

AGREEMENT BETWEEN SAN MARCOS AND MARTINDALE

This Agreement between San Marcos and Martindale (“the Agreement” and/or “this Agreement”) is entered into by and The City of Martindale, Texas, a Class “A” General Law Municipality, under the Laws of the State of Texas (“Martindale”) and The City of San Marcos, Texas, a Home Rule Municipality, under the Laws of the State of Texas (“San Marcos”) (collectively “the parties”), who state, represent, and agree as follows.

I. Background

1. What follows is background of factual matters relevant to this Agreement beginning with the Incorporation of Martindale in 1980 and ending with Martindale taking action to bring certain properties into its ETJ in 2007.

A. Incorporation and 1980 ETJ.

2. On or about August 14, 1982, Martindale incorporated. The municipal boundaries of Martindale following the incorporation are shown in “dark grey” on the document attached hereto as “Exhibit A,” with Martindale’s extraterritorial jurisdiction (“ETJ”) extending one-half mile beyond Martindale’s municipal boundaries (“the Incorporation”).

3. At the time of the Incorporation, San Marcos’s ETJ extended one (1) mile beyond its municipal boundaries. The line delineating San Marcos’s ETJ at this time is shown in “light blue” and is labeled “ETJ 1980 (1mile)” on the document attached hereto as “Exhibit A” (“the 1980 ETJ”).

4. Martindale and San Marcos do not dispute the validity of the Incorporation and the 1980 ETJ and agree that no ETJ dispute(s) existed between Martindale and San Marcos at the time of the Incorporation.

B. The 1983 Resolution & the Ohnheiser Dispute.

5. On or about March 1, 1983, Martindale passed a resolution purporting to expand its ETJ to include the “Ohnheiser Property” as shown in “light yellow” on the document attached hereto as “Exhibit A” (“the 1983 resolution¹”).

6. San Marcos disputes the validity of the 1983 resolution and asserts that no part of the Ohnheiser property has ever been in Martindale’s ETJ, save and except the area labeled as “NOT DISPUTED”.

7. In support of this dispute, San Marcos asserts that, in 1983, all owners of the Ohnheiser property did not request the Ohnheiser property be included in Martindale’s ETJ, and therefore, the 1983 resolution failed to meet the requirements of Texas law (at that time) and was void *ab initio*.

8. Martindale disputes San Marcos’ assertions and alleges the 1983 resolution met the requirements of Texas law (at that time), and if it did not, any deficiencies in the 1983 resolution are not subject to challenge as a result of “*validation acts*” passed by the Texas legislature up through 1995 (“the Ohnheiser dispute”).

C. 1984 ETJ.

9. In 1984, San Marcos’s ETJ was expanded to two (2) miles beyond its municipal boundaries². The line delineating San Marcos’s ETJ at this time is shown in “light green” and is labeled “ETJ 1984 (2 mile)” on the document attached hereto as “Exhibit A” (“the 1984 ETJ”).

10. Martindale does not dispute the validity of the 1984 ETJ.

¹ See Exhibit B

² Local Government Code § 42.021(a)(3)

D. 2007 ETJ Disputes.

11. In 2007, San Marcos passed Resolution 2007-132R (“R132³”) by and through which San Marcos purported to declare it had at least fifty-thousand (50,000) inhabitants, thereby purportedly establishing a three and a half (3.5) mile ETJ beyond its municipal boundaries⁴. The line delineating San Marcos’s alleged ETJ at this time is shown in “pink” and is labeled “ETJ 2007 (3.5 mile)” on the document attached hereto as “Exhibit A” (“the 2007 ETJ – San Marcos”).

12. Martindale disputes the validity of the 2007 ETJ. In support of this dispute, Martindale asserts R132, as passed, and for reasons previously communicated to San Marcos, is void. San Marcos disputes Martindale’s assertions and maintains that the 2007 ETJ met the requirements of Texas law (at that time) and is valid (“the 2007 ETJ Dispute – San Marcos”).

