

**RESOLUTION NO. 2019-21R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING AN AMENDMENT TO THE CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH URBAN MINING COMPANY AND URBAN MINING DEVELOPMENT LLC THAT EXTENDS THE DATE BY WHICH THE COMPANY SHALL BEGIN CONSTRUCTION OF ITS FACILITIES, PROVIDES FOR THE COMPANY TO DEDICATE LAND TO THE CITY FOR THE RATTLER ELECTRIC SUBSTATION AND PROVIDES FOR OFFSETS AGAINST ANY GRANT PAYMENTS DUE FOR ANY UNPAID AMOUNTS UNDER A CONTRIBUTION IN AID OF CONSTRUCTION AGREEMENT RELATED TO THE CONSTRUCTION OF SAID SUBSTATION; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AMENDMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.**

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

**PART 1.** The attached Amendment to Chapter 380 Economic Development Incentive Agreement with Urban Mining Company and Urban Mining Development, LLC (the "Amendment") is hereby approved.

**PART 2.** The City Manager is authorized to execute the Amendment on behalf of the City.

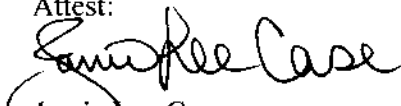
**PART 3.** This resolution shall be in full force and effect from and after its passage.

**ADOPTED** on January 29, 2019.



Jane Hughson  
Mayor

Attest:



Jamie Lee Case  
City Clerk

## AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This First Amendment to Chapter 380 Economic Development Incentive Agreement (the “First Amendment”) is entered into effective January 29, 2019 (the “Effective Date”) between (i) the City of San Marcos, Texas (the “City”), a Texas municipal corporation, and (ii) Urban Mining Company, a Delaware Corporation which is duly registered to do business in the State of Texas (“Company”) and Urban Mining Development, LLC, a Delaware limited liability company (“UMC Development”). Company and UMC Development may also be collectively referred to herein as the “Developers.” The City and Developers may also be referred to collectively as the “Parties.”

1. This First Amendment amends that certain Chapter 380 Economic Development Incentive Agreement between the Parties dated April 18, 2017 (the “380 Agreement”) as set forth below.

a. Section 3.01 is amended to read as follows:

**Section 3.01. Operation of Business.** Company shall begin operation of the Business on the Project Site after January 1, 2017, but before December 21, 2019, and shall continuously operate, maintain and manage the Business for the duration of the Term. The Company further agrees to commence the initial construction necessary for the commencement of the operation of the Business on the Project Site prior to September 30, 2018, and thereafter diligently pursue completion of such construction.

b. Article III, Company’s Obligations, is amended by adding a new Section 3.04 to read as follows:

**Section 3.04. Dedication of Land.** Company shall dedicate approximately 2.4 acres of land, more or less, to the City, as shown in Exhibit F, for the construction and operation of an electric service substation to serve Urban Mining Company on the Project Site, and future development on the ETJ Land. The dedication of land under this section shall be in accordance with the specific terms related to the dedication of land for the substation under that certain Contribution in Aid of Construction Agreement between the Parties of even date herewith.

c. Section 10.06 Offset and Overpayments, is amended to read as follows:

**Section 10.06 Offset and Overpayments.** The City may deduct from any Grant Payments, as an offset, any verified overpayments to Company, delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City by Company; provided that before offsetting any amounts the City must provide Company with (a) advance notice of such offset; (b) 60 days to take action to remedy the situation giving rise to the offset; and (c) reasonable opportunity, at its own expense, to contest such offset. Notwithstanding the foregoing, without providing advance notice, an opportunity to remedy or a right to contest the deduction under subsections (a), (b) and (c), the City may automatically deduct from any Grant Payments and all amounts due to the City under that certain Contribution in Aid of Construction Agreement (the "CIAC") under which the City is providing financial incentives to Developers for the extension of electric service to the Land. It is understood and agreed by Developers that such amounts under the CIAC subject to automatic

deduction include the amount of \$285,000.00 due under Section 5.01 of the CIAC and the Incentive Repayment in the amount of \$641,422.31 due under Section 5.03 of the CIAC. Any funds deducted from a Grant Payment related to the CIAC shall be applied toward reimbursement of funds expended by the City's Electric Utility Department.

**d.** Exhibit F, Conceptual Master Plan, is replaced by the amended Exhibit F attached to this First Amendment and incorporated herein for all purposes.

**2.** All other terms and conditions of the 380 Agreement shall remain in full force and effect.

**3.** This First Amendment may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument, and facsimile or electronic (in PDF) copies of this Agreement and facsimile or electronic (in PDF) signatures to this Agreement shall be authorized and deemed effective.

EXECUTED to be effective as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGES]

**CITY OF SAN MARCOS, TEXAS:**

By:   
Bert Lumbreras, City Manager

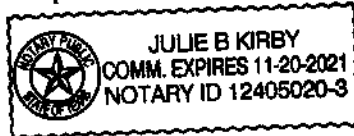
**ACKNOWLEDGEMENT**

THE STATE OF TEXAS     §

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COUNTY OF HAYS         §

This instrument was acknowledged before me on this the 1<sup>ST</sup> day of FEBRUARY, <sup>2019</sup>~~2018~~,  
by Bert Lumbreras, City Manager of the City of San Marcos, Texas in such capacity, on behalf of  
the said municipal corporation.



