

REQUEST FOR PROPOSALS

Request for Proposal (“RFP”)
No: 758-24-00089
For a Hotel Developer

ALL PROPOSALS MUST BE RECEIVED
NO LATER THAN **2:30 p.m. CT**

Initial Submission Deadline:
January 23, 2024

Final Submission Deadline:
April 12, 2024

Procurement Contact:
Jenn DeLeon
The Texas State University System
Jennifer.DeLeon@tsus.edu

TEXAS STATE UNIVERSITY®

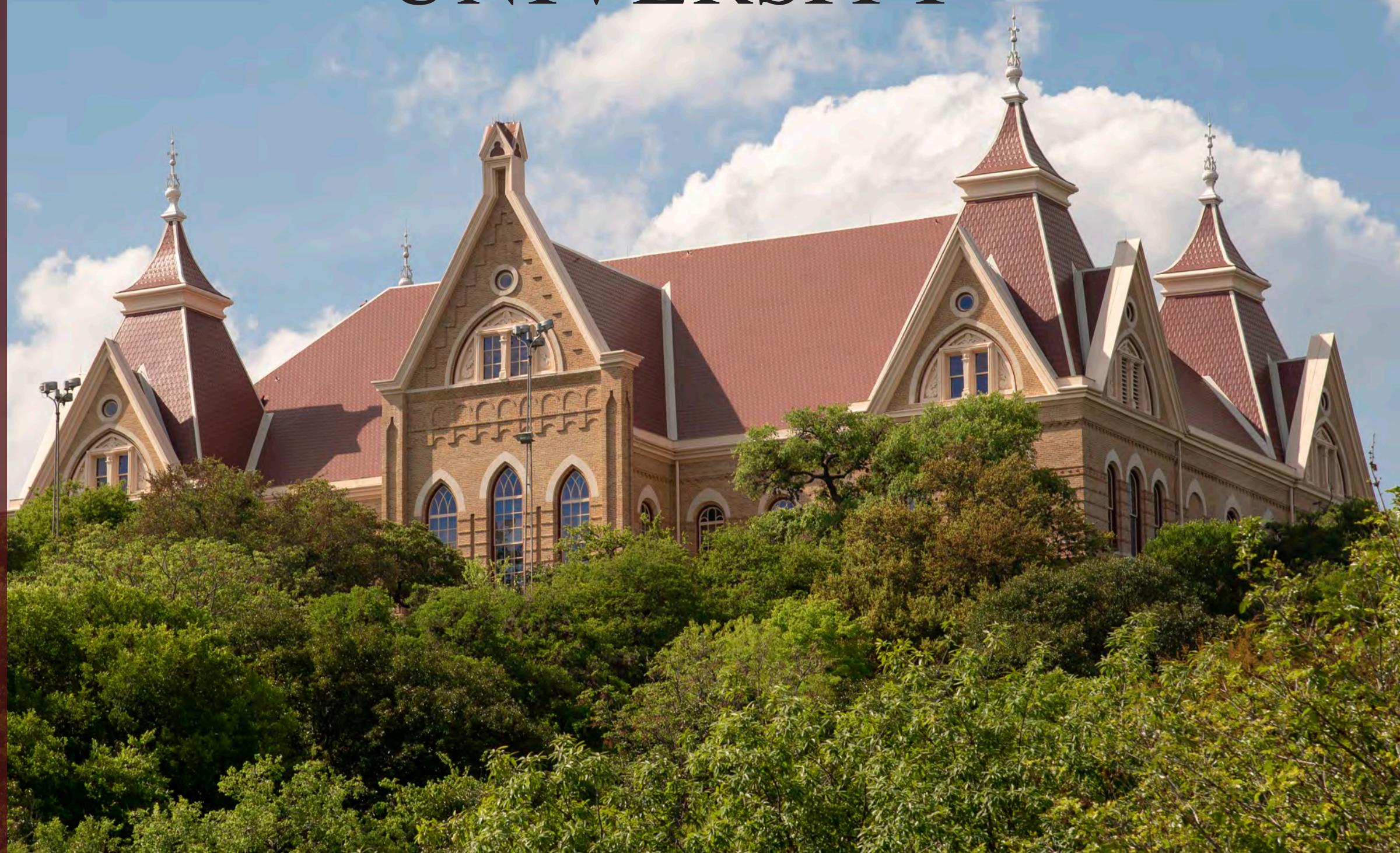


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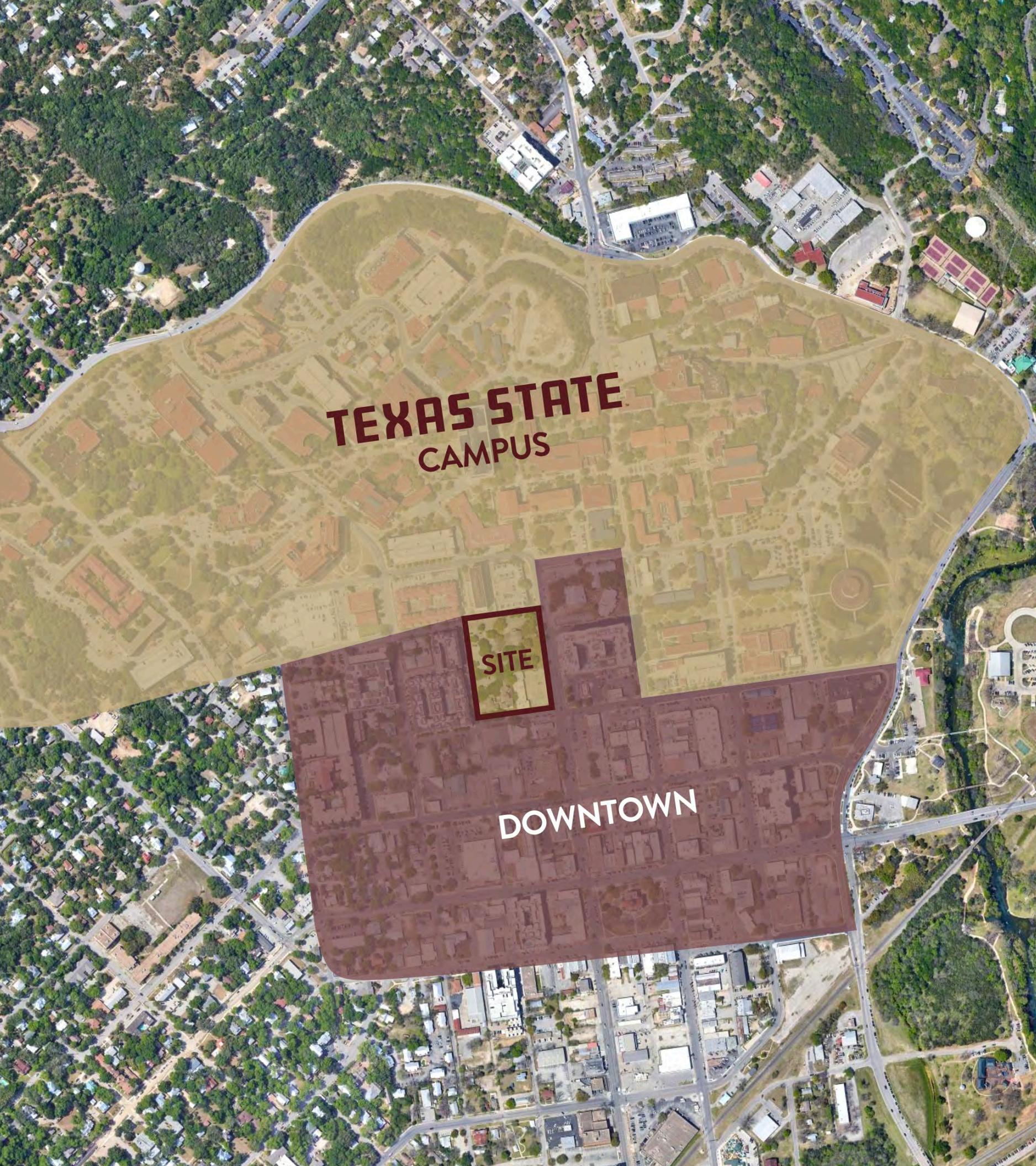
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1.1 OPPORTUNITY OVERVIEW

The Texas State University System (“The System”), on behalf of Texas State University (“the University”) is seeking proposals from qualified development teams (“Developer”) to design, finance, construct, operate, and maintain an approximate 150 to 250 room full-service hotel (the “Project”) on property owned by the University and located at 429 N. Guadalupe Street (“Project Site”) in San Marcos, Texas. The Project Site is approximately 3 acres along N. Guadalupe Street, the current location of the Richard A. Castro Undergraduate Admissions Center at the southern gateway of the Texas State University Campus. The Project Site is ideally situated near major demand drivers, including the University Campus, Downtown San Marcos, and the San Marcos River. The City of San Marcos is highly supportive of the Project and has expressed willingness to provide economic incentives to achieve a successful Project. The University will work with the successful Developer to pursue economic incentives for the Project through the City of San Marcos and Hays County, as appropriate. Moreover, the University itself is open to incentives for the appropriate project.