13. In 2007 and 2008, Martindale passed a series of ordinances: Ordinances 2007-717, 2007-718, 2007-221, 07-223, 2007-224, 2007-225, 2007-229, 2007-233, 2007-236, 2007-238, and 2008-359 (“the 2007 Ordinances⁵”), hereafter referred to as “the 2007 ETJ – Martindale.”

14. The 2007 Ordinances were adopted at the request of the owners of the properties referenced in the 2007 Ordinances by and through which the properties referenced therein purportedly became part of Martindale’s ETJ.

15. San Marcos disputes, in relevant part, the validity of the 2007 Ordinances and the 2007 ETJ – Martindale. In support of this dispute, San Marcos asserts the 2007 Ordinances attempted to incorporate into Martindale’s ETJ properties that were already in San Marcos’s ETJ.

³ See Exhibit C

⁴ *Local Government Code* § 42.021(a)(3)

⁵ See Exhibits D-N

16. Martindale disputes San Marcos's assertions and alleges the 2007 Ordinances met the requirements of Texas law (at that time) and are valid ("the 2007 ETJ Dispute – San Marcos").

E. Hillert Dispute.

17. Presently the Parties are engaged in active litigation regarding property known as the Hillert Tract, and more thoroughly described on the document attached hereto as "Exhibit O" ("the Hillert Tract").: *The Mayan at San Marcos, LLC & The City of Martindale v. The City of San Marcos*, Cause No. 18-0958-CV-A; in the District Court, 25th Judicial District, Guadalupe County, Texas ("the Litigation"). In so far as Martindale and San Marcos are concerned, the Litigation centers around a dispute as to whether (1) relevant portions of the Hillert Tract remain in Martindale's ETJ; and (2) San Marcos's annexation of the Hillert Tract ordinance is void *ab initio*? Presently, the Litigation is on appeal: Cause No. 04-19-00018-CV, IN the 4th Court of Appeals, San Antonio, Texas ("the Appeal").

II. Recitals

18. **WHEREAS**, in early 2019, San Marcos contacted Martindale to request a meeting regarding problems with areas of alleged overlapping ETJ between Martindale and San Marcos, namely the Ohnheiser dispute, the 2007 ETJ dispute, and the 2007 Resolution dispute; and

19. **WHEREAS**, following the Parties' initial meeting in early 2019, the Parties have engaged in lengthy negotiations regarding the Ohnheiser dispute, the 2007 ETJ dispute, and the 2007 Resolution dispute; and

20. **WHEREAS**, to avoid the costs, inconvenience, and burdens associated with contentious litigation, including appeals, the parties have agreed to compromise and settle all disputes between them by entering into this Agreement.

III. Agreements and Releases

21. In consideration of the covenants, agreements, and releases contained herein, including the recitals set forth above, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

A. Ohnheiser Dispute – Agreement.

22. San Marcos states, represents, and agrees that the 1983 resolution is valid, and that San Marcos has no legitimate basis to challenge the same. Furthermore, San Marcos and all its predecessors, successors, assigns, representatives, attorneys, employees, officers, and agents, elective and appointive council members, council boards, commissions, and commissioners jointly and severally release, acquit and forever discharge Martindale from any and all claims related to the Ohnheiser Dispute, and upon execution of this Agreement, San Marcos will be barred from bringing suit against Martindale that relates, in any manner, to the Ohnheiser Dispute.

23. In the event San Marcos does bring suit against Martindale that relates, in any manner, to the Ohnheiser Dispute, San Marcos shall indemnify and defend and hold Martindale and its elected and appointed officials, boards, commissions, officers, agents, attorneys, representative, and employees, harmless from any and all liability, loss, expense, damage, or claims which may arise directly or indirectly from or in connection with the Ohnheiser Dispute.

