, bad faith, or willful misconduct, the City shall have no obligation to pay any Preliminary Development Costs to the Developer; however, the City reserves the right to pay fair value, in light of the circumstances, to the Developer or any member of the Development Team in exchange for the transfer, assignment, or licensing of any Instruments of Service.
 - 2. *Other Material Default.* In the event of a termination due to a material default other than that described in subparagraph (1) above, the City agrees to reimburse the Developer all of its Third-Party Costs incurred up to the Developer's receipt of notice of default.
- (b) *Termination for Convenience by the City.*
 - (i) *Notice of Termination.* If the City determines in its sole discretion to terminate this Agreement for its convenience at any time, it shall have the right, with thirty (30) calendar days' written notice to the Developer, to terminate this Agreement. Termination shall take effect immediately upon the expiration of the thirty (30) day notice period; however, the City's payment obligations described in paragraph (ii) below shall survive termination.
 - (ii) *Reimbursement of Preliminary Development Costs.* If the City terminates for convenience, the City agrees to reimburse the Developer for the amount of Reimbursable Preliminary Development Costs incurred up to the Developer's receipt of notice of termination, plus the full amount of the Developer's Fixed Fee set forth in the Concept Refinement Phase Budget. The City shall use all reasonable and lawful

means to pay such Reimbursable Preliminary Development Costs within thirty (30) calendar days of termination and receipt of the final Expense Report.

(c) *Termination by Failure to Approve Final Development Proposal.*

- (i) *Failure to Approve Final Development Proposal.* The Developer may terminate this Agreement by giving written notice to the City if (A) the City does not approve in writing the Final Development Proposal within forty-five (45) days of the Developer's submission of the Final Development Proposal to City, or (B) the Developer is unable to deliver a Final Development Proposal to the City on or before October 31, 2026 due to the City's failure to timely perform its responsibilities under this Agreement. Termination shall take effect immediately upon the delivery of such notice; however, the City's payment obligations described in paragraph (ii) below shall survive termination.
- (ii) *Reimbursement of Preliminary Development Costs.* If the Developer terminates this Agreement because the City fails to approve the Final Development Proposal, the City agrees to reimburse the Developer its Preliminary Development Costs incurred up to the Developer's receipt of notice of termination, plus the full amount of the Developer's Fixed Fee set forth in the Concept Refinement Phase Budget. The City shall use all reasonable and lawful means to pay such Reimbursable Preliminary Development Costs within thirty (30) calendar days of termination and receipt of the final Expense Report.

Section 9. General Provisions.

- (a) *Representations and Warranties.* Each Party represents and warrants to the other Party all of the following:
 - (i) The Party has all requisite power and authority to enter into this Agreement and consummate the transactions set forth herein, and by proper action has duly authorized the execution and delivery of this Agreement and the consummation of the transaction set forth herein, and no permission, approval, or consent by any additional third parties or governmental authorities is required for the Party to enter into and consummate this Agreement.
 - (ii) This Agreement is a valid obligation of the Party and is binding upon and enforceable against the Party in accordance with its terms.
 - (iii) The consummation by the Party of this Agreement and the Project set forth herein do not, and will not, constitute a violation of any order, rule or regulation of any court or of any federal, state, or municipal regulatory body, administrative agency, or other governmental body having jurisdiction over the Party.
- (b) *Confidentiality of Information and Negotiations.*
 - (i) If the Developer provides information to the City, in whatever form or medium, concerning the operations or affairs of the Developer or member of the Development Team, whether developed prior to or on or after the Effective Date, that is generally considered under the law to be of a confidential or privileged nature and is marked as "Confidential" plainly on the face of any such document or information, the City agrees

that it will keep confidential and not disclose any such information submitted by the Developer in the course of the negotiations ("Confidential Information") except for disclosures:

