

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered to resolve issues regarding approximately 120.73 acres of land out of the Thomas Yates league, abstract-313 (the "Property"). The parties to this Agreement are the City of San Marcos, Texas ("City"), Walton Texas, LP ("Walton"), and David Tuckfield, attorney at law ("Tuckfield"). The City and Walton collectively are referred to herein as "Parties."

RECITALS

WHEREAS, Walton filed a Petition to Amend the City's Sewer Certificate of Convenience and Necessity ("CCN") No. 20116 in Caldwell County by Streamlined Expedited Release ("Petition") pursuant to Texas Water Code ("TWC") §13.2541 and 16 TAC §24.245(h);

WHEREAS, Walton's Petition was assigned Docket No. 56371 by the Public Utility Commission of Texas ("PUC");

WHEREAS, Walton and the City desire to resolve these and other issues amicably and without the need for litigation or unnecessary administrative processes;

WHEREAS, Walton has deposited \$50,000.00 in the IOLTA account of the Law Offices of David J. Tuckfield to be held in trust by David Tuckfield for payment to the City in accordance with this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the benefits to be received by the Parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

I. WALTON'S AND TUCKFIELD'S OBLIGATIONS

- 1.01 Within 5 business days of the Approval Date, defined below, David Tuckfield will pay the City \$50,000.00 ("Payment Amount") that is currently being held in trust. This payment is consideration for the Settlement provisions set-forth in Section 4 of this Agreement and includes the compensation specified in Section 2.02 for the compensation in Docket No. 56371. Payment will be made by check payable to the City of San Marcos and send that check to the following address: City of San Marcos, Attn: City Attorney, 630 E Hopkins, San Marcos, TX 78666.
- 1.02 Walton understands and agrees that the City is under no obligation to serve the land described in this Agreement that is sought to be decertified with sewer service.
- 1.03 Except for the initial filing specified in paragraph 2.01 of this Agreement, the attorneys for Walton will draft documents needed for filing with the PUC and will obtain approval from

Settlement Agreement

the City's attorney prior to filing. The City will not be responsible for the attorney's fees incurred by Walton.

- 1.04 Walton will work in good faith with the City to effectuate the purpose of this Agreement and will execute any documents and file any documents needed to effectuate the purpose of this Agreement.

II. THE CITY'S OBLIGATIONS

- 2.01 Upon execution of this Agreement, the City shall take all appropriate steps and with all due speed utilizing the City processes to consider whether the Cotton Center Development Agreement between the City and Walton, effective as of December 20, 2016 and recorded as Document No. 2023-002100 in the Official Public Records of Caldwell County, Texas, as amended (the "Development Agreement"), should be terminated as to the Property, and whether the City nor Walton have any further rights or obligations thereunder with respect to the Property. In conjunction with consideration of the partial release of the Development Agreement, the City will likewise take all appropriate steps and with all due speed utilizing the City processes to consider whether that certain Consent Agreement between the City and Walton, effective December 11, 2014 and recorded as Document No. 2014-006144 in the Official Public Records of Caldwell County, Texas, as amended (the "Consent Agreement"), should be terminated as to the Property. The partial releases of the Development Agreement and the Consent Agreement shall be herein collectively referred to as the "Partial Release." The City staff shall support said Partial Release to the San Marcos City Council. Provided that the San Marcos City Council approves of the Partial Release, the date of such action shall be called the "Approval Date" herein. If the San Marcos City Councils denies or does not approve the Partial Release within 90 days hereof, said action shall be herein called the "Denial Action."
- 2.02 Within 5 business days of the Approval Date, the City will file with the Texas PUC a pleading stating that it has reached an agreement with Walton, that it no longer opposes the decertification, that the parties have reached an agreement on compensation in PUC Docket No. 56371 in the amount of \$15,000, and that it does not seek any additional compensation in PUC Docket No. 56371.
- 2.03 The City will cooperate in filing a Joint Motion for Informal Disposition (pursuant to 16 Tex. Admin. Code § 22.35(a)), requesting that the requested area be decertified, and requesting that the PUC issue an order regarding compensation, and acknowledging that such compensation has already been paid. To the extent that the PUC may require additional filings, the City will cooperate in such filings to effectuate the purposes of the Agreement.
- 2.04 After the filing specified in Section 2.02 and 2.03 above, although Walton will have the primary responsibility for drafting additional documents needed for filing with the PUC, the City will have its attorneys cooperate in the review of such documents and, where appropriate, to cooperate in filing such documents as joint filings. Upon issuance of the final Order from the PUC, if required by that Order, the City will require its attorney to file

Settlement Agreement

with the County the documents required to be filed in Tex. Water Code § 13.257(r) as well as proof of such filing with the Texas PUC.

- 2.05 Walton will not be responsible for any attorney's fees incurred by the City in effectuating this Settlement or incurred from Texas PUC Docket No. 56371.
- 2.06 The City will work in good faith with Walton to effectuate the purpose of this Agreement and will execute any documents and file any documents needed to effectuate the purpose of this Agreement.

