

Real Estate Sales Contract

This contract to buy and sell real property is between Seller and Buyer as identified below and is effective on the date ("Effective Date") of the last of the signatures by Seller and Buyer as parties to this contract and by Title Company to acknowledge receipt of the Earnest Money. Buyer must deliver the Earnest Money to Title Company and obtain Title Company's signature before the Earnest Money Deadline provided in section A.1. for this contract to be effective.

Seller: San Marcos River Foundation, Inc., a Texas non-profit corporation

Address: P.O. Box 1393, San Marcos, Texas 78667-1393

Phone: 512.787.6392

E-mail: wassenich@grandecom.net

Seller's Attorney: Gene Majors, Majors Law Firm, LLP

Address: 100 E. San Antonio, Ste. 102, San Marcos, Texas 78666

Phone: 512-392-1273

E-mail: gene@majorslawfirm.com

Buyer: City of San Marcos

Address: 630 E. Hopkins St. San Marcos, TX 78666

Phone: 512.393.8130

E-mail: psteed@sanmarcostx.gov

Property: 248.711 acres, more or less, of land as described in Exhibit A, attached hereto and made a part hereof for all purposes.

Title Company: San Marcos Title Company

Address: 100 East San Antonio Street, Suite 101, San Marcos, Texas 78666

Phone: 512.353.1782

Purchase Price: \$3,062,700.00

Earnest Money: \$1,000.00

Buyer's Liquidated Damages: \$1,000.00

Seller's Additional Liquidated Damages: \$1,000.00

County for Performance: Hays County, Texas

A. Deadlines and Other Dates

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1. Earnest Money Deadline: One day after execution of this contract by both parties.
2. Delivery of Title Commitment: Two days after the Effective Date
3. Delivery of Survey: N/A
4. Delivery of current grazing lease: Delivered on July 23, 2018
5. Delivery of legible copies of instruments referenced in the Title Commitment: Two days after the Effective Date
6. Delivery of Title Objections: Two days after delivery of the Title Commitment, and legible copies of the instruments referenced in them
7. Delivery of Seller's Records as specified in Exhibit C: Two days after the Effective Date
8. End of Inspection Period: N/A
9. Closing Date: August 13, 2018, subject to Buyer's rights to extend the Closing Date or terminate this contract under other terms in this contract.

B. Closing Documents

1. At closing, Seller will deliver the following items:

General Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Customary closing items as may be requested by the Title Company

2. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Customary closing items as may be requested by the Title Company

The documents listed in this section B are, collectively, known as the "Closing Documents." Unless otherwise agreed by the parties before closing, the deed will be prepared by Seller's attorney using the forms contained in the current edition of the *Texas Real Estate Forms Manual* (State Bar of Texas). The deed to Seller, however, shall not include any provisions regarding payment of taxes contrary to the provisions in Section K.2.c.

C. Exhibits

The following are attached to and are a part of this contract:

Exhibit A— Description of the Property

Exhibit B— Representations; Environmental Matters

Exhibit C— Seller's Records

D. Purchase and Sale of Property

Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

E. Interest on Earnest Money

Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money.

F. Title and Survey

1. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Property. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract. "Title Policy" means an Owner Policy of Title Insurance

issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

2. *Survey*. “Survey” means the survey of the Property prepared by Bettersworth & Associates, Inc. and dated January 27, 2016 delivered by Seller to Buyer prior to the Effective Date.

3. [INTENTIONALLY OMITTED]

4. *Delivery of Title Commitment and Legible Copies*. Seller must deliver the Title Commitment to Buyer by the deadline stated in section A.2.; and legible copies of the instruments referenced in the Title Commitment Search by the deadline stated in section A.5.

5. *Title Objections*. Buyer has until the deadline stated in section A.6. (“Title Objection Deadline”) to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer’s objections to any of them (“Title Objections”). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are “Permitted Exceptions.” If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer’s notice to notify Buyer whether Seller agrees to cure the Title Objections before closing (“Cure Notice”), Seller being under no obligation to cure. If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller’s Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller’s obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure. Buyer’s City Manager may agree to extend the Closing Date to a mutually agreed date if necessary to enable any Cure under this paragraph.

G. [INTENTIONALLY OMITTED]

H. Representations

The representations stated in Exhibit B are true and correct as of the Effective Date and must be true and correct on the Closing Date.

I. Condition of the Property until Closing; Cooperation; No Recording of Contract

1. *Maintenance and Operation*. Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b)

operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property. Seller will not enter into, amend, or terminate any contract that affects the Property other than in the ordinary course of operating the Property and will promptly give notice to Buyer of each new, amended, or terminated contract. Buyer may terminate this contract if Seller enters into, amends, or terminates any contract that affects the Property without first obtaining Buyer's written consent.

2. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Casualty damage means any damage to the Property that prevents the use of the Property for the prevention of non-point source pollution, including damage to existing fencing, damage to vegetation from wildfires or the improper disposal of toxic or hazardous materials or chemicals. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within fifteen days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen days before closing). If Buyer does not terminate this contract, Seller will (a) convey the Property to Buyer in its damaged condition, (b) assign to Buyer all of Seller's rights under any property insurance policies covering the Property, and (c) pay to Buyer the amount of the deductibles and coinsurance provisions under any insurance policies covering the Property, but not in excess of the cost to repair the casualty damage and less any amounts previously paid by Seller to repair the Property. If Seller has not insured the Property and Buyer does not elect to terminate this contract in accordance with this section, the Purchase Price will be reduced by the cost to repair the casualty damage.

3. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken, and (d) no change in the Purchase Price will be made.

4. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

5. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

6. *No Recording.* Buyer may not file this contract or any memorandum or notice of

this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

J. Termination

1. *Disposition of Earnest Money after Termination*

- a. *To Buyer.* If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days after receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer
- b. *To Seller.* If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five days after receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller.

2. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract and those obligations that survive termination under the express terms of this contract.

K. Closing

1. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.

- e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing.

2. *Transaction Costs*

- a. *Seller's Costs.* Seller will pay the basic charge for the Title Policy; one-half of the escrow fee charged by the Title Company; the costs to obtain, deliver, and record releases of all liens to be released at closing; the costs to record all documents to cure Title Objections agreed to be cured by Seller; certificates or reports of ad valorem taxes and Seller's expenses and attorney's fees.
- b. *Buyer's Costs.* Buyer will pay one-half of the escrow fee charged by Title Company; the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense; Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession; the costs to obtain the Survey; the costs to deliver copies of the instruments described in section A.5; the additional premium for the "survey/area and boundary deletion" in the Title Policy, if the deletion is requested by Buyer; the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; the costs to obtain financing of the Purchase Price, including the incremental premium costs of mortgagee's title policies and endorsements and deletions required by Buyer's lender; and Buyer's expenses and attorney's fees.
- c. *Ad Valorem Taxes.* Buyer is a tax-exempt governmental entity and assumes no responsibility for taxes associated with Seller's ownership of the Property through the Closing Date. Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date. Seller's portion of the prorated taxes will be paid to Buyer at closing as an adjustment to the Purchase Price. If the assessment for the calendar year of closing is not known at the Closing Date, the proration will be based on taxes for the previous tax year, and Buyer and Seller will adjust the prorations in cash within thirty days of when the actual assessment and taxes are known. In addition, Seller shall be solely responsible for payment of any taxes arising from a change in use or "roll-back" taxes. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after closing. All taxes due as of closing will be paid at closing. After closing, Buyer may forward any tax bills attributable to Seller's ownership of the Property or arising from change in use or "roll-back" taxes directly to the Seller and Seller shall promptly pay such bill. If Buyer pays such bill, it may forward an invoice to Seller for reimbursement and Seller shall promptly pay such invoice. Buyer may pursue any remedies available at law or in equity to

enforce the Seller's obligations under this paragraph. Seller's obligations under this paragraph shall survive closing.

- d. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.
- e. *Broker's Commissions.* Buyer will not be responsible for payment of any Broker's Commissions and seller agrees to indemnify, defend and hold Buyer harmless from any loss, attorney's fees, court costs and other costs arising out of a claim by any person or entity claiming a fee or commission arising from this transaction.

3. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

L. Default and Remedies

1. *Seller's Default.* If Seller fails to perform any of its obligations under this contract after 15 days prior notice and opportunity to cure from Buyer, or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money returned to Buyer. Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, if Seller's Default occurs after Buyer has incurred costs to investigate the Property after the Effective Date and Buyer terminates this contract in accordance with the previous sentence, Seller will also pay to Buyer as liquidated damages the lesser of Buyer's actual out-of-pocket expenses incurred to investigate the Property after the Effective Date or the amount of Buyer's Liquidated Damages, within ten days after Seller's receipt of an invoice from Buyer stating the amount of Buyer's expenses.
- b. *Specific Performance.* Unless Seller's Default relates to the untruth or incorrectness of Seller's representations for reasons not reasonably within Seller's control, Buyer may enforce specific performance of Seller's obligations under this contract, but any such action must be initiated, if at all, within ninety days after the breach or alleged breach of this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

2. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Seller may terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will also reimburse Seller for the lesser of Seller's actual out-of-pocket expenses incurred to perform its obligations under this contract or the amount of Seller's Additional Liquidated Damages, within ten days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.

3. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by a default by either party cannot be accurately estimated or would be very difficult to accurately estimate and that Buyer's Liquidated Damages or the Earnest Money and Seller's Additional Liquidated Damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

4. *Attorney's Fees.* If either party retains an attorney to enforce this contract, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

M. Miscellaneous Provisions

1. *Notices.* Any notice required by or permitted under this contract must be in writing. Any notice required by this contract will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this contract. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, electronic mail, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein. Copies of each notice must be given by one of these methods to the attorney of the party to whom notice is given.

2. *Entire Contract.* This contract, together with its exhibits, and any Closing Documents delivered at closing constitute the entire agreement of the parties concerning the sale of the Property by Seller to Buyer. There are no oral representations, warranties, agreements, or promises pertaining to the sale of the Property by Seller to Buyer not incorporated in writing in this contract.

3. *Amendment.* This contract may be amended only by an instrument in writing signed by the parties.

4. *Assignment.* Buyer may assign this contract.

5. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

6. *Choice of Law; Venue; Alternative Dispute Resolution.* This contract will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue for any dispute arising under this agreement shall be in the appropriate state court in Hays County, Texas having jurisdiction or, if in federal court, the United States District Court for the Western District of Texas, Austin Division. Time permitting, the parties will submit in good faith to an alternative dispute resolution process before filing a suit concerning this contract.

7. *Waiver of Default.* It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays taking any action with respect to the default.

8. *No Third-Party Beneficiaries.* There are no third-party beneficiaries of this contract.

9. *Severability.* The provisions of this contract are severable. If a court of competent jurisdiction finds that any provision of this contract is unenforceable, the remaining provisions will remain in effect without the unenforceable parts.

10. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

11. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

12. *Counterparts.* If this contract is executed in multiple counterparts, all counterparts taken together will constitute this contract.

13. *Confidentiality.* The parties will keep confidential all information learned in the course of this transaction, except to the extent disclosure is required by the Texas Public Information Act, the Texas Open Meetings Act, other law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

14. *No Waiver of Immunity.* The parties agree that this contract is not a contract for goods or services and neither party waives any immunity from suit or liability of limitations on liability granted under applicable laws and constitution of the State of Texas.

15. *Subject to Approval.* This contract is subject to a) the approval of the San Marcos

City Council; and b) the appropriation of lawfully available funds for payment of the Purchase Price and all of Buyer's Closing Costs by the San Marcos City Council. If no such approval is obtained and appropriation made, Seller shall have no recourse against Buyer for such reasons and this contract shall be of no further force and effect.

N. Special Provisions

1. *Subject to TWDB Award.* This contract is subject to the approval of the award to Buyer of grant or loan funds from the Texas Water Development Board specifically for the purpose of purchasing the Property as evidenced by written notice of award or approval from the Texas Water Development Board, together with written notice that all conditions or contingencies, including approval of the terms and form of this contract, have been satisfied. Buyer's obligation to close is subject to the terms of this paragraph.

2. *Termination of Grazing Leases.* On or before the Closing Date, Seller shall provide written confirmation that all grazing or other leases affecting the Property have been terminated effective on a date that is on or before the Closing Date. Buyer's obligation to close is subject to the terms of this paragraph.

[SIGNATURES ON FOLLOWING PAGES]

SELLER:

By: _____

Name: _____

Title: _____

Date: _____

BUYER:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A [Attach Survey]