The University intends to execute a long-term ground lease of the Project Site with a Developer to generate revenue and bring a quality, full-service hotel to the community. Firms that respond to this RFP will be referred to as “Proposers.”

OPPORTUNITY AT A GLANCE

1.2 THE SYSTEM OVERVIEW

The Texas State University System, founded in 1911, is the first higher education system established in Texas. Beginning as an administrative means to consolidate the support and management of state teacher colleges, The System has evolved into a network of higher education institutions stretching from the Texas–Louisiana border to the Big Bend region of West Texas. Throughout The System, faculty and staff are preparing students to work in and contribute to our global society.

The System includes the system administration office (TSUS Administration) and seven (7) Member Institutions (Member Institutions) that offer a broad range of academic and career opportunities:

- TSUS Administration
- Lamar University
- Sam Houston State University
- Sul Ross State University
- Texas State University
- Lamar Institute of Technology
- Lamar State College Orange
- Lamar State College Port Arthur

The Texas State University System is governed by a nine-member Board of Regents appointed by the governor. In addition, a nonvoting student regent is appointed annually to the board. TSUS Administration, which is led by a board-appointed chancellor, is based in Austin, where it provides support to the Member Institutions and state government.





1.3 UNIVERSITY OVERVIEW

Texas State University, commonly known as Texas State, is a public research university located in San Marcos, Texas. Established in 1899, it is one of the largest universities in the state and is part of The Texas State University System. The University offers a wide range of undergraduate and graduate degree programs across various disciplines.

The University is strategically situated in the heart of San Marcos, ideally located on the I-35 corridor just 30 miles south of Austin and 40 miles north of San Antonio, two of the fastest-growing MSAs in the United States and the fastest-growing region in Texas. This prime location positions the University as an attractive educational institution for students seeking a dynamic environment with access to major metropolitan areas. With its central location, the University serves as an important center of academic and cultural activity in the region. It contributes to the local economy and fosters collaboration with businesses, organizations, and industries in San Marcos and its surrounding areas.

The University's main campus spans over 457 acres along the banks of the San Marcos River, providing a picturesque setting for learning and recreational activities. Nestled amidst the scenic Texas Hill Country, the campus itself blends modern architecture with historic buildings, preserving the University's rich heritage.



OPPORTUNITY AT A GLANCE

1.4 PROJECT OBJECTIVES

The intent of the Project is to deliver a high-quality, full-service hotel development that will add value to the University and San Marcos communities while generating a long-term revenue stream for the University through ground rent.

a. **The Project seeks to:**

1. Offer quality on-campus lodging for visitors and guests of the University at a premier location within walking distance of Downtown San Marcos
2. Elevate the University stature and on-campus experience
3. Create proximate amenities for students, faculty, staff, parents, and community members
4. Generate a revenue stream for the University that can be used on an ongoing basis to fund the University's core mission
5. Continue the growth of economic development in San Marcos

b. **The University seeks for the Project to include:**

1. A minimum of 150 rooms
2. At least one food & beverage outlet
3. Community gathering space (there is no minimum requirement on meeting and function space)
4. An upper-upscale hotel product, with brand-affiliated, soft-branded, and non-brand affiliated being considered
5. Typical amenities associated with the scale and size of the hotel
6. A hotel design and aesthetic that is complementary of the University campus and wholly consistent with the University branding, including the incorporation of colors, logos, and campus visions and memorabilia, and potentially the sale of University-branded items in the hotel store. The University intends to work with the selected Developer to mutually define and determine the appropriate relationship between the physical aspects of the Project and the University.





1.5 UNIVERSITY DEMAND

Direct University Demand

Each year, the University spends approximately \$1.4 million in local hotels within a 20-mile radius of the campus to house visitors, and prospective students and faculty. In addition to the approximately 9,500 room nights that the University directly pays for in the San Marcos area annually, the following University events consistently generate a significant influx of overnight visitors.

Graduation

4,675 students graduate from the University every year. This typically attracts between 9,000 – 18,000 family members and guests to the city of San Marcos at the end of every academic year. Hotel rooms are likely to sell out on graduation dates.

Bobcat Days

There are 4 Bobcat Visit days each year (2 in the Fall and 2 in the Spring). On average, 12,375 students and family members per year travel to San Marcos to tour campus. The largest county of the University's enrolled students is 3 hours away (Harris County), so most families travel the day before to attend Bobcat Day on Saturday.

Alumni Gala

An annual Distinguished Alumni Gala invites University alumni to gather for a dinner and celebration on a Friday evening on campus. The event takes place each year in late October. Guests typically stay overnight and through the weekend.

Daily Tours & Spring Break Tours

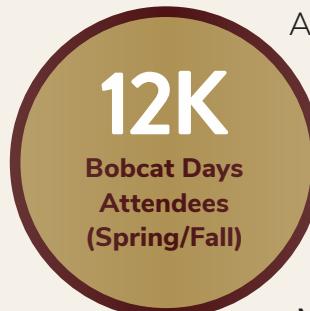
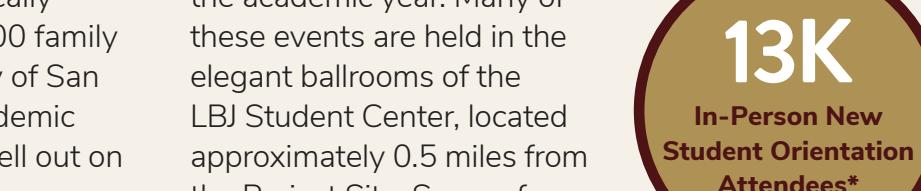
The Alumni and Future Student Welcome Center hosts 2-4 tours every day. In 2021, 35,000 people (students with families and guests) visited the University campus for a tour. During Spring Break Tours held in March, 1300-1500 visitors tour campus every week. These families will usually arrive early and stay overnight.

Conferences

The University hosts several State and Regional conferences throughout the academic year. Many of these events are held in the elegant ballrooms of the LBJ Student Center, located approximately 0.5 miles from the Project Site. Some of the organizations include the Texas Association of Collegiate Registrars and Admissions (TACRAO) and the Texas Association for College Admission Counseling (TACAC). Each organization's event is typically 3-4 nights and attracts upwards of 700+ attendees. TACRAO takes place in November and TACAC is in April.

Meetings and Symposiums

The University hosts a variety of peer university leaders, interdepartmental meetings and symposiums, all which frequently need hotel accommodation.



Athletic Events

Athletic events at the University attract students, families and alumni to San Marcos. In the last two years, football and baseball attendance were the highest in the previous five-year period and single game crowds filled stadiums above 90% capacity. Football games attracted the most visitors in late September / early October.

New Student Orientation (NSO)

NSO spans June, July, and August and consists of two 2-day sessions per week, plus six 1-day sessions for transfers.