  
Notary Public, State of Texas

**URBAN MINING COMPANY:**

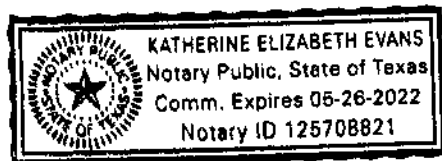
By:   
Scott Dunn, CEO

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on this the 31<sup>st</sup> day of January, ~~2018~~, <sup>2019</sup>  
by Scott Dunn, CEO of Urban Mining Company, a Delaware corporation, in such capacity, on  
behalf of the said corporation.

  
Notary Public, State of Texas



**URBAN MINING DEVELOPMENT, LLC:**

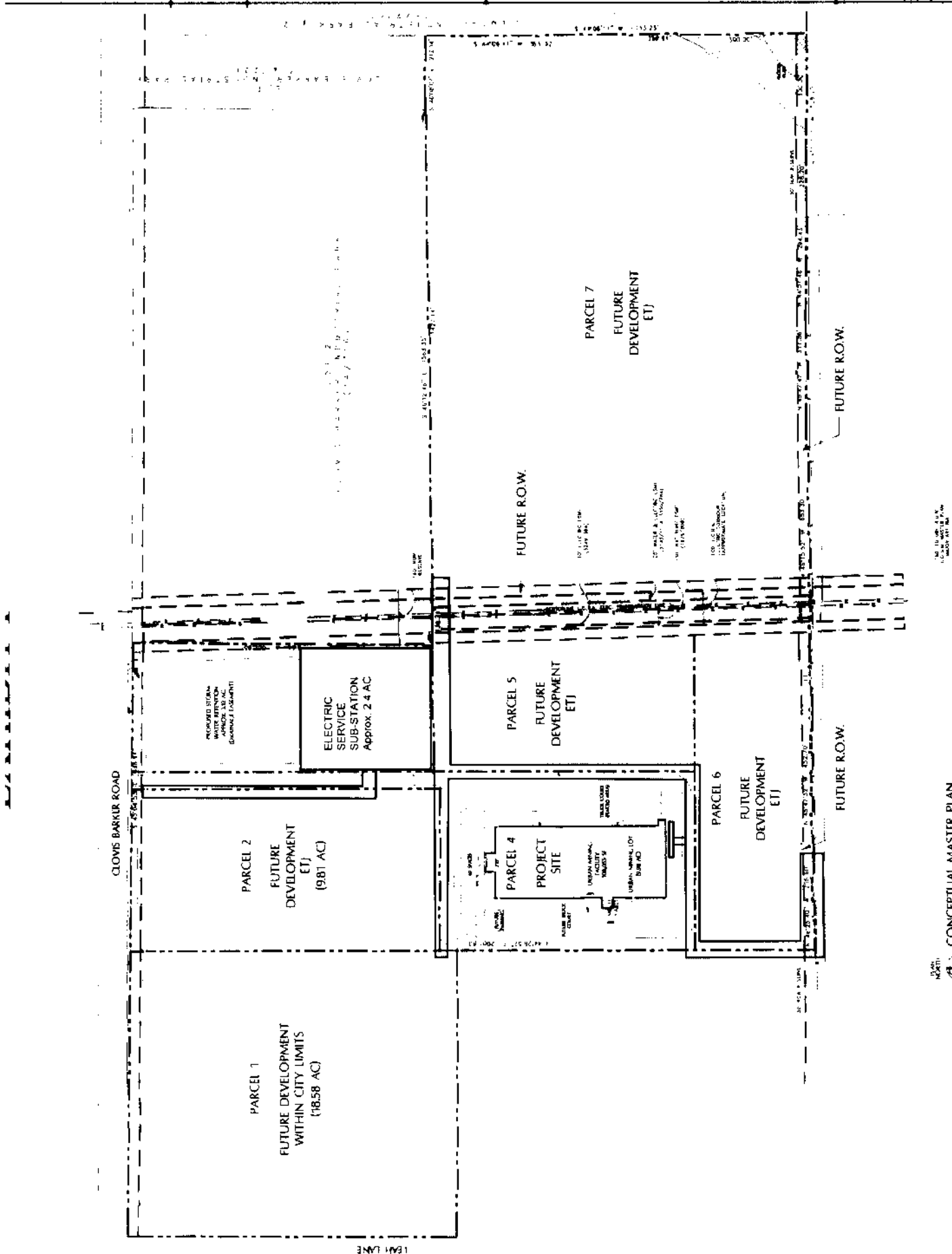
By: [Signature]  
Name: SCOTT DUNN  
Title: MANAGER

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

~~2018~~ <sup>2019</sup> This instrument was acknowledged before me on this the 31<sup>st</sup> day of JANUARY,  
~~2018~~, by SCOTT DUNN, \_\_\_\_\_ of Urban Mining Development,  
LLC, a Delaware limited liability company, in such capacity, on behalf of the said entity.

[Signature]  
Notary Public, State of TEXAS



CONCEPTUAL MASTER PLAN