- A. in the process of discussions, meetings or conferences with its officers, agents, employees and representatives who reasonably need to know this information for purposes of evaluating, approving or effecting the transactions contemplated hereby;
 - B. in response to a legal process or as otherwise required by law, including the Texas Public Information Act (the "Act") with prompt written notice being delivered to the Developer regarding such disclosure, or as otherwise required by any order of a legal authority under applicable law; or
 - C. in any manner to which the Developer affirmatively consents.
- (ii) Subject to any third-party rights under the Act, the City and the Developer agree that neither shall have the right to require the other to disclose attorney-client privileged communications or work product.
 - (iii) The City shall use reasonable efforts to provide prompt written notice to the Developer of any request received by the City pursuant to the Act or by any competent legal authority requesting Confidential Information or information collected, assembled or maintained for the City and to which the City has contractual access, for the purpose of providing the Developer an opportunity to seek to protect such information from disclosure. Under the Act, documents collected, assembled or maintained for the City and to which the City has access under the terms of a contract may be deemed public information, subject to the exceptions in the Act. The City makes no representation as to how the Attorney General of Texas will rule on any public information request but agrees to reasonably cooperate with the Developer in asserting exemption claims under the Act, provided any extensive briefing or analysis of documentation will be the responsibility of the Developer.
 - (iv) Upon reasonable request of the Developer, the City shall reasonably cooperate with the Developer and shall give the Developer the opportunity to submit briefings to the Office of the Texas Attorney General in the manner provided by the Texas Public Information Act.
 - (v) The terms of this Section 9(b) will survive the expiration or earlier termination of this Agreement but will be superseded by the terms of the Definitive Agreements, if fully executed.
- (c) *Assignment.* The Developer shall not assign (it being agreed that for purposes of this Agreement, assignment includes, without limitation, a merger, dissolution, sale, pledge or other hypothecation or transfer of stock or ownership interests in any other form of business entity interests or sale of assets), mortgage, pledge or otherwise transfer their respective interests in this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. However, the Developer may assign its interest in this Agreement to an entity that directly or indirectly controls, is controlled by, or is under common control with the Developer ("Affiliate") with prior notice to the City. In such a case, the City's consent to said assignment may not be unreasonably withheld, conditioned, or

delayed and such consent shall be conditioned upon (i) the Developer demonstrating such Affiliate has comparable or greater financial standing, professional expertise and development capabilities as the Developer as of the Effective Date, and (ii) the execution and delivery by such Affiliate of an instrument in form and substance reasonably satisfactory to the City evidencing its full assumption of the Developer's obligations hereunder. The Party who assigns this Agreement shall provide the other Party with a copy of the assignment.

- (d) *Notices.* Formal notices, demands and communications between the Parties will be sufficiently given if, and will not be deemed given unless delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

To the Developer: Upward Communities, LLC
Attn: Jason Roberts
123 N. Edward Gary, Floor Two
San Marcos, TX 78666
Email: jason@upwardcommunities.com

With a copy to: Winstead PC
Jeff Nydegger
600 W. 5th Street, Ste. 900
Austin, TX 78701
jnydegger@winstead.com

To the City: City of San Marcos
Attn. City Manager
630 E. Hopkins
San Marcos, TX 78666
Email: sreyes@sanmarcostx.gov

Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused) or in the case of registered mail four (4) Business Days following deposit of such instrument in the United States Mail. "Business Day" means Monday through Friday, except for state or federal holidays. Notices delivered by email to the email addresses provided above shall also be deemed to have been delivered but only if receipt is personally and affirmatively acknowledged in writing by the recipient.

- (e) *Limitation on Remedies.* In no event shall either party be liable, whether in contract or tort or otherwise, to the other party for loss of profits, delay damages, punitive damages, exemplary damages, indirect damages, or for any special incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.
- (f) *Amendment or Modification to this Agreement.* This Agreement may be amended, modified and/or restated only by a written instrument adopted by all of the Parties and signed by the duly authorized representatives of the Parties hereto.

(g) *Rules of Interpretation.*

- (i) Consideration. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties executing this Agreement hereby agree to the terms and conditions contained herein, as it may from time to time be amended according to its terms.
- (ii) Entire Agreement. This Agreement constitutes the entire agreement of the Parties. No other agreement, statement, or promise that is not contained in this Agreement shall be binding, except a subsequent written amendment or supplement to this Agreement signed by both Parties.
- (iii) Captions. Captions at the beginning of each Section of this Agreement are for reference only and will in no way define or interpret any provision hereof.
- (iv) Construction. Common nouns and pronouns and any variations thereof shall be deemed to refer to masculine, feminine, non-binary, or neuter gender, singular or plural, as the identity of the person, persons or other reference in the context requires. Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party. Any reference to the Act or other statutes, laws, or regulations, forms or schedules shall include the amendments, modifications, supplements, or replacements thereof. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, as the same may from time to time be amended, modified or supplemented and not to any particular section, subsection or clause contained in this Agreement. Whenever used herein, "or" shall include both the conjunctive and disjunctive, "any" shall mean "one or more," and "including" shall mean "including without limitation."
- (v) Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise, except to the extent limited by Section 9(i) above.
- (vi) Relationship of Parties; No Third-Party Beneficiaries. The City and the Developer are not partners or joint venturers, nor is either the principal or agent of the other, and nothing herein will be construed to create any such relationship between the City and the Developer, or to render either the City or the Developer liable for any obligations of the other. The only beneficiaries of this Agreement are the City and the Developer. There are no third-party beneficiaries.
- (vii) Severability. If any provision of this Agreement or the application thereof to any person or circumstances becomes invalid or unenforceable to any extent, the application of such provision to other persons or circumstances and the remainder of this Agreement will not be affected thereby and will be enforced to the greatest extent permitted by law.
- (viii) Waivers. The failure of any Party to seek redress for violation of or to insist upon the strict performance of any agreement or condition of this Agreement shall not prevent a

subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

- (h) *Governing Law; Venue.* This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The obligations of the Parties are performable in Hays County, Texas, and venue for any dispute arising hereunder will lie exclusively in the state district courts located in Hays County, Texas.
- (i) *Additional Assurances.* The provisions of this Agreement shall be self-operative and shall not require further agreement by the Parties except as may be herein specifically provided to the contrary; provided, however, at the request of a Party, the other Party shall execute such reasonable additional instruments and take such reasonable additional actions as the requesting Party may deem necessary to effectuate this Agreement.
- (j) *Successor and Assigns.* This Agreement will be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns.
- (k) *State Law Matters.* In addition to the terms provided herein, the Parties agree to the terms and conditions contained in the State Law Addendum attached hereto as EXHIBIT E.
- (l) *Payment from Current Revenues.* The Developer acknowledges that any commitment of the City for the payment or the performance of any obligation hereunder shall be made from the current revenues available to the City.
- (m) *Counterparts; e-Signatures.* This Agreement may be signed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages. The Parties agree that digital or facsimile signatures shall be given the same legal effect as original signatures, and the Parties hereby agree to accept delivery of digital signatures by e-mail in "pdf" form, or *via* DocuSign, Adobe Sign, or any similar means of digital delivery.

(Signature Page Follows)

The undersigned have signed and delivered this Preliminary Development Agreement to be effective as of the Effective Date.