Families attending with future Bobcats typically require at least one overnight stay during their visit. Around 8,000 freshmen attended the in-person NSO in 2022, while an additional 5,000+ non-first-year students signed up to attend. Parents and guests had a total of 4,856 check-ins in 2022, compared to 4,763 in 2019 and 4,515 in 2018.

Counselor Showcase

High School counselors travel to the University to tour campus and familiarize themselves with programs offered by the University and share this information with prospective students. In 2019, 40 rooms were requested to accommodate a group of 80-100 counselors.

* June, July & Aug 2022

OPPORTUNITY AT A GLANCE

1.6 SAN MARCOS MARKET OVERVIEW

As described by the Greater San Marcos Partnership, "Located at the gateway to the Texas Hill Country, San Marcos was recognized as the fastest growing city in the U.S. from 2013 to 2015. It is midway between the two major metros of San Antonio and Austin. The spring-fed San Marcos River provides a refreshing playground for swimming, canoeing, tubing, and glass bottom boat rides at the Aquarena Center. San Marcos is the seat of Hays County and is home to Texas State University, the seventh-largest university in Texas and an Emerging Research University with more than 38,000 students. San Marcos also claims the most parkland per capita of any city in the Austin-Round Rock MSA. San Marcos attracts millions of domestic and international visitors to its outlet malls and is home to brand-name companies like Amazon, Best Buy, H-E-B and a host of innovative start-ups."



Texas State University



San Marcos River / Springs
1 miles



Hill Country Studios
2 miles



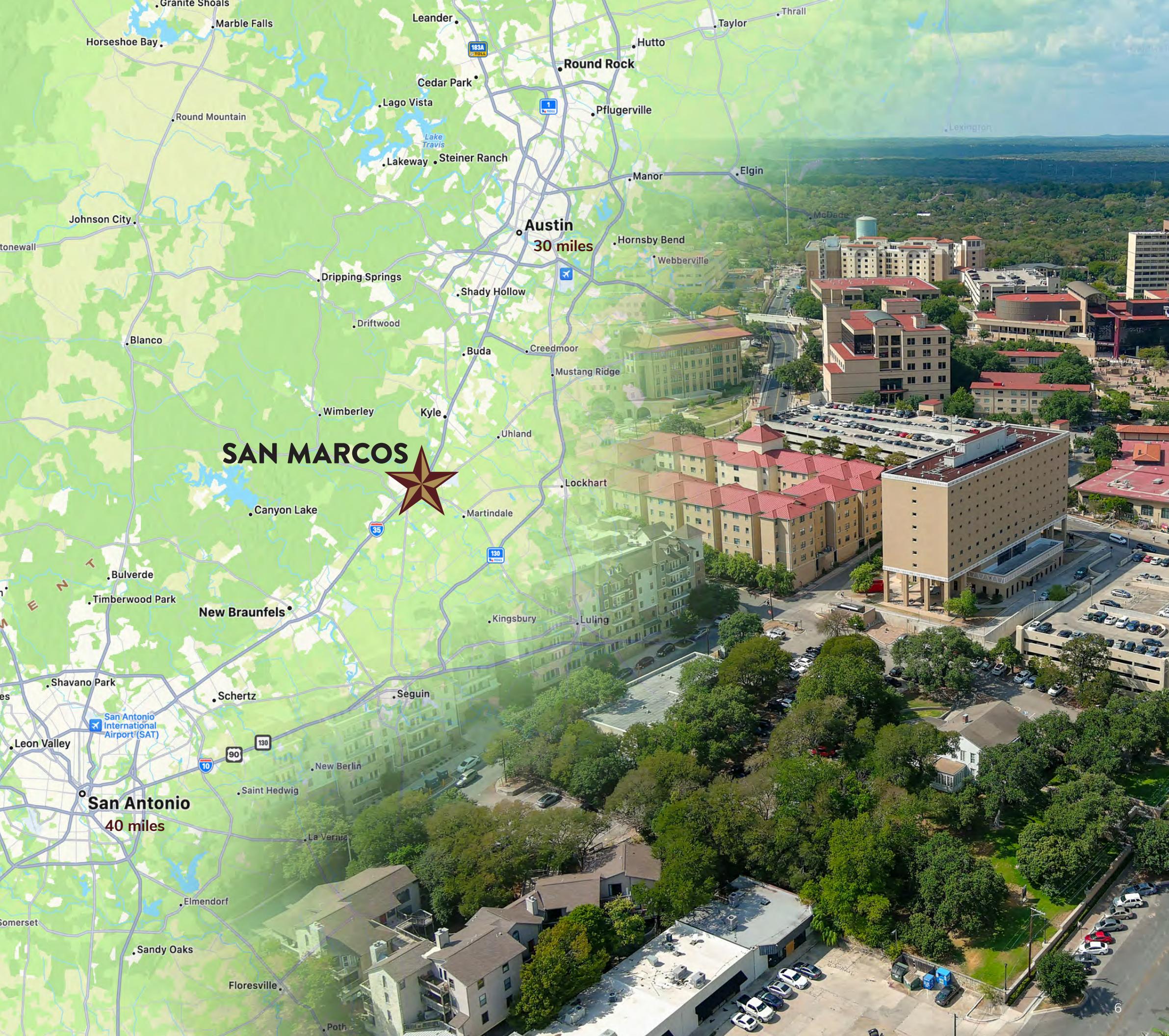
Canyon Lake / Highland Lakes
25 miles / 50 miles



Circuit of the Americas
30 miles



Texas Hill Country
40 miles



OPPORTUNITY AT A GLANCE

Population Growth

San Marcos is consistently ranked as one of the fastest-growing cities in the U.S., and the Greater San Marcos Region is one of the fastest-growing areas in the country. In the most recent census data (2020), the U.S. Census Bureau ranks Hays County as the fastest-growing county in Texas and as the fastest-growing county in the nation among counties with 100,000+ residents. San Marcos specifically grew from 44,894 residents in 2010 to 67,553 in 2020.

Economic Growth

The city's retail sector has grown significantly due to the presence of popular shopping centers like the San Marcos Premium Outlets, attracting approximately 14 million annual domestic and international tourists and shoppers. Additionally, San Marcos has become a hub for e-commerce fulfillment centers due to its strategic location along the I-35 corridor between Austin and San Antonio. With the nearby San Marcos River and state park offerings, opportunities for outdoor activities such as kayaking, hiking, and swimming have contributed to the steady growth of San Marcos' tourism and recreation industries.

Texas State University

San Marcos is home to Texas State University, which has played a significant role in the city's growth. The University has witnessed consistent enrollment growth, leading to increased demand for housing and services in the area. Moreover, Texas State University is one of the largest employers in the region. Texas State recorded an overall enrollment of 38,873 in Fall 2023, setting a record for the largest number of new undergraduate and graduate students (11,752 students). Altogether, new student enrollment has exceeded 11,000 for the third consecutive year.



Development Activity

With the city's population growth, optimal position located equidistance between two major metro centers, and increasing demand for housing, there has been a surge in residential and commercial development. Many new apartment complexes, single-family homes, and mixed-use developments have been constructed to cater to the growing population. Additionally, San Marcos has seen an influx of commercial development including:

- **Hill Country Studios:** Adjacent to the La Cima development will be the 820,000-square foot movie studio facility, Hill Country Studios, which will include stages, workshops, offices, support spaces, and retail space for public use spanning across 200 acres. Construction on the approximately \$267 million project began in April 2023 and will be conducted in three phases, with an anticipated completion date set for August 2025. Hill Country Studios is expected to bring 44 full-time employees to San Marcos and employ up to 1,400 additional contract workers.
- **AXIS Logistics Industrial Park:** Formerly known as SMART Terminal, Scarborough Lane Development and Partners Real Estate are delivering one of the largest master-planned industrial parks in the nation, currently offering 735 acres of industrial zoned property in the City of San Marcos. Strategically located for access to Loop 110, IH-35, I- 10, and SH-130, the site seeks to offer logistics solutions for industrial tenants, both national and international.
- **Great Springs Project:** Within minutes of the Project Site lie the San Marcos Springs, the second largest natural cluster of springs in Texas, and a critical outflow of the Edwards Aquifer. In the heart of Texas, the Great Springs Project is working to create a greenway of protected lands between Austin and San Antonio over the Edwards Aquifer recharge zone. This green corridor will be connected by a network of spring-to-spring trails, linking the four iconic springs of Central Texas: Barton Springs, San Marcos Springs, Comal Springs, and San Antonio Springs. The Great Springs Project works to unify existing local efforts to address the most critical water, land, wildlife, and public health challenges facing the Central Texas region.