24. As a condition of the foregoing, and pursuant to *Local Government Code* § 42.023, Martindale, upon final execution of this Agreement by the Parties, will execute the Resolution attached hereto as “Exhibit P” (“the Martindale Resolution”) to effectuate the release of one-hundred and sixty one point five nine (161.59) acres that are part of the “Ohnheiser Property” and more clearly identified on the document attached hereto as “Exhibit Q” (“the Released property”).

25. The Parties agree that, following the execution of this Agreement and the Martindale Resolution, all portions of “Ohnheiser Property” as shown in “light yellow” on the document attached hereto as “Exhibit A,” save and except the Released property, will remain in Martindale’s ETJ.

26. Following execution of this Agreement and the Martindale Resolution, Martindale and San Marcos state, represent, agree, and acknowledge that the Released property will become part of San Marcos’s ETJ by operation of law (under *Local Government Code* § 42.021(a)(4)), and that no further action by San Marcos will be necessary to bring the Released property into San Marcos’s ETJ.

27. The foregoing, as well as the mutual releases set forth herein below, fully and finally settle the Ohnheiser Dispute.

B. The 2007 ETJ Dispute – Agreement.

28. Martindale states, represents, and agrees that R132 is valid, and that Martindale has no legitimate basis to challenge the same. Furthermore, Martindale and all its predecessors, successors, assigns, representatives, attorneys, employees, officers, and agents, elective and appointive council members, council boards, commissions, and commissioners jointly and severally release, acquit and forever discharge San Marcos from any and all claims related to R132, and upon execution of this Agreement, Martindale will be barred from bringing suit against San Marcos that relates, in any manner, to R132.

29. In the event Martindale does bring suit against San Marcos that relates, in any manner, to R132, Martindale shall indemnify and defend and hold San Marcos and its elected and appointed officials, boards, commissions, officers, agents, attorneys, representative, and employees,

harmless from any and all liability, loss, expense, damage, or claims which may arise directly or indirectly from or in connection with the R132.

30. **Caveat as to the Litigation, the Appeal, and the Hillert Tract:** Presently as part of the Appeal, Martindale has raised legal arguments challenging R132. The Parties state, represent, and agree that Martindale may challenge R132 for the following limited purposes, and that what is stated in paragraphs 28 and 29 herein is wholly inapplicable to the following: (1) the Appeal; (2) the Litigation; and (3) any and all subsequent legal proceedings regarding the Hillert Tract that involve (i) Martindale and The Mayan at San Marcos, LLC (or any successors in interest, in part or in whole to the Hillert Tract) on the one-hand; and San Marcos on the other.

31. San Marcos states, represents, and agrees that the 2007 Ordinances described in Exhibits D through N are valid, the properties described therein are located within Martindale's ETJ, and that San Marcos has no legitimate basis to challenge the same. Furthermore, San Marcos and all its predecessors, successors, assigns, representatives, attorneys, employees, officers, and agents, elective and appointive council members, council boards, commissions, and commissioners jointly and severally release, acquit and forever discharge Martindale from any and all claims related to the 2007 Ordinances, and upon execution of this Agreement, San Marcos will be barred from bringing suit against Martindale that relates, in any manner, to the 2007 Ordinances.

32. In the event San Marcos does bring suit against Martindale that relates, in any manner, to the 2007 Ordinances, San Marcos shall indemnify and defend and hold Martindale and its elected and appointed officials, boards, commissions, officers, agents, attorneys, representative, and employees, harmless from any and all liability, loss, expense, damage, or claims which may arise directly or indirectly from or in connection with the 2007 Ordinances.

33. The foregoing, as well as the mutual releases set forth herein below, fully and finally settle the 2007 ETJ Dispute.

C. Revised Maps.

34. Martindale and San Marcos state, represent, agree, and acknowledge the map attached hereto as Exhibit “R” accurately represents the ETJ boundary between Martindale and San Marcos as envisioned by this Agreement, following the execution of this Agreement.