UPWARD COMMUNITIES, LLC,
a Texas limited liability company

By: _____
Jason Roberts, Manager

CITY OF SAN MARCOS, TEXAS,
A Texas home-rule municipality

By: _____
Stephanie Reyes, City Manager

EXHIBIT A
DEVELOPMENT SITE

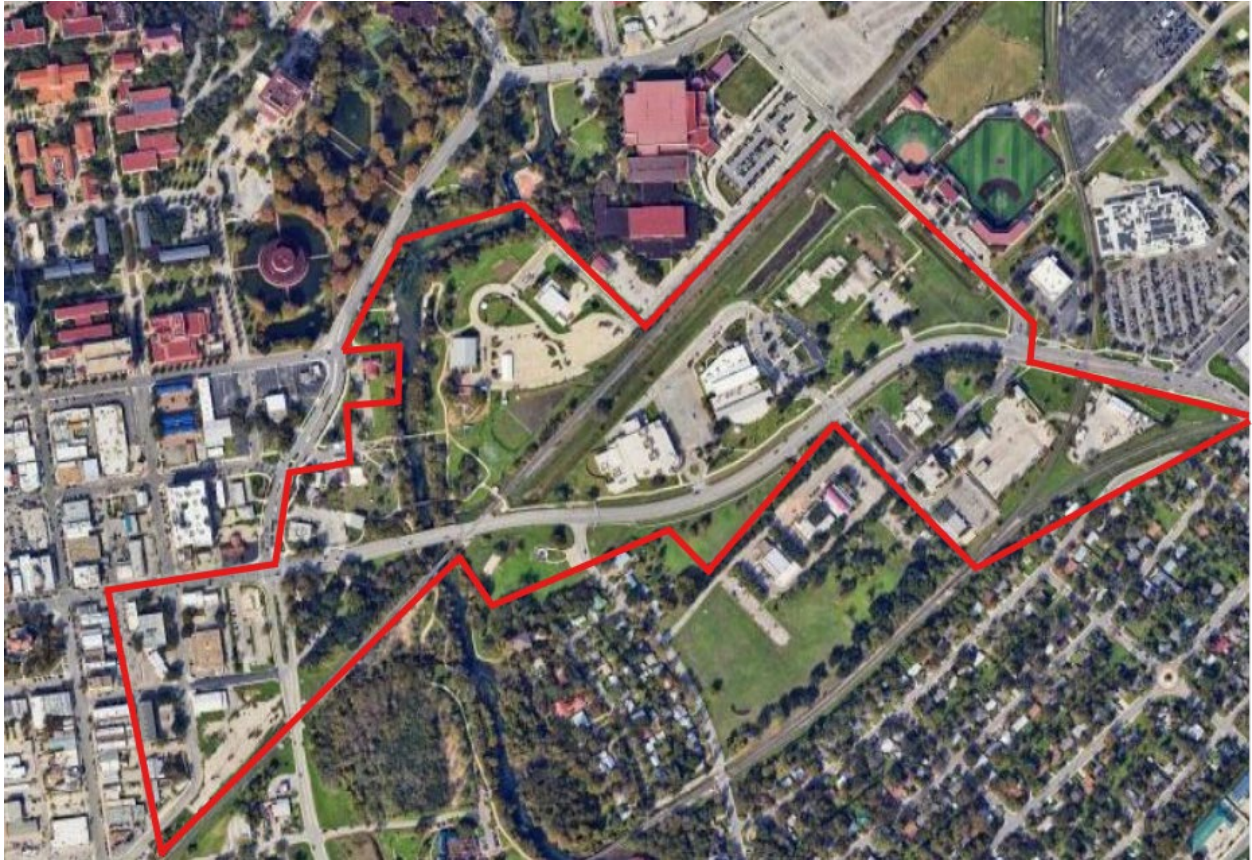


EXHIBIT B
PRELIMINARY DEVELOPMENT SCHEDULE

ID	Task Name	Duration	Start	Finish	Qtr 4, 2025 OctNovDec	Qtr 1, 2026 JanFebMar	Qtr 2, 2026 AprMayJun	Qtr 3, 2026 JulAugSep	Qtr 4, 2026 OctNovDec	Qtr 1, 2027 JanFebMar
1	City of San Marcos	283 days	Mon 12/1/25	Wed 12/30/26						
2	PREDEVELOPMENT AGREEMENT EXECUTION	0 days	Mon 12/1/25	Mon 12/1/25						
3	CONCEPT REFINEMENT PHASE	168 days	Mon 12/1/25	Wed 7/22/26						
4	Feasibility Due Diligence	80 days	Mon 12/1/25	Fri 3/20/26						
12	Community Engagement	33 days	Mon 12/29/25	Wed 2/11/26						
16	Phase One Definition	40 days	Thu 1/29/26	Wed 3/25/26						
20	Design & Planning	40 days	Thu 3/12/26	Wed 5/6/26						
24	Financing & Budgeting	21 days	Thu 2/19/26	Thu 3/19/26						
28	Predevelopment Planning	20 days	Thu 5/7/26	Wed 6/3/26						
32	Deal Structuring	30 days	Thu 5/14/26	Wed 6/24/26						
36	Final Proposal Compilation	20 days	Thu 6/25/26	Wed 7/22/26						
39	Formal Presentation to City	0 days	Wed 7/22/26	Wed 7/22/26						
40	PREDEVELOPMENT PHASE	150 days	Thu 6/4/26	Wed 12/30/26						
41	Master Planning & Infrastructure	40 days	Thu 6/4/26	Wed 7/29/26						
45	Program Validation	25 days	Thu 7/30/26	Wed 9/2/26						
49	Technical Diligence	40 days	Thu 7/2/26	Wed 8/26/26						
54	Issue Mitigation	35 days	Thu 8/27/26	Wed 10/14/26						
58	Schedule & Delivery Planning	30 days	Thu 9/3/26	Wed 10/14/26						
62	Consultant & Contracting	30 days	Thu 9/17/26	Wed 10/28/26						
66	Pricing & GMP	55 days	Thu 10/1/26	Wed 12/16/26						
72	Financing Model	25 days	Thu 11/26/26	Wed 12/30/26						

EXHIBIT C
INSURANCE REQUIREMENTS

- (a) Qualifying Insurers. All insurance policies shall be obtained from insurers authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-VII or better.
- (b) Required Liability Insurance Coverage and Limits.
- (i) Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:
- | | |
|-------------------------------------|-------------|
| Employers Liability - Each Accident | \$1,000,000 |
| Employers Liability - Each Employee | \$1,000,000 |
| Employers Liability - Policy Limit | \$1,000,000 |
- (ii) Commercial General Liability Insurance with limits of not less than:
- | | |
|---------------------------------|-------------|
| Each Occurrence Limit | \$1,000,000 |
| Personal & Advertising Injury | \$1,000,000 |
| General Aggregate | \$2,000,000 |
| Products - Completed Operations | \$1,000,000 |
- (iii) Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 combined single limit of liability per accident for Bodily Injury and Property Damage;
- (iv) Professional Liability (E&O) with minimum limits of \$1,000,000 per occurrence and aggregate to be maintained for the duration of the agreement and three years following its termination; and
- (v) Umbrella/excess liability insurance with limits of not less than \$2,000,000, per occurrence. Such umbrella coverage will be excess over and at least as broad as the underlying coverage as required for Employer's Liability, Commercial General Liability and Business Auto Liability under subsections (i), (ii) and (iii) foregoing, respectively. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.
- (c) Endorsements. All Insurance Policies (with the exception of workers' compensation and employer's liability) will be endorsed and name City of San Marcos, Texas as additional insureds for liability caused in whole or in part by the Developer's acts or omissions with respect to its ongoing operations up to the actual liability limits of the required insurance policies maintained by the Developer. Commercial General Liability Additional Insured status, including ongoing and completed operations coverage, will be submitted with the certificates of insurance required above. Commercial General Liability and Business Auto Liability will include primary and non-contributory coverage in favor of the City.
- (d) Waivers of Subrogation. The Developer hereby waives and will cause each contractor or subcontractor to waive all rights of subrogation against the City. All Insurance Policies required