Job Outlook

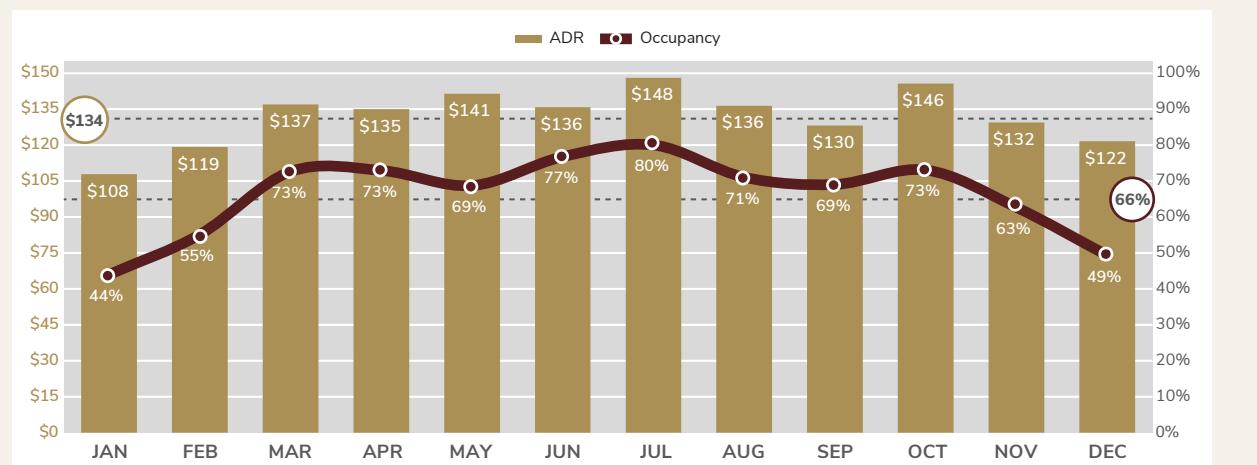
San Marcos has experienced a rise in job opportunities due to its location within the Texas Innovation Corridor. The Texas Innovation Corridor includes the four counties between Austin and San Antonio: Hays, Caldwell, Comal and Guadalupe. Hays and Caldwell Counties are regarded as "the heart" of the Texas Innovation Corridor, and the City of San Marcos continues to attract companies from various industries, including retail, manufacturing, technology, and healthcare. Additionally, the availability of a skilled workforce in the area, combined with lower operational costs compared to larger neighboring cities, has contributed to this job growth and resulted in more than 40% increase in jobs in Hays County between 2010 and 2020.



OPPORTUNITY AT A GLANCE

1.7 HOSPITALITY MARKET OVERVIEW

San Marcos/Austin Surrounding Area Submarket is one of Austin's smaller submarkets and contains approximately 4,600 hotel rooms spread between 79 properties. Within the submarket, Revenue Per Available Room (RevPAR) saw a climb to \$88.91 in 2022, while the Average Daily Rate (ADR) approached \$140. In total, the area saw an increase to \$31.6M in revenue in 2022, an increase of \$5.5M from 2021 and pre-COVID averages. With occupancy reaching 66.2% in 2022 and trending back toward the pre-pandemic peak, prospective developers can anticipate potential occupancy between the upper 60- and lower-70 percent range. The hotel market leader in San Marcos enjoys annual occupancy over 70% with an average daily room rate that exceeds \$150.



Parks, Attractions, & Points of Interest

- 1 Performing Arts Center
- 2 "The Square" Downtown
- 3 Lyndon B. Johnson (LBJ) Museum
- 4 Lyndon B. Johnson (LBJ) Student Center
- 5 University Halls
- 6 "The Quad" Student Plaza
- 7 Performing Arts Center
- 8 Texas State University Police

Restaurants, Bars, & Cafes

- 9 Café on the Square The Coffee Bar
- 10 The Root Cellar Café
- 11 Santi's Tacos
- 12 Taco Bell
- 13 Chipotle, Italian Garden
- 14 Torchy's Tacos
- 15 Jack in the Box
- 16 Subway, Bakery
- 17 CRAFTHouse Kitchen + Tap
- 18 Jones Dining Center (Panda Express, Dunkin, Sushi)

Retail, Fitness & Wellness

- 19 CVS
- 20 Target
- 21 University Square Mall
- 22 Churches
- 23 Mosque
- 24 H-E-B
- 25 Nelson Shopping Center
- 26 Greater Texas Credit Union
- 27 San Marcos Athletic Club



OPPORTUNITY AT A GLANCE

1.8 SITE CONTEXT / OVERVIEW

The Project Site is approximately 3 acres and located on the southern edge of the University campus, centered between N. Guadalupe Street and N. Fredericksburg Street. Adjacent to student and multifamily housing and retail, including Aspire San Marcos and Target, the Project Site is within short walking distance to both the center of campus and San Marcos' Downtown Square. Apart from being an epicenter for students and the local community activity, San Marcos' Downtown Square is home to many locally owned shops, restaurants, bistros, venues, and nightspots. The Project Site is also within minutes from the LBJ Student Center which hosts year-round events, Strahan Arena at the University Events Center, the Performing Arts Center, Bobcat Ballpark and Softball Stadium, Bobcat Stadium, and the popular San Marcos River.

Entitlements and Permitting

Under Texas law, land owned by The System is not subject to municipal zoning regulations. Accordingly, Proposers should assume that the Project will be exempt from applicable municipal or county land use codes and zoning regulations. No entitlement changes will be required, however, to the extent that any component of the Project may be serviced by municipal utilities or emergency response services, local ordinances and regulations applicable to those services may apply. Proposers should assume a typical commercial permitting processes for building occupancy.

Utilities

The site is served by municipal utilities. Developer will be responsible for coordinating all utility work with the appropriate parties.

Parking

Parking requirements will follow the municipal code. The University owns the adjacent Towers Garage (258 spaces) and nearby Edward Gary Garage (511 spaces), and is willing to lease parking spaces to the Developer through a parking agreement to offset onsite parking construction requirements.



OPPORTUNITY AT A GLANCE

1.8 SITE CONTEXT / OVERVIEW CONTINUED

Potential Site Expansion

The System also owns the adjacent strip center located at 407 N Guadalupe Street and would consider incorporating the land into the Project Site, if the Proposer articulates a compelling reason to expand the development footprint. There is one active lease in the shopping center and the Developer and University would need to work collaboratively with the tenant on a relocation solution.

Design Aesthetic

The University campus, settled amongst the elevations of the Texas Hill Country, incorporates both contemporary, modern, and traditional architectural styles and designs. For example, Old Main, a historic building on campus, showcases a striking Victorian Gothic style and serves as a symbol of the University's rich history. The LBJ Student Center, named after President Lyndon B. Johnson, features a modern design with unique patterns, open atriums, and a mix of glass and stone elements. Given the adjacency of the Project Site to the University's campus, the University envisions a development that harmoniously integrates with the surrounding natural landscapes and the University Campus. While the University does not have design or construction guidelines for the Project, the preferred design aesthetic is one that complements but does not attempt to replicate the campus design and is reflective of a high-quality commercial hotel.



OPPORTUNITY AT A GLANCE

1.9 SOLICITATION AND TRANSACTION OVERVIEW

1.9.1 Solicitation Overview

This RFP is the sole solicitation vehicle through which The System intends to select a Developer for the Project and with whom the University may negotiate and enter into agreements for the ground lease, financing, planning, development, and operation of the Project.