D. Hillert Tract Agreement.

35. As stated above herein, the Parties are presently engaged in the Litigation and the Appeal. Depending on the decision that results from the Appeal, one or both Parties may seek appropriate relief from the Supreme Court of Texas, or the Litigation may resume. Insofar as the Litigation, the Appeal, or any legal action in a court of competent jurisdiction resulting from the Litigation and/or the Appeal persists, the Parties agree to the following:

- (a) Any and all releases contained herein (whether in favor of Martindale or San Marcos) are null, void, and of no force and effect, but only insofar as the Hillert Dispute is concerned. More clearly, Martindale and San Marcos reserve the right to assert any and all claims, and make any and all arguments (legal and factual) that are otherwise waived, released, and settled herein, but only insofar as such claims and arguments are made in relation to, and only in relation to the Litigation, the Appeal, or any legal action in a court of competent jurisdiction resulting from the Litigation and/or the Appeal.

TO THE EXTENT IT IS DETERMINED THERE IS A CONFLICT WITH SECTION III(D)(35)(a) ABOVE, AND ANY OTHER PROVISION OF THIS AGREEMENT, SECTION III(D)(35)(a) SHALL CONTROL. IT IS THE PARTIES EXPRESS INTENT THAT THE PARTIES HERETO ARE FREE TO MAKE ANY ALL CLAIMS AND ARGUMENTS IN THE LITIGATION AND THE APPEAL, AS IF THIS AGREEMENT DID NOT EXIST. THIS APPLIES TO CLAIMS THAT HAVE NOT YET BEEN MADE AS PART OF THE LITIGATION AND THE APPEAL, BUT THAT EITHER PARTY MAY HEREAFTER BRING.

- (b) If, following final adjudication of the Litigation, the Appeal, or any legal action in a court of competent jurisdiction resulting from the Litigation and/or the Appeal, San Marcos is successful, and it is determined (1) San Marcos’s annexation of the

Hillert Tract ordinance is valid; and (2) no portions of the Hillert Tract remain in Martindale's ETJ, the Parties state, represent, agree, and acknowledge the map attached hereto as Exhibit "R" accurately represents the ETJ boundary between Martindale and San Marcos.

- (c) If, following final adjudication of the Litigation, the Appeal, or any legal action in a court of competent jurisdiction resulting from the Litigation and/or the Appeal, Martindale is successful, and it is determined (1) San Marcos's annexation of the Hillert Tract ordinance is void *ab initio*; and (2) relevant portions of the Hillert Tract remain in Martindale's ETJ, the Parties state, represent, agree, and acknowledge a new map that accurately represents the ETJ boundary between Martindale and San Marcos will be produced by San Marcos, subject to the agreement of Martindale.

E. Payments from the 161-Acre Tract.

36. Beginning in 2021, and ending in 2051, San Marcos will pay Martindale thirty percent (30%) of the annual tax revenue San Marcos collects on the Released property, save and except tax rebates given for each year in question. For purposes of this Section 36, "tax revenue" shall include taxes, rollback taxes, and interest but shall not include collection fees or penalties. In furtherance of the foregoing, the Parties will do the following. The steps set forth below will be followed annually beginning in 2021, and ending in 2051

- (a) On or before February 28th, San Marcos will provide Martindale written notice of the amount San Marcos proposes it remit to Martindale, that amount being thirty percent (30%) of the tax revenue San Marcos collected on the Released property in the prior year, save and except tax rebates given in the prior year.
- (b) In support of this written notice, San Marcos, at the same time it provides written notice, will also provide Martindale all documentation supporting the amount San Marcos proposes it remit to Martindale.
- (c) Martindale will have until March 31st to object to the amount San Marcos proposes it remit to Martindale and/or request additional documentation supporting the amount San Marcos proposes it remit to Martindale. If Martindale wishes to object and/or request additional documentation, it must do so by giving San Marcos written notice on or before March 31st. Requested additional documentation shall not be unreasonably requested and shall not be unreasonably withheld.
- (d) If Martindale does not object and/or request additional documentation by written notice, and by the above stated deadline, San Marcos will remit the proposed

amount to Martindale no later than ten (days) following March 31st, that amount being in full satisfaction of the thirty percent (30%) of the tax revenue San Marcos collected on the Released property in the prior year owed to Martindale, save and except tax rebates given in the prior year.