hereunder will be endorsed to provide a waiver of subrogation in favor of the City. The waivers set forth above shall extend to the agent of each such person and their respective contractors and employees.

EXHIBIT D
STATE LAW MATTERS

- (a) *State Law Limitations and Prevailing Laws Applicable to the City.* The City is a local government corporation organized under the laws of the State of Texas. The Parties expressly agree that following provisions shall control over any conflicting provisions contained in this Agreement.
- (i) No Liens on Public Property. No provision of the Agreement purporting to grant to the Developer (A) a security interest or lien against the real or personal property of the City; or (B) a contractual right or power of attorney to take control over or otherwise handle or dispose of the property of the City, shall be of force and effect.
 - (ii) Court Costs. No provision of this Agreement requiring the City to pay court costs, costs of suit, or attorney fees incurred by the Developer or any other person in enforcing or interpreting the terms of this Agreement shall be of force and effect, except as otherwise expressly permitted by the laws of the State of Texas.
 - (iii) Open Records. Any obligation of the City under this Agreement to (A) keep the terms and provisions of this Agreement confidential; and/or (B) not disclose the terms of this Agreement, shall be binding on the City only to the extent permitted by law, including without limitation Chapter 552 of the Texas Government Code or any successor law or other similar statutory provisions (the "Texas Public Information Act"). the City agrees that it shall notify the Developer upon receipt of a request for release of this Agreement or any terms hereof to any member of the public pursuant to the Texas Public Information Act, and the City shall give the Developer the opportunity to submit briefings to the Office of the Texas Attorney General in the manner provided by the Texas Public Information Act.
 - (iv) Privileges and Immunities. No provision of this Agreement shall constitute, nor is it intended to constitute, a waiver of any other exemptions, privileges or immunities of the City under the constitution and laws of the State of Texas.
 - (vi) No Violation of Prevailing Law. The City shall not be required to perform any act or refrain from performing any act under this Agreement if that performance or non-performance would constitute a violation of the constitution or laws of the State.
- (b) *Representations and Certifications of the Developer.*
- (i) Interested Parties Disclosure. To the extent that this Agreement is a contract with a value of \$100,000 or more, prior to entering into this Agreement, and unless otherwise exempt therefrom, the Developer must file a certificate of Interested Parties Form 1295 (a "1295 Certification") with the Texas Ethics Commission through its electronic portal in accordance with Section 2252.908, Texas Government Code, as amended, and has delivered evidence of filing to the City. The Developer acknowledges that the City has no obligation, and have not undertaken any responsibility, for advising the Developer with respect to the completion of its 1295 Certification, except for the provision of the contract identification numbers and description of services.
 - (ii) Verifications Required for Contracts for Goods or Services. To the extent this Agreement constitutes a contract for goods or services for which a written verification statement is required under Sections 2252.152, 2271.002 and 2274.002, Texas Government Code, as

amended, by submitting a bid, the bidder does hereby verify that it and its parent company, wholly- or majority- owned subsidiaries, and other affiliates:

- A. Do not boycott energy companies and, will not boycott energy companies during the term of this Agreement. The foregoing verification is made solely to comply with Section 2274.002, Texas Government Code, as amended, to the extent Section 2274.002, Texas Government Code does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies" has the meaning provided in Section 809.001 of the Texas Government Code.
- B. Do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and are authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in Section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in Section 2274.001(6) and (7) of the Texas Government Code.
- C. Do not boycott Israel and are authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in Section 808.001 of the Texas Government Code.
- D. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, are not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201 of the Texas Government Code

As used in the foregoing verifications, "affiliate" to mean an entity that controls, is controlled by, or is under common control with the bidder within the meaning of SEC Rule 405, 17 C.F.R. 230.405 and exists to make a profit.