Proposers must submit an Initial Proposal which will focus on the Proposer's qualifications and approach to the Project. The System will evaluate and score the Initial Proposals to determine a shortlist of Proposers ("Shortlisted Proposers") who will be invited to submit a Final Proposal that will focus on the technical components of the Project, including program, design and Project financing plan. The Shortlisted Proposers will be invited to participate in a design charette session and term sheet work session prior to the Final Submission Due Date.

At the conclusion of the RFP process, The System intends to select a Developer for the Project based on the Final Proposals. It is the intent of The System to award a contract to the responsible, responsive Proposer that submits a proposal meeting the minimum criteria set forth herein, and that represents the best value to The System. Representatives from third-party vendors or other outside entities that are currently contract holders with The System ("External Representatives") may have access to Proposer's submitted proposals and other relevant materials to assist The System in conducting its review.

The System makes no guarantee that an award will be made because of this RFP. The System reserves the right to accept or reject any or all proposals, waive any formalities or minor technical inconsistencies and delete any requirement or specification from this RFP when deemed to be in The System's best interest. The System reserves the right to seek clarification of any item contained in Proposer's proposal prior to final selection. Such clarification may be provided by telephone or personal meetings with or in writing to The System, at The System's discretion. Representations made by Proposer within its proposal will be binding on Proposer. The System will not be bound to act by any previous communication or response submitted by Proposer, other than this RFP.

1.9.2 Transaction Overview

The University anticipates executing a long-term, unsubordinated Ground Lease with the awarded Developer. The Ground Lease will govern the Developer's responsibilities to design, entitle, develop, construct, finance, lease, operate and maintain the Project. Ownership of the improvements will revert to The System at the expiration of the Ground Lease.

Execution of a Ground Lease and related definitive agreements will depend upon the outcome of the parties' ability to successfully negotiate mutually agreeable terms consistent with the Project Objectives, and material terms contained in this RFP. The System expects the final terms of the definitive agreements to be fully consistent with this RFP and the material terms and considerations presented in the selected Proposal.

Any contract shall be governed, construed, and interpreted under the laws of the State of Texas, and The System Administration policy as the same may be amended from time to time. Any legal actions must be filed in Travis County, Austin, Texas.

1.9.3 University Role

The University will maintain several primary roles in the Project, which are highlighted below. A comprehensive set of roles and responsibilities will be provided in the Project's ground lease:

Landowner / Ground Lessor

The University will act as the ground lessor for the Project and as a steward for its land and any improvements built thereon.

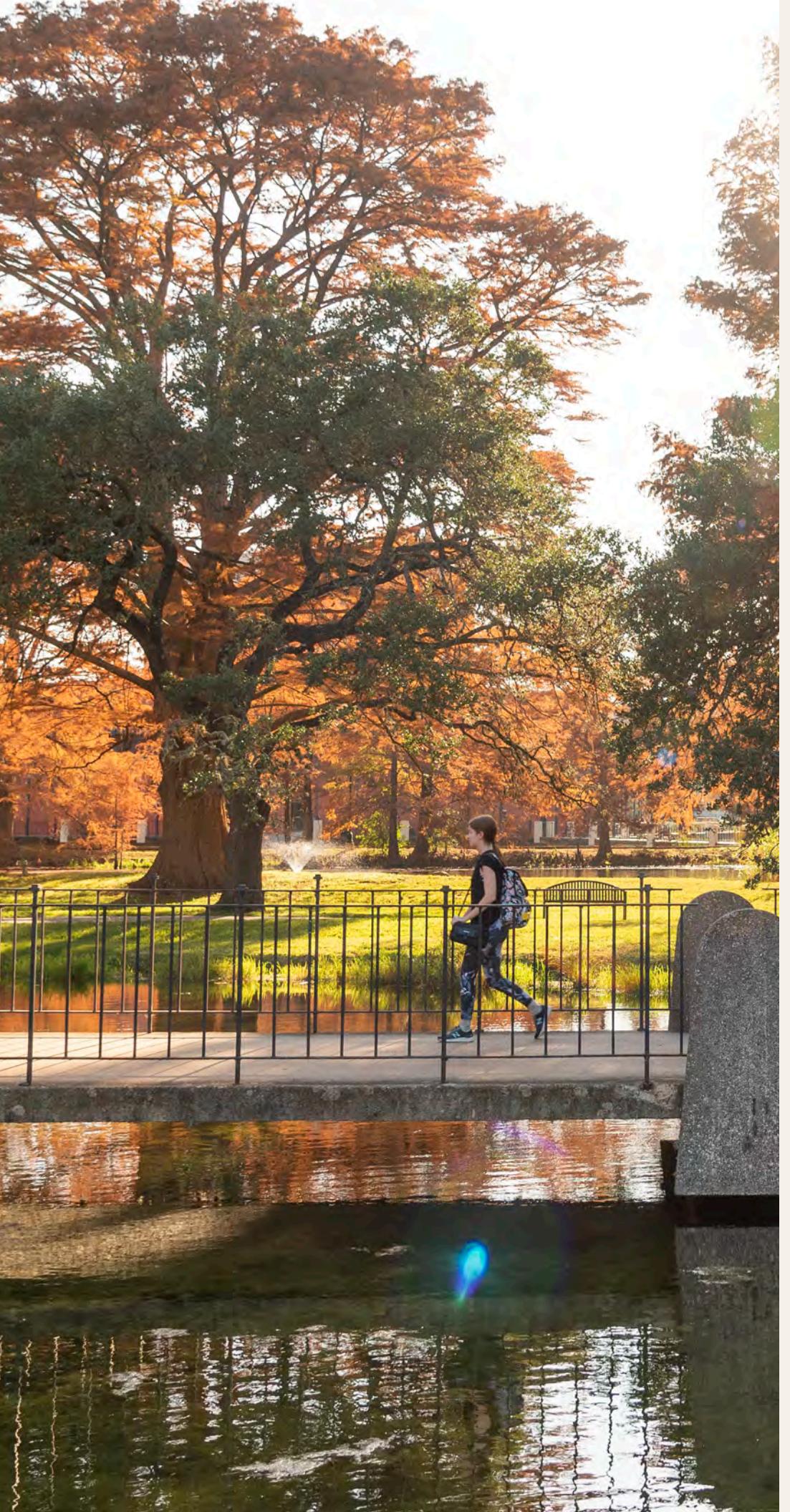
Stakeholders and Collaborators

The University community and professionals will be the key stakeholders in planning, scheduling, and coordination of the Project.

Design Review

The University will provide guidance and consultations to the selected Developer and Project to meet all applicable standards.





1.9.4 Developer Role

The University anticipates that the general scope of the Developer's responsibilities will be as follows:

Design

The Developer will be responsible for the design of the Project.

Construction

The Developer will be solely responsible for the construction of the Project, including site make-ready work as well as turnkey construction, test-out, and commissioning of the Project. The University will have no responsibility for any costs of the Project and shall not be liable for any cost overruns or delays.

Permits/Approvals

The Developer will be responsible for obtaining all permits and approvals necessary for construction, use, and occupancy of the Project through the City of San Marcos, Hays County, State of Texas or any other agency having authority or requiring licenses.

Security

During construction and operations, the Developer will be responsible for worksite security and for control, protection, and public safety of pedestrians and traffic within or around any construction zone associated with the Project, including any staging or material/equipment lay-down areas.

Finance

The Developer will be responsible for securing the financing necessary for the Project, including all required debt, equity, and liquidity.

Operations and Maintenance

The Developer will be responsible for all operations and maintenance activities for the Project, including payment of all operating expenses such as utilities, insurance, and taxes (or any type of payments in lieu of taxes paid to a taxing entity). The Developer will be responsible for maintaining and updating the Project, consistent with industry accepted operating standards for similar projects throughout the life of the lease term.

Limitation on Liability and Indemnity

The Developer will agree to release and indemnify The System and the University from any liability relating to its construction, operation, and maintenance of the Project.

