

RESOLUTION NO. 2020-121R

AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AUTHORIZING THE EXECUTION OF A GROUND LEASE AND ACQUISITION AGREEMENT BETWEEN THE CITY AND HUNT SAN MARCOS DEVELOPMENT, LLC FOR THE CITY'S NEW PUBLIC SERVICES CENTER; ESTABLISHING A FACILITY PURCHASE PRICE UNDER THE GROUND LEASE IN AN AMOUNT NOT TO EXCEED \$44,400,000.00; APPROVING AND AUTHORIZING THE EXECUTION OF AMENDMENT ONE TO THE EXCLUSIVE NEGOTIATING AGREEMENT (ENA) WITH HUNT SAN MARCOS DEVELOPMENT, LLC TO, AMONG OTHER THINGS, PROVIDE FOR \$62,409 OF ADDITIONAL PRE-DEVELOPMENT SERVICES FOR A NEW TOTAL AMOUNT PAYABLE UNDER THE ENA OF \$1,562,409.00; AUTHORIZING OTHER MATTERS IN CONNECTION THEREWITH; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. In 2008, the City of San Marcos, Texas (the *City*) merged three departments, Water/Wastewater, Public Works, and San Marcos Electric Utility, into one department, known as Public Services.
2. Even before this merger, the City recognized these departments had grown beyond the ability of the existing facilities to house them in a safe, effective, and cost-efficient work space.
3. After a multi-year study that included a comprehensive facility assessment to document the then-current and forecasted needs of the merged Public Services department into a consolidated facility, the City initiated a competitive process under Chapter 2269, as amended, Texas Government Code (the *Selection Process*) to identify and select the most qualified provider to deliver a facility of specified characteristics pursuant to the "design-build" method of technical project delivery.
4. At the conclusion of this Selection Process, at the recommendation of City administration (who was advised by third party consultants), the Council selected Hunt Companies, Inc. (*Hunt*) to deliver a consolidated public works facility to house the Public Services department, which facility shall, upon completion, consist of eight functional areas totaling approximately 140,000 gross square feet and onsite surface parking for approximately 700 vehicles (the *Facility*) built on City-owned land (such City-owned land, the *Parcel*), developed in accordance with the technical requirements included in and made a part of the Selection Process.
5. On December 3, 2019, the City entered into an Exclusive Negotiating Agreement (the *ENA*) with Hunt San Marcos Development, LLC (the *Lessee*), a wholly-owned Hunt-subsubsidiary created specifically for the purpose of developing the Facility, which agreement specified the terms and provisions by which the Lessee would conduct preliminary development

activities relative to Facility development that necessarily preceded the ability of the City and the Lessee to enter into a comprehensive agreement concerning full Facility development.

6. As a result of the Selection Process and completion of the Facility preliminary development work specified under the ENA, the City and the Lessee have now determined to facilitate Facility development through the City's entry into the Ground Lease and Acquisition Agreement (the *Lease*) with the Lessee, pursuant to which the City leases the Land to the Lessee and the Lessee is obligated to design, finance, construct, and convey to the City the Facility in accordance with the terms therein specified.

7. In connection with the planning for the Facility, it is necessary to amend the ENA to add \$62,409.00 of pre-development services to the scope of services, increasing the amount payable under the ENA from \$1,500,000.00 to \$1,562,409.00 (*ENA Amendment One*).

8. The City Council of the City (the *Council*) finds that the adoption of this Resolution is in the best interests of the residents of the City.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. Approval of Lease; Adoption of Representations and Warranties. Pursuant to authority conferred by and in accordance with the provisions of the Constitution and general laws of the State of Texas, including (particularly) Chapters 271 and 282, as amended, Texas Local Government Code, and Chapter 2269, as amended, Texas Government Code (*Chapter 2269*), and the City's Home Rule Charter and as a culmination and conclusion of the Selection Process, the City hereby authorizes its entry into the Lease, in the form attached hereto as Exhibit A, with the Lessee. In addition to being a lease for real property, the City hereby finds that the Lease is a public work contract under Chapter 2269. The City hereby adopts as its own the representations and warranties of the City included in, and recognizes and accepts its duties and obligations (subject to any limitations therein specified) under, the Lease, which Lease provisions are incorporated by reference in this Resolution as though herein replicated. With respect to the foregoing, the City hereby approves a Facility Purchase Price (as defined in the Lease) in an amount not to exceed \$44,400,000.00.

PART 2. Ratification of Prior Actions; Authorization of City Manager to Execute Documents. All actions necessary or incidental to the adoption of this Resolution by the Council, whether heretofore or hereafter taken, are hereby ratified and approved as the act and deed of the City for all purposes. The Council hereby authorizes the City Manager, on behalf of the City, to execute the Lease (evidencing, among other things, a Facility Purchase Price not in excess of the maximum Facility Purchase Price established in Part 1 of this Resolution), any Memorandum of Lease thereunder required, and any other document, agreement, certification, representation, warranty, or receipt relating to the Lease, the transactions thereunder or hereunder contemplated, or that are necessary or desirable to effectuate the intent and purpose of the Lease or this Resolution which executions shall be binding on the City as the act and deed thereof. In addition, and to the extent necessary or required, the City hereby authorizes the recordation in the real property records of Hays County, Texas the Lease, any Memorandum of Lease, or such other documentation

relating to the Land or the Facility as may be necessary or desirable as a result of or in relation to the transactions that are a part of or that are contemplated under or described in the Lease.

PART 3. Term of Authorization. Time is of the essence regarding Facility development. Accordingly, the counterpart to the Lease is not executed by the Lessee on or before July 31, 2020, the signature of the City Manager shall be null and void, and the Lease may not become effective without subsequent consideration and approval of the Council. The Council may, at any time prior to the Lessee's execution of the Lease, revoke the authorization provided in Section 1 hereof, upon written notice to the Lessee at the address provided for the Lessee in the Lease.

PART 4. Approval of ENA Amendment One. ENA Amendment One is approved for the purpose of adding \$62,409.00 of additional pre-development services as specifically described in ENA Amendment One, attached hereto as Exhibit B, for a total amount payable under the ENA of \$1,562,409.00. The City Manager, or his designee, is authorized to execute ENA Amendment One.

PART 5. Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Council.

PART 6. Inconsistent Provisions. All ordinances and resolutions of the City, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters provided herein.

PART 7. Governing Law. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.


PART 8. Severability. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Resolution would have been enacted without such invalid provision.

PART 9. Construction. Unless the context requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Resolution and all the terms and provisions hereof shall be constructed to effectuate the purposes set forth herein and to sustain the validity of this Resolution.

PART 10. Compliance with Texas Open Meetings Act. It is officially found, determined, and declared that the meeting of the City at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

PART 11. Effective Date. This Resolution shall be in full force and effect immediately from and after its adoption.

ADOPTED on June 16, 2020.


Jane Hughson
Mayor

Attest:

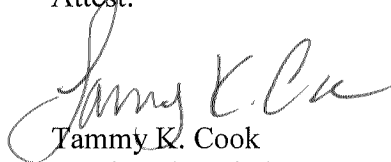

Tammy K. Cook
Interim City Clerk

EXHIBIT A

Ground Lease and Acquisition Agreement

EXHIBIT B

Amendment to ENA for Additional Services