- (e) If Martindale does object and/or request additional documentation by written notice, and by the above stated deadline, San Marcos will remit the proposed amount to Martindale no later than ten (days) following March 31st, that amount being in partial satisfaction of the thirty percent (30%) of the tax revenue San Marcos collected on the Released property in the prior year owed to Martindale, save and except tax rebates given in the prior year.
- (f) Following any partial payment, the Parties shall meet in an effort to resolve any dispute on or before April 30th. If this initial meeting is unsuccessful, the parties will then mediate with an agreed upon mediator in an effort to resolve any dispute on or before May 31st. If mediation is unsuccessful, then either party may file suit. A suit filed against Martindale shall be filed in Caldwell County, Texas. A suit filed against San Marcos shall be filed in Hays County, Texas.
- (g) Martindale's rights to receive payments under this Section 36 are not assignable to any organization or entity.
- (h) San Marcos' obligations to make payments under this Section 36 and Martindale's rights to receive such payments shall immediately terminate upon the occurrence of any of the following events:
 - i) Martindale files suit to challenge the validity of the Martindale Resolution (in the form attached as Exhibit P) or to challenge the validity of San Marcos' annexation of all or any portion of the Released Property (described in Exhibit Q);
 - ii) Martindale attempts to assign or pledge its right to receive one or more payments under this Section 36; or
 - iii) Martindale abolishes its corporate existence in accordance with the process provided in the Texas Local Government Code or other applicable law.

37. In the event the Parties have failed to reach resolution on the amount owed from the tax revenue San Marcos collected on the Released property in any given year (save and except tax rebates), on or before January 31 of the following year, such failure shall have no impact the Parties course of dealings in the following year.

F. Notice

All notices pursuant to this Agreement will be in writing. All notices, requests, demands and other communication required or permitted under this Agreement will be deemed received by the intended recipient on (a) the Business Day that such notice is sent by telecopy, facsimile, or email to the intended recipient; (b) the first Business Day after such notice is sent by a nationally recognized overnight mail service. All notices will be delivered to the addresses indicated below, unless the party giving any such notice has been notified in writing of a change of such address:

| | |
|-------------|---|
| Martindale: | The City of Martindale Attn: Mayor 409 Main Street Martindale, Texas 78655 |
|-------------|---|

-AND-

PO Box 365
Martindale, Texas 78655

| | |
|-------------|--|
| San Marcos: | The City of San Marcos Attn: City Manager 630 East Hopkins Street San Marcos, Texas 78666 |
|-------------|--|

G. Amendment

38. This Agreement represents the entire understanding between the Parties hereto with respect to the subject matter hereof, and no provision hereof may be amended, modified or waived unless such amendment, modification or waiver is in writing signed by both parties hereto.

H. Non-Waiver.

39. No waiver of any provision of this Agreement will be binding upon a party unless such waiver is expressly set forth in a written instrument which is executed and delivered on behalf of such party by an officer of such party, and in accordance with the "Notice" requirements of this Agreement. Such waiver will be effective only to the extent specifically set forth in such written instrument.