For clarity, the Developer will be responsible for all the following at their expense:

- Conducting all site due diligence such as obtaining site surveys, appraisals, environmental studies, geotechnical assessments, and any other required studies.
- Planning the site in accordance with the project goals and objectives as stated in this RFP.
- Ingress and egress, including all coordination with the Texas Department of Transportation ("TxDOT"), the City of San Marcos, and the University Operations Division.
- Constructing and financing all required offsite improvements including connections to all utilities.
- Maintaining and operating the Project Site.

2.0

2.1 SOLICITATION ACCESS

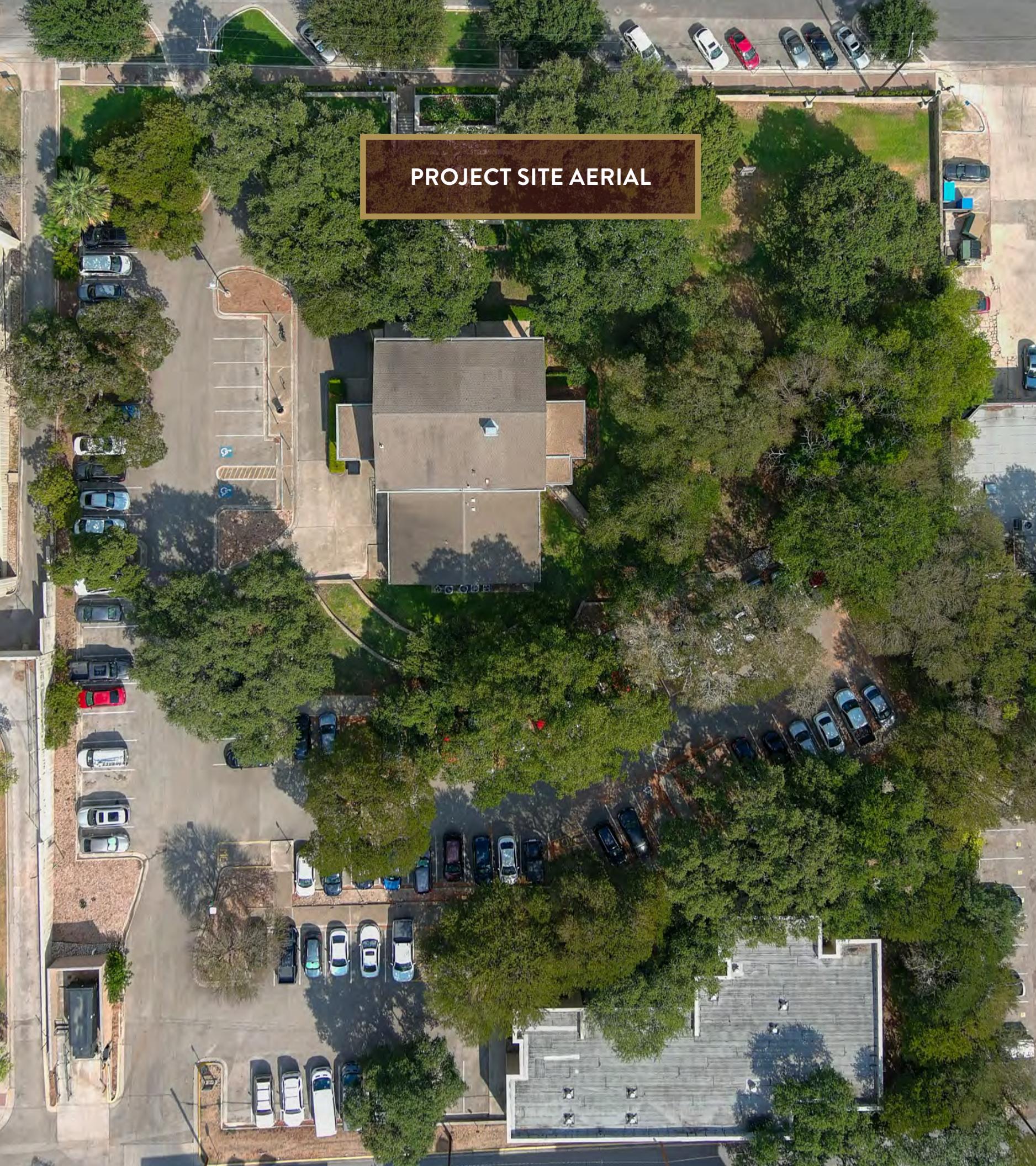
All RFP materials, including addenda and exhibits, will be posted to The System Procurement website: <https://www.tsus.edu/offices/finance/formal-bid-opportunities.html> (the “Website”) and advertised on the State of Texas Electronic State Business Daily (ESBD) website. Proposers should monitor the website for information concerning this procurement and will be required to acknowledge in their Execution of Proposal that they had access to all relevant materials posted thereon.

2.2 RFP AND PROCUREMENT SCHEDULE

The following schedule is subject to modification at the sole discretion of The System:

Milestone	Date
RFP Issuance	November 28, 2023
Proposer Site Visit and Preproposal Meeting*	December 11, 2023
Deadline for Submittal of Proposer Questions	December 19, 2023
Response to Proposer Questions	January 9, 2024
Initial Submittal Deadline	January 23, 2024
Shortlisted Proposers Selected	February 13, 2024
Term Sheet Work Session & Design Charrette	Week of March 11, 2024
Deadline for Submittal of Shortlisted Proposer Questions	March 19, 2024
Response to Proposer Questions	March 26, 2024
Final Submittal Deadline	April 12, 2024
Shortlisted Proposer Presentations/Interviews	Week of April 22, 2024
Submittal Due Date for Best and Final Offer	May 10, 2024
Developer Selection	May 20, 2024





PROJECT SITE AERIAL

2.2.1 Optional Pre-Proposal Meeting and Site Visit

The System will hold an optional pre-proposal meeting at 10:00 am CT on the date listed in the Procurement Schedule with a site visit to immediately follow. The pre-proposal meeting will be held both in-person and virtual; details for each are included below. The pre-proposal meeting will include a brief site visit for in-person attendees. The System will arrange transportation and attendance will be limited to 1-3 people per firm. Email the Point of Contact to RSVP for the pre-proposal meeting and obtain detailed information for the visit. RSVPs must be received no later than Thursday, December 7th, 2023.

Pre-Proposal Meeting and Site Visit – In Person Option:

LBJ Student Center
Room # 3-21.2
109 Student Center Drive
San Marcos, TX 78666

Pre-Proposal Meeting – Virtual Option (Microsoft Teams):

Join on your computer, mobile app or room device.

[Click here to join the meeting](#)

Meeting ID: 247 628 406 928

Passcode: HHyp3h

[Click here to download Teams](#)

[Click here to join on the web](#)

Video Conference ID: 118 976 167 1

[Alternate VTC instructions](#)

SOLICITATION ACCESS, SCHEDULE, & CONDITIONS

2.3 SOLICITATION CONDITIONS

2.3.1 Public Information

All information, documentation, and other materials submitted in response to this Solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.) after the Solicitation is completed.

The System strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act, Chapter 552, and Texas Government Code.

Proposer is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise exempted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

Information provided to Proposer by The System, including information from representatives of The System or any of its Component Institutions, and information provided to Proposer by members of the public or any other third party shall belong to The System.

Information created or otherwise produced by Proposer shall remain the exclusive property of Proposer. Proposer acknowledges any final report or papers will be provided in accordance with this RFP, and that any information contained in any report or papers, which Proposer believes is confidential under Texas law will be clearly designated as such by Proposer.

If The System receives a request for public information for any portion of any final report or papers that have been designated by Proposer to be confidential, The System will provide notice to Proposer and Proposer may submit a brief to the Office of the Attorney General, as provided by Chapter 552, Tex. Govt. Code.

2.3.2 Reservation of Rights

The System may evaluate the Proposals based on the anticipated completion of all or any portion of the Project. The System reserves the right to divide the Project into multiple parts, to reject any and all proposals and re-solicit for new proposals, or to reject any and all proposals and temporarily or permanently abandon the Project. The System makes no representations, written or oral, that it will enter into any form of agreement with any Proposer to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

2.3.3 Acceptance of Evaluation Methodology

By submitting its proposal in response to this RFP, Proposer accepts the evaluation process and acknowledges and accepts that the determination of the “best value” firm(s) will require subjective judgments by The System.