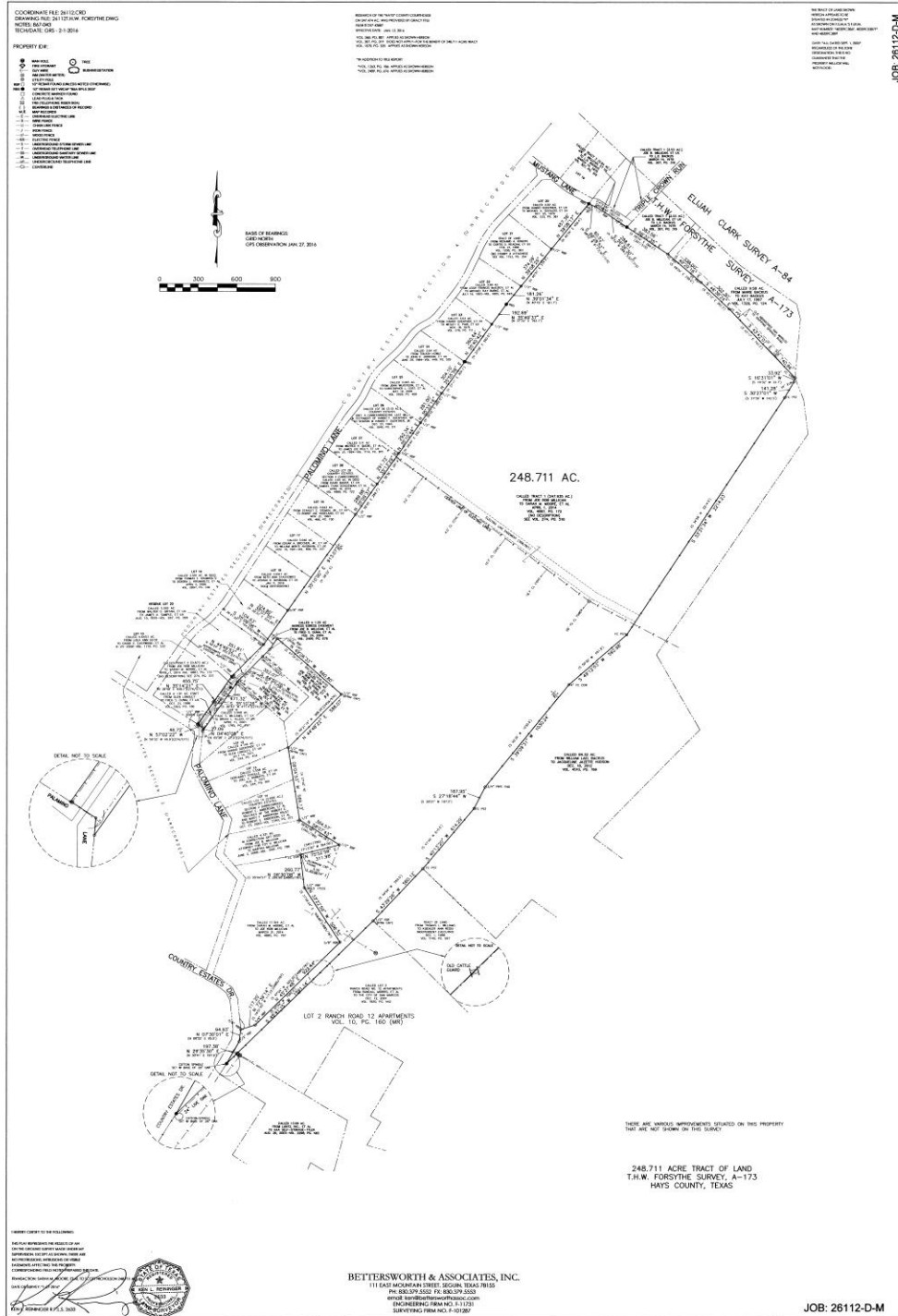


EXHIBIT B

Representations; Environmental Matters

A. Seller's Representations

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* This contract is, and all documents required by this contract to be executed and delivered by each party at closing will be duly authorized, executed, and delivered by such party.
2. *Litigation.* There is no litigation pending or threatened against either party that might affect the Property or either party's ability to perform its obligations under this contract.
3. *Violation of Laws.* Neither party has received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or use of the Property.
4. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller agrees to provide any environmental, hazardous materials and other such reports or disclosures in its possession to Buyer within the deadline for providing Seller's Records. Other than such information, if any, Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.
5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.
6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.
7. *No Other Representation.* Except as stated above or in this Agreement Seller makes no other representation with respect to the Property.
8. *No Warranty.* Seller has made no warranty in connection with this contract.

Exhibit C

Seller's Records

To the extent that Seller has possession of the following items pertaining to the Property, Seller will deliver or make the items or copies of them available to Buyer by the deadline stated in section A.7.:

Governmental

governmental licenses, certificates, permits, and approvals

tax statements for the current year and the last three years

notices of appraised value for the current year and the last three years

records of regulatory proceedings or violations (for example, condemnation, environmental)

Land

soil reports

environmental reports

water rights

engineering reports

prior surveys

site plans

Facilities

as-built plans, specifications, and mechanical drawings for improvements

engineering reports

environmental reports

operating and maintenance plans (for example, asbestos maintenance plans)

Leases

Grazing Lease, a copy of which will be delivered per section A 4 above.

TITLE COMPANY RECEIPT

Title Company acknowledges receipt of Earnest Money in the amount of \$1,000.00 and a copy of this contract executed by both Buyer and Seller.

San Marcos Title Company

By: _____

Name: _____

Date: _____