I. Applicable Law, Venue, Causes of Action, and Attorney's Fees:

40. This Agreement, together with the exhibits hereto, and any Claim, controversy, dispute or Proceeding arising out of or related to this Agreement will be governed by and construed in accordance with the laws of the State of Texas. Any Proceeding brought with respect to, arising out of or relating to this Agreement must be brought in the District Courts of Caldwell County, Texas, if San Marcos files suit, and in Hays County, Texas if Martindale files suit, and, by execution and delivery of this Agreement, each party (i) accepts, generally and unconditionally, and irrevocably submits to, the exclusive jurisdiction of such courts and any related appellate courts and irrevocably agrees to be bound by any final and non-appealable judgment rendered thereby in connection with this Agreement and (ii) fully, irrevocably and unconditionally waives any objection or defense it may now or hereafter have as to the venue of any such Proceeding brought in such a court or that such court is an inconvenient forum. Each of the parties further agrees that service of any notice, process, summons or other document to such party's respective address listed herein will be deemed in every respect effective service of process in any such Proceeding. Nothing herein will affect the right of any party to serve process in any other manner permitted by applicable Law.

41. Martindale and San Marcos state, represent, agree, and acknowledge that, in the event either party violates any of the provisions set forth in this Agreement, the other will suffer immediate and irreparable harm, for which there is no adequate remedy at law, which cannot be accurately calculated in monetary damages. Consequently, the non-breaching party may seek immediate temporary injunctive relief to prevent such a violation, and any other legal or equitable relief to which it may be entitled. The Parties agree no party shall be required to post bond in an amount to exceed \$1,000.00, such amount being reasonable, just, and sufficient to

protect the Parties' interests. The Parties acknowledge that the pursuit of one remedy at any time will not be deemed an election of remedies or waiver of the right to pursue any other remedy.

J. Severability

42. Any provision of this Agreement that is found to be illegal, invalid or unenforceable will be ineffective to the extent of such illegality, invalidity or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement illegal, invalid or unenforceable. Upon any such determination that any provision is illegal, invalid or unenforceable, such provision will be interpreted so as to best accomplish the intent of the parties within the limits of applicable Law.

I. Releases

43. In further consideration of the agreements recited above and in consideration of the other agreements described below, the Parties agree as follows:

(a) **Releases:**

- (1) San Marcos, for itself and its present and former officers, council members, managers, directors, employees, servants, parents, subsidiaries and other affiliated companies, predecessors and successors, general partners, attorneys, heirs, executors, and assigns jointly and severally release, acquit and forever discharge Martindale and their present and former officers, council members, managers, directors, employees, servants, parents, subsidiaries and other affiliated companies, predecessors and successors, general partners, attorneys, heirs, executors, and assigns jointly and severally, of and from all claims for damages, whether known or unknown, arising, in any way, out of this Settlement Agreement.
- (2) Martindale, for itself and its present and former officers, council members, managers, directors, employees, servants, parents, subsidiaries and other affiliated companies, predecessors and successors, general partners, attorneys, heirs, executors, and assigns jointly and severally release, acquit and forever discharge San Marcos and their present and former officers, council members, managers, directors, employees, servants, parents, subsidiaries and other affiliated companies, predecessors and successors,

general partners, attorneys, heirs, executors, and assigns jointly and severally, of and from all claims for damages, whether known or unknown, arising, in any way, out of this Settlement Agreement.

- (3) The releases contained in this section are to be construed in the most broad and general manner possible. It is the parties intention that the parties, upon execution of this Agreement will be barred from bringing suit against the other parties to this agreement that relates, in any manner, to this Settlement Agreement.
- (4) The foregoing releases are not intended to apply to any claims arising out of any breach of this Agreement by any party.