2.3.4 Conflicts/Contacts

Proposers shall not contact existing members of The System, Board of Regents, The System employees, including those of Component Institutions about this RFP until the resulting contract(s), if any, are fully executed.

2.3.5 Non-Reimbursement for Costs

Proposer acknowledges and accepts that any costs incurred from the Proposer’s participation in this RFP process shall be at the sole risk and responsibility of the Proposer. Proposers submit proposals at their own risk and expense, including the evaluation of the qualifications, presentations, meeting attendance, due diligence, work sessions, regardless of whether The System enters into an agreement with the Proposer.

2.3.6 Certificate of Interested Parties

Pursuant to Texas Government Code 2252.908 and Texas Ethics Commission Rule 46, for contracts that either have a value of at least \$1 million or require approval of the TSUS Board of Regents, a business entity (vendor) must submit a copy of the Disclosure of Interested Parties (Texas Ethics Commission Form 1295) filed with the Texas Ethics Commission when the business entity submits the signed contract. No such contract may be presented to the TSUS Board of Regents for approval without the disclosure. By submitting a proposal in response to this RFP, Proposer agrees to comply with this law. Information on the Disclosure of Interested Parties can be found at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

2.3.7 Class and Item (NIGP) Codes

The related Class and Item code(s) for services related to this solicitation are: 971-35.



SOLICITATION ACCESS, SCHEDULE, & CONDITIONS

2.4 COMMUNICATION PROTOCOL

2.4.1 Point of Contact

The System designates the following person as its representative and Point of Contact for this RFP:

Jenn DeLeon

Email: Jennifer.DeLeon@tsus.edu

The System instructs interested parties to restrict all contact and questions regarding this RFP to written, email communications with the Point of Contact. Proposers shall restrict all contact with The System and direct all questions regarding this RFP in writing to the Point of Contact.

2.4.2 Proposer Questions

After the RFP is advertised, Proposers will have until the Question Deadline (ref. Section 2.2, RFP and Procurement Schedule) to submit written questions, including questions regarding terms and conditions or for clarification of the proposal, to The System's Point of Contact (ref. Section 2.4.1). All questions submitted and received prior to the deadline will be reviewed, consolidated where possible, and answered in a written addendum. The addendum will be posted on the Texas Electronic State Business Daily (ESBD) at: <https://www.txsmartbuy.com/esbd>. Enter "758" in the Agency Number field to search ESBD for The Texas State University System solicitations. The System will provide responses as soon as practicable following the Question Deadline however, The System reserves the right to decline to respond to any question. It is the Proposer's responsibility to continually check the ESBD for Addenda.

2.4.3 Clarifications and Interpretations

Any clarifications or interpretations of this RFP that materially affect or change its requirements will be issued formally by the University as a written addendum. Addenda, if required, will be issued by the University and posted on the Website. It is the responsibility of all Proposers to check the status of the formal addenda before the submission deadline and to obtain this information in a timely manner. The University intends to issue any required addenda a minimum of five (5) business days prior to the Submittal Deadline (ref. Schedule of Events) to allow time for Proposers to review information and complete responses. All such addenda issued by the University must be acknowledged by Proposers and incorporated into the RFP response.



3.0

Proposers are required to assemble and submit their Initial Proposal and Final Proposal according to the instructions and order contained in this section. The System reserves the right to deem a Proposal as unresponsive if the Proposer deviates materially from the requested Proposal content and submittal requirements. The determination of responsiveness is at The System's sole discretion.

3.1 SUBMITTAL DEADLINE AND INSTRUCTIONS

The System will receive proposals for this RFP at the time and location described below. The Proposer (not The System, the carrier, mail service/courier, or other party) is solely responsible for ensuring that the proposal is received by the Point of Contact, in the format described below, prior to the Submittal Deadline.

Initial Submittal Deadline:
January 23, 2024, at 2:30 PM CENTRAL

Final Submittal Deadline:
April 12, 2024, at 2:30 PM CENTRAL

Delivered to:

The Texas State University System
Attn: **Jenn DeLeon**
601 Colorado Street
Austin, Texas 78701
Re: RFP 758-24-00089

NOTE: A public opening of responses will not be conducted for this RFP.





3.2 PROPOSAL FORMAT

3.2.1 Format for Proposals

Initial Proposals and Final Proposals shall be formatted on 8.5" x 11" sheets (except as expressly provided herein), preferably in portrait orientation, and submitted in an electronic version via one USB flash drive with a complete electronic copy of the entire proposal in a single .pdf file and excel file (only for the Final Proposal) delivered to The System office as instructed. The USB flash drive must include a protective cover that is labeled with Proposer's name and the RFP number. A copy of an original signature by an authorized officer of Proposer's firm must appear on the Execution of Proposal included in the submitted proposal. All page limitations identify single-sided pages of content (i.e. one double-sided page equals two pages of content). Drawings and renderings do not count towards stated page limits. Proposer should submit the complete proposals using a format substantially like the following in terms of order of content:

Initial Proposal:

- A. Cover Page
- B. Table of Contents
- C. Execution of Proposal (ref. Appendix A)
- D. Proposer's Questionnaire (ref. Appendix B)
- E. Executive Summary of Proposal
- F. Proposed Concept Narrative (ref. Section 4.1.3)
- G. Proposer's Qualifications and Experience (ref. Section 4.1.3)
- H. Proposer's Financial Capacity and Ability to Perform (ref. Section 4.1.3)

Final Proposal:

- A. Cover Page
- B. Table of Contents
- C. Execution of Proposal (ref. Appendix A)
- D. Executive Summary of Proposal
- E. Technical Proposal (ref. Section 4.2.3)
- F. Financial Proposal (ref. Section 4.2.3)

3.2.2 Proposal Envelope/Box/Container

Proposal must be placed in a sealed envelope, box, or container that is completely and properly identified with the name of Proposer's firm, RFP number, due date and time. It is the Proposer's responsibility to have the proposal correctly marked, addressed, and delivered to The System by the Submittal Deadline for receipt by the Point of Contact.

3.2.3 Unacceptable Proposal Delivery Methods:

The System will not accept proposals in response to this RFP that are submitted by telephone, facsimile (fax) transmission, or electronic mail.

3.3 VALIDITY PERIOD

By submitting a proposal in response to this RFP, Proposer accepts that the proposal will remain valid for a minimum of one-hundred twenty (120) days after the submittal deadline to allow time for evaluation of proposals, award determination, and any unforeseen delays.

4.0

The Proposer recognizes that in selecting a Developer, The System will rely in part on the Proposer's responses to this Section. Accordingly, by submitting a proposal, Proposer certifies that to the best of its knowledge, all responses are true, correct and complete. The System reserves the right to contact each reference or contact name listed in response to this RFP at any time and shall be free from any liability to Proposer for conducting such inquiry. Failure to respond to any item in this section may result in disqualification.

The specific RFP evaluation criteria and relative weights of each that will be used to evaluate the Initial Proposals and Final Proposals are as follows:

4.1 INITIAL PROPOSAL SCORING, CRITERIA, AND SUBMISSION REQUIREMENTS

4.1.1 Initial Proposal Weighted Scoring Guide

Category	Weight
Interim Proposal	
Complete proposal	Pass / Fail
Demonstrated understanding of the University objectives	30%
Proposer's qualifications and experience	50%
Financial capacity & ability to perform	20%
Total Score:	100%



EVALUATION CRITERIA

4.1.2 Initial Proposal Evaluation Criteria

The selection criteria for shortlisting respondent teams are summarized below, with approximate weighting values as outlined above. The top ranked Proposers will be invited to submit the Final Proposals. Proposers who are not shortlisted will not be evaluated further.