III. JOINT OBLIGATIONS

- 3.01 The Parties agrees to delay PUC Docket No. 56371 until the City considers the Partial Release as described in Section 2.01 above.

IV. SETTLEMENT

- 4.01 **Settlement of Claims.** The parties recognize and acknowledge that the funds specified herein are paid to settle claims and work amicably together. They are not to be relied upon as setting any precedent for the valuation of decertification.
- 4.02 The City accepts the compensation set-forth herein as full, final, and adequate compensation for decertification of the property in PUC Docket No. 56371. The Payment Amount constitutes payment for both the Partial Release and the compensation in PUC Docket No. 56371.
- 4.03 **Partial Termination of Development Agreement Obligations.** The Parties agree that upon the Approval Date the rights and obligations under that certain Cotton Center Development Agreement between the City and Walton, effective as of December 20, 2016 and recorded as Document No. 2023-002100 in the Official Public Records of Caldwell County, Texas, as amended (the "Development Agreement"), are hereby terminated as to the Property, and neither the City nor Walton have any further rights or obligations thereunder with respect to the Property. Not in limitation of the generality of Section 5.02 below, the Parties agree to execute, together with any required third parties, and deliver such recordable document(s) as may be necessary to memorialize the termination of the Development Agreement as to the Property and remove same from title to the Property.
- 4.04 **Partial Termination of Consent Agreement Obligations.** The Parties agree that upon the Approval Date the rights and obligations under that certain Consent Agreement between the City and Walton, effective December 11, 2014 and recorded as Document No. 2014-006144 in the Official Public Records of Caldwell County, Texas, as amended (the "Consent Agreement"), are hereby terminated as to the Property, and neither the City nor Walton have any further rights or obligations thereunder with respect to the Property. Not in limitation of the generality of Section 5.02 below, the Parties agree to execute, together with any required third parties, and deliver such recordable document(s) as may be necessary to memorialize the termination of the Consent Agreement as to the Property and remove same from title to the Property.

Settlement Agreement

- 4.05 In the event the Partial Release is not approved as provided in Section 2.01 above, on the date of the Denial Action, Tuckfield may return the Payment Amount to Walton and the Parties will have no further obligations under this Agreement.

V. REMEDIES

- 5.01 **Remedies.** If any Party fails to comply with its obligations under this Agreement or fails to correct any default after a 30-day notice and opportunity to cure, the other Party or Parties may exercise any remedy authorized at law or in equity, including filing suit in a court of competent jurisdiction to seek any available remedy, including by way of example only, injunctive relief, specific performance and/or monetary damages. To the extent allowed by law, the prevailing Party or Parties to the litigation may recover costs of court, attorney's fees and expert consultant and witness fees incurred in enforcing or defending a claim under this Agreement.
- 5.02 **Equitable Remedies.** It is not intended hereby to specify (and this Agreement will not be considered as specifying) an exclusive remedy for any default, but all remedies existing at law or in equity may be availed of by any party hereto and will be cumulative of the remedies provided herein. Recognizing however, that the failure in the performance of the Parties' obligations hereunder could not be adequately compensated in money damages alone, the Parties agree, in the event of any default on its part, that the other parties will have available to them equitable remedies, including specific performance, in addition to any other legal or equitable remedies which may also be available.

VI. GENERAL PROVISIONS

- 6.01 **Good Faith.** The Parties agree to cooperate with each other and act in good faith in the performance of this Agreement.
- 6.02 **Provision of Further Documents.** The Parties will execute and deliver such other and further requested legal documents or instruments as are reasonably necessary to effectuate the purposes and intent of this Agreement.
- 6.03 **Severability.** Except as specifically set forth in this Agreement, the provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstances is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected thereby and this Agreement will be construed as if such invalid or unconstitutional portion had never been contained herein.
- 6.04 **Entire Agreement.** This Agreement, including all Exhibits attached hereto, which are expressly made a part hereof by reference for all purposes, constitutes the entire agreement between the Parties relative to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations, covenants or warranties, whether oral or in writing, respecting the subject matter hereof.

Settlement Agreement

- 6.05 **Amendment.** No amendment of this Agreement is effective unless and until it is duly approved by each party and reduced to a writing signed by the Authorized Representatives of all of the Parties.
- 6.06 **Governing Law.** This Agreement will be construed under the laws of the State of Texas.
- 6.07 **Counterparts.** This Agreement may be executed in counterparts and may be delivered electronically.
- 6.08 **Representations/Warranties.** Each Party represents and warrants that the signatory below who has signed for that Party has the power and authority to enter into this Agreement on its behalf and that each Party has the authority to execute this Agreement.

Executed in multiple counterparts, each to be considered an original, to be effective upon execution by all Parties:

Settlement Agreement

AGREED:

THE CITY OF SAN MARCOS

By:
Title:

Date signed: _____

WALTON TEXAS, LP

By:
Title:

Date signed: _____

September 17, 2024

DAVID J. TUCKFIELD, ATTORNEY AT LAW

David J. Tuckfield

Date signed: _____