H. Representations.

44. The parties represent that:

- (a) they are legally competent to execute this Agreement;
- (b) in choosing to enter into this Agreement, they have made their own investigation of the facts and are relying upon their own knowledge and upon the advice of counsel of their choosing;
- (c) they have not sold, assigned, or otherwise transferred their rights in or to any of the claims they are releasing or forgoing by way of this Agreement;
- (d) they have not been influenced to enter into this Agreement by any oral or written representations or statements made about this matter by any attorney, agent, adjuster, employee or representative of any opposing party;
- (e) they have no expectation that the other party will disclose facts material to this settlement;
- (f) they knowingly waive (i) any claim that this settlement was induced by any misrepresentation or nondisclosure, and (ii) any right to rescind or avoid this settlement based on presently existing facts, known or unknown;
- (g) their representatives have read carefully this Agreement and understand and have advised that this settlement is final and conclusive; and
- (h) they understand and acknowledge that the other party does not warrant or represent any tax consequences of this Agreement, and they agree that they are relying on their own legal and/or tax advisors and not on each other with respect to any tax aspects of this Agreement. The parties agree that any tax or costs, attorneys' fees, penalties, or interest incurred or assessed to them are their sole responsibility.

I. Other Matters

45. The parties agree that:

- (a) the Agreement is made and should be construed under the laws of the State of Texas;
- (b) the Agreement is the complete and final agreement between the parties in regards to the matters referenced herein, and may be modified only by a written agreement, signed by the parties which expressly refers to and purports to modify the Agreement;
- (c) all prior agreements, discussions, and negotiations between the parties or their attorneys are hereby merged into the Agreement;
- (d) in the event that an arbitrator or a court of competent jurisdiction should hold any provision of the Agreement to be void or unenforceable for any reason, the express intent of all parties is that all remaining provisions are severable and should remain in force to the greatest possible degree;
- (e) the terms of the Agreement are contractual and are not mere recitals;
- (f) the Agreement shall become effective immediately upon its execution; and
- (g) The parties agree that a faxed or scanned and emailed copy of the signatures required below shall be treated as if they are originals.

J. Dispute Resoution

46. The Parties agree that:

- (a) They desire to resolve any disputes arising under this Agreement without litigation. Accordingly, if a dispute arises, San Marcos and Martindale agree to attempt in good faith to resolve the dispute between themselves and agree not to sue one another until they have exhausted the procedures set forth in this Section 46.
- (b) At the written request of either party, each party shall promptly appoint one non-lawyer representative to negotiate informally and in good faith to resolute any dispute arising under this Agreement. The representatives appointed shall promptly determine the location, format, frequency, and duration of the negotiations.
- (c) If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to refer the dispute to a mutually agreed upon mediator. Each party agrees to pay half of the mediator's fee.

- (d) . If mediation does not resolve the parties' dispute, the parties may pursue their legal and equitable remedies.
- (e) A party's participation in or the results of any mediation or other non-binding dispute resolution process under this Section 46 shall not be construed as a waiver by party of any rights, privileges, defenses, remedies, or immunities available to a party.
- (f) Nothing shall prevent either party from resorting to judicial proceedings if (a) good faith efforts to resolve a dispute under these procedures have been unsuccessful, or (b) interim resort to a court is necessary to prevent serious and irreparable injury to a party or to others.

(Signature Pages Follow)

APPROVED AS TO FORM & SUBSTANCE:

The City of Martindale.

By: _____

Date: _____

Title: _____

By: _____

Date: _____

Title: _____

Subscribed and sworn to before me by _____ and
_____ on the _____ day of _____,
2019.

Notary Public, State of Texas

The City of San Marcos

By: _____

Date: _____

Title: _____

By: _____

Date: _____

Title: _____

Subscribed and sworn to before me by _____ and
_____ on the _____ day of _____,
2019.

Notary Public, State of Texas

APPROVED AS TO FORM ONLY:

THE WYMORE LAW FIRM, PLLC

/s./ Kent E. Wymore IV

Kent E. Wymore IV

State Bar No. 24075315

1250 Capital of Texas Highway South

Building Three, Suite 400

Austin, Texas 78746

Tel: (512) 346-3600

Fax: (866) 211-4235

kent@thewymorelawfirm.com

ATTORNEY FOR MARTINDALE