1. **Complete proposal:** The Proposer provides a complete submittal that is inclusive of all required information, and that provides the University with a clear understanding of the Proposer's capabilities and experience.
2. **Demonstrated understanding of the University objectives:** The degree to which the Proposer demonstrates a clear understanding of the University's objectives outlined in the RFP and incorporates those objectives into the proposal.
3. **Team qualifications and experience:** The Initial Proposal Score will consider the structure of the Proposer and the background and experience of the Proposer, individual team members, and Key Personnel with financing, developing, designing, constructing, operating, and maintaining comparable projects. The specific experience will be evaluated in accordance with the following criteria:
 - a. **Proposer Team Structure, Experience, and Capacity:**
 - i. Clarity and logic of the proposed organizational structure, including the reporting structures and hierarchy of Proposer's team members, and how such team structure aligns with the overall needs of the Project (including the program, construction, and operating phases);
 - ii. Current relevant projects for each Proposer member and the degree to which the Proposer demonstrates capacity to deliver this project given its other commitments; and
 - iii. The Proposer's previous experience partnering together on projects of similar size and scope.
 - b. **Lead Developer and Financing Partner Experience:**
 - i. Recent experience and quality of project examples provided as is relates to financing, developing, and owning hospitality projects in San Marcos, Austin, San Antonio, and/or elsewhere in Texas and the U.S.;
 - ii. Track record of adhering to schedule and budget;

- iii. The extent and depth of experience of the Key Personnel from the Lead Developer and Financing Partner(s); and
- iv. Experience working with colleges and universities on ground lease or public-private partnership ("P3") structures for similar projects that have reached construction completion.

c. **Lead Architect Experience:**

- i. Recent experience and quality of project examples provided as it relates to designing hospitality projects in San Marcos, Austin, San Antonio, and/or elsewhere in the U.S. and Texas; and
- ii. The extent and depth of experience of the Key Personnel from the Lead Architect.

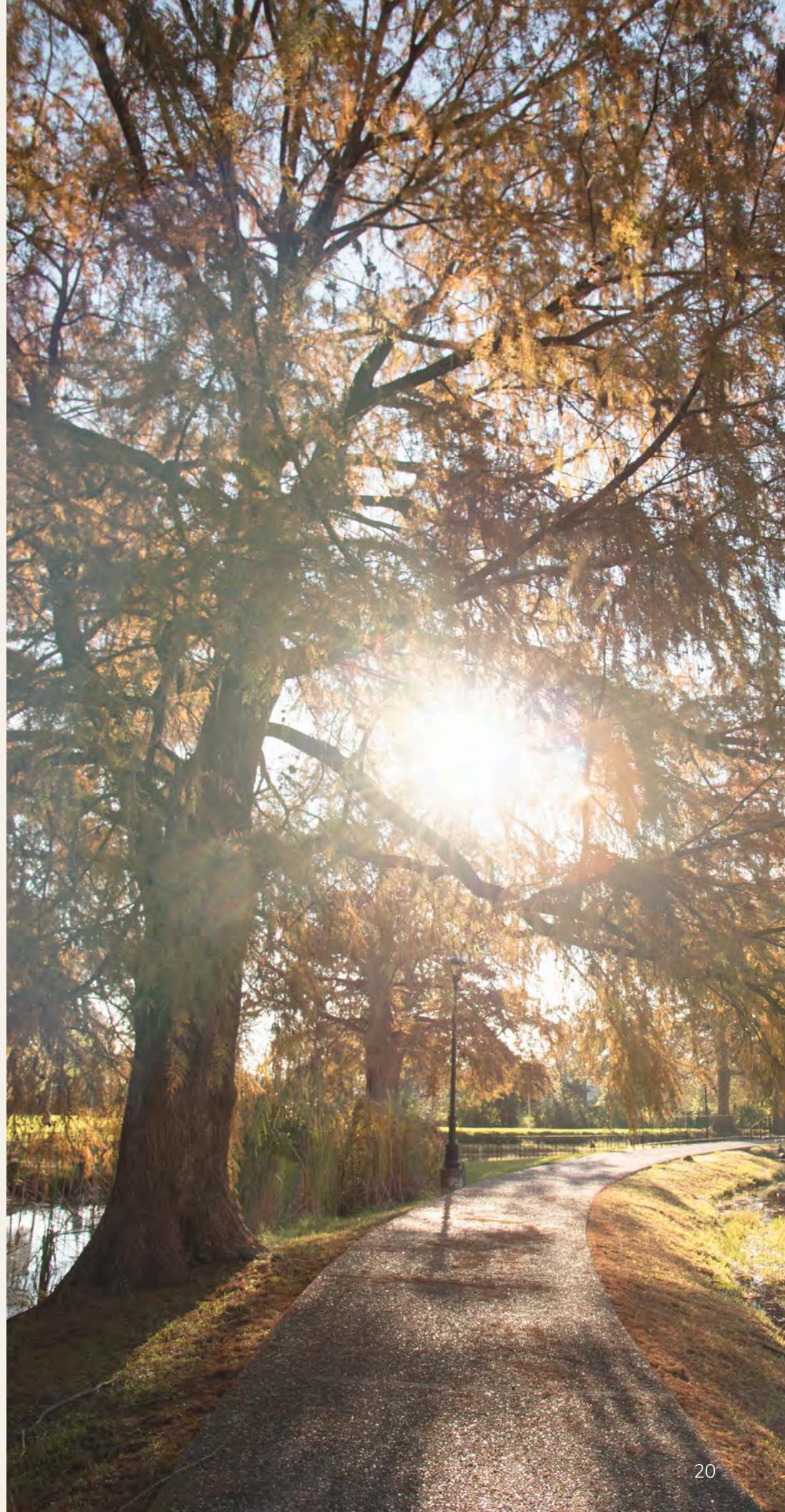
d. **Lead Contractor Experience:**

- i. Recent experience and quality of project examples provided as it relates to building hospitality projects in San Marcos, Austin, San Antonio, and/or elsewhere in the U.S. and Texas;
- ii. Track record of adhering to schedule and budget; and
- iii. The extent and depth of experience of the Key Personnel from the Lead Contractor.

e. **Lead Operator Experience:**

- i. Demonstrated experience operating and maintaining similar hotel or hospitality facilities for which the Lead Operator has been responsible for operations and maintenance for at least five (5) years; and
- ii. The extent and depth of experience of the Key Personnel from the Lead Operator.

4. **Financial capacity and ability to perform:** Confirmation that the Lead Developer, Financing Partner(s) (if any) and the Lead Contractor (and if the Lead Contractor is a joint venture, consortium, partnership or other party entity, then all members of the Lead Contractor) have the financial capability to carry out the Project responsibilities potentially allocated to it as demonstrated by the materials provided in the Initial Proposal.



EVALUATION CRITERIA

4.1.3 Initial Proposal Submittal Requirements

4.1.3.1 Administrative Submittals

The Proposer shall, as its administrative submittals:

1. Provide an Execution of Proposal: Proposer must complete, sign, scan and return the attached Execution of Proposal (Appendix A) as part of the proposal. The Execution of Proposal must be signed by an authorized officer of Proposer's firm duly authorized to bind the Proposer to its proposal. Failure to sign and return the Execution of Proposal will result in the rejection of the proposal.
2. Provide a completed "Proposer's Questionnaire" (Appendix B).
3. Provide an executive summary of the proposal.

4.1.3.2 Proposed Concept Narrative

Proposers shall provide a brief Concept Narrative to describe their proposed approach to the Project for which the Proposer will submit a Final Proposal if shortlisted. The purpose of the Concept Narrative is to provide the University with an introduction to the Proposer's proposed development program and site plan for the Project and to demonstrate the Proposer's understanding of the Project goals. The University recognizes that a Proposer's initial concept will change and adapt as more information is gleaned and the Project evolves; however, we ask for the Proposer's best faith effort in describing (in written form and with imagery where appropriate) their vision for the Project based on the current understanding. The Concept Narrative shall not exceed two (2) pages. The Concept Narrative shall include the following:

- a. Anticipated hotel rooms, etc.
- b. Preliminary site planning approach, including anticipated land use;
- c. Anticipated hotel chain scale/boutique hotel plan;
- d. Ideas to generate increased pedestrian engagement and Project vibrancy;
- e. Proposed vