

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement (the “Agreement”) is made effective as of _____, 2025 (the “Effective Date”), by and between **City of San Marcos, Texas (“City”)**, and **Mary Beth Harper a/k/a Mary Nance Harper, individually and as Independent Executor of the Estate of Ray Stewart Harper, and Jaime Lynn Harper (“Landowner,” whether one or more),** (City and Landowner being referred to herein either individually and/or collectively as “Party” or “Parties,” unless otherwise required by the context).

I. RECITALS

1. WHEREAS, Landowner is the legal owner of the property (the “Property”) more particularly described in Condemnor’s Original Petition in Condemnation (the “Petition”) in Cause No. 24CV-07636, *City of San Marcos, Texas v. Mary Beth Harper a/k/a Mary Nance Harper, individually and as Independent Executor of the Estate of Ray Stewart Harper, and Jaime Lynn Harper*, in the County Court at Law of Caldwell County, Texas (the “Lawsuit”), wherein City sought certain water, wastewater, and recycled water pipeline rights set forth in the Petition; and

2. WHEREAS, through the Petition, City sought to acquire easements on, in, over, under, through and across the Property necessary for the construction, installation, and operation of the City water, wastewater and recycled water system, with the easement and temporary workspace area being more particularly described and depicted in the exhibits attached to the Petition, which shall be referred to herein collectively as the “Easement”; and

3. WHEREAS, the Parties acknowledge the costs, hazards, uncertainties, and pitfalls of continued litigation and desire to enter into this Agreement in order to settle and lay to rest certain controversies in order to avoid further costs, litigation and risks; and the Parties have agreed to settle the Lawsuit pursuant to the terms and conditions as set forth herein.

NOW, THEREFORE, AS MATERIAL CONSIDERATION AND INDUCEMENTS TO THE EXECUTION OF THIS AGREEMENT AND IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS MADE, INCLUDING THE RECITALS SET FORTH ABOVE AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS ACKNOWLEDGED, THE PARTIES HEREBY CONTRACT, COVENANT AND AGREE AS FOLLOWS:

II. AGREEMENT

4. Landowner and City agree to enter into the City of San Marcos Utility Easement Agreement in the form attached hereto as Exhibit “A” (the “Easement Agreement”).

5. As consideration for this Agreement, and the Easement Agreement, City shall pay to Landowner the difference between \$408,500.00 which was the amount of the Special Commissioners’ Award deposited into the registry of the court and \$575,000.00, which difference is \$166,500.00, as total compensation (the “Settlement Sum”). The Settlement Sum shall be paid as follows:

- a) This transaction will be closed at the following title company (“Title Company”):

Independence Title Company
Dawn Stitch, Escrow Officer
211B FM 1626, Building 2
Buda, Texas 78610
Tel: (512) 523-3204

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- b) City will deliver to Title Company a check in the amount of **\$166,500.00** within 30 days of Title Company’s receipt of the executed Easement Agreement. Upon receipt of the Settlement Sum, Title Company will deliver a check made payable to Barron Adler Clough & Oddo, PLLC, Trustee for Mary Beth Harper a/k/a Mary Nance Harper, individually and as Independent Executor of the Estate of Ray Stewart Harper, and Jaime Lynn Harper, at 808 Nueces Street, Austin, Texas 78701-2216.
- c) After recording of the Easement Agreement in the Official Public Records of Caldwell County, Texas, counsel for City will file a Notice of Non-Suit with the Court and record a Release of Lis Pendens, also in the Official Public Records of Caldwell County, Texas. Copies of the recorded documents will be forwarded to counsel for Landowner.

6. The Parties agree to cooperate regarding the drafting and execution of any additional documents, including but not limited to disclaimers of interest in the condemnation proceeds from lienholders, as is required to implement the provisions and spirit of this Agreement and/or the request to withdraw funds from the Court’s registry, provided that such other documents are prepared at no cost to Landowner and do not require Landowner to make any additional representations, indemnifications, or promises to City, the title company, or any other person except as otherwise specifically provided in this contract. As consideration for the Settlement Sum, Landowner agrees that they are responsible for securing waivers of claims against the settlement funds and condemnation from other interest holders, if any.

7. Landowner does hereby COMPROMISE, SETTLE, AND ABSOLUTELY, UNCONDITIONALLY, AND FULLY RELEASE and FOREVER DISCHARGE City, its current and former city councils, council members, officers, successors, subsidiaries, parents, affiliates, related corporate entities, assigns, agents, employees, attorneys, owners, shareholders, and insurers from any and all liabilities, demands, claims, damages, punitive damages, penalties, losses, costs, debts, and charges, both legal and equitable, whether at common law, statutory, regulatory, contractual, tortious or otherwise, now owned or accrued, that arise out of, relate to, or is in any way connected with the institution, prosecution and/or maintenance of the Lawsuit. This release specifically includes but is not limited to: (i) just compensation for the taking; (ii) any and all claims for damages to growing crops, timber, fences, livestock, access, trees, and other improvements within the Easement caused during City’s initial construction on the Property and all claims for damages or otherwise asserted by Landowner in the course of the Lawsuit, including any alleged trespass claims arising prior to the date of this Agreement; provided, however, unless specifically included elsewhere in this Agreement, that this release does not encompass and

specifically excludes claims, causes of action and other matters arising from acts or events after the date hereof.

8. City does hereby COMPROMISE, SETTLE, AND ABSOLUTELY, UNCONDITIONALLY, AND FULLY RELEASE and FOREVER DISCHARGE Landowner, their current and former boards of directors, board members, officers, successors, subsidiaries, parents, affiliates, related corporate entities, assigns, agents, employees, attorneys, owners, shareholders, and insurers, and Landowner's property from any and all liabilities, demands, claims, damages, punitive damages, penalties, losses, costs, debts, and charges, both legal and equitable, whether at common law, statutory, regulatory, contractual, tortious or otherwise, now owned or accrued, that arise out of, relate to, or is in any way connected with the institution, prosecution and/or maintenance of the Lawsuit. This release specifically includes but is not limited to any and all claims for damages or otherwise asserted in the course of the Lawsuit; provided, however, that this release does not encompass and specifically excludes claims, causes of action and other matters arising from acts or events after the date hereof.

9. It is understood that this is a compromise of disputed claims, and that neither (1) the consideration provided for herein, (2) the entry into this Agreement, nor (3) any recital contained herein, shall be construed, or interpreted as an admission of liability by City and, all such liability is herein being expressly denied.

10. The releases provided herein are not intended to, and do not, release the Parties from any obligations arising under this Agreement and the Easement Agreement, nor any breach of or default with respect to the terms, conditions, representations and warranties, and/or covenants provided in this Agreement and the Easement Agreement, nor any breach of or default with respect to the terms, conditions, representations and warranties, and/or covenants provided in the Easement Agreement.

III. COSTS, FEES, AND EXPENSES

11. Each of the Parties to this Agreement shall bear its own attorneys' fees, costs, and expenses. Landowner waives and hereby further releases City from any claims under section 21.019 of the Texas Property Code, Section 38 of the Civil Practices and Remedy Code, and/or any other statutory provision allowing for fees for attorneys, appraisers, and photographers and/or any other expenses incurred.

IV. ENTIRE AGREEMENT

12. This Agreement and the Easement Agreement constitute the entire agreement between the Parties and supersedes any and all prior understandings and agreements concerning the subject of this Agreement. This Agreement and the Easement Agreement may not be modified or amended except by a writing signed by the Party against whom said modification or amendment is to be enforced.

V. LEGALITY OF AGREEMENT

13. If any provision, term, or condition of this Agreement shall be held invalid, illegal,

or unenforceable by any court, regulatory agency, or tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions, terms and conditions shall not in any way be affected or impaired thereby, and the term, condition, or provision that is held illegal, invalid or unenforceable shall be deemed modified to conform to such rule of law, but only for the period of time such order, rule, regulation, or law is in effect unless the primary purposes of this Agreement would thereby be frustrated.

14. The Landowner represents, covenants and warrants that Landowner has the full authority and capacity to make this Agreement, grant the releases and waivers set forth herein, and take the other actions contemplated by this Agreement; that Landowner is the sole owner of any and all claims ever possessed by Landowner against City; and that no portion of any of the released claims that Landowner may have possessed against City have been sold, assigned, transferred, pledged, or hypothecated to any third party. In addition, Landowner represents, covenants, and warrants that Landowner is the only party with an interest in the claims asserted and is therefore the only party who has a right to assert a cause of action against City for such claims or any other claims related to the owners of the Property.

15. City represents, covenants and warrants that City has the full authority and capacity to make this Agreement, grant the releases and waivers set forth herein, and take the other actions contemplated by this Agreement; that City is the sole owner of any and all claims ever possessed by City against Landowner or Landowner's property; and that no portion of any of the released claims that City may have possessed against Landowner or Landowner's property have been sold, assigned, transferred, pledged, or hypothecated to any third party. In addition, City represents, covenants, and warrants that City is the only party with an interest in the claims asserted and is therefore the only party who has a right to assert a cause of action against Landowner or Landowner's property for such claims or any other claims related to the owners of the Property.

16. The Parties each represent to the other that they have read and understand this Agreement, and that they have not relied upon any representation made by the other party or parties or their attorneys in executing this Agreement. The Parties each hereby stipulate that they do not stand in a disparate bargaining position and that they have not executed this Agreement under duress. The Parties further stipulate that they do not occupy a fiduciary relationship with each other.

VI. MISCELLANEOUS

17. This Agreement is binding upon and shall inure to the benefit of the Parties and each of the Parties' respective successors, assigns, heirs, personal representatives, affiliates, agents, attorneys, and insurers without time limitation.

18. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one Agreement.

19. The signatories and their counsel have assisted in the drafting of this Agreement, have reviewed this Agreement before execution, and agree that the normal rules of construction, specifically that "any ambiguities are to be construed against the drafter," will not be employed in its interpretation.

20. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its conflict of law principles. Jurisdiction and venue for any dispute related to this Agreement shall be in Caldwell County, Texas.

EXECUTED as of the dates of the acknowledgements hereto but effective for all purposes as of the Effective Date.

AGREED:

LANDOWNER(S):

Mary Beth Harper / Mary Nance Harper
Mary Beth Harper a/k/a Mary Nance Harper,
Individually and as Independent Executor of the
Estate of Ray Stewart Harper

Jaime Lynn Harper
Jaime Lynn Harper

Nick Laurent,
Attorney for Landowners

CITY OF SAN MARCOS, TEXAS:

Stephanie Reyes, City Manager
City of San Marcos, Texas

Katherine Ramos,
Attorney for City of San Marcos

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Individually and as Independent Executor of the
Estate of Ray Stewart Harper**

Jaime Lynn Harper



**Nick Laurent,
Attorney for Landowners**

CITY OF SAN MARCOS, TEXAS:

**Stephanie Reyes, City Manager
City of San Marcos, Texas**

**Katherine Ramos,
Attorney for City of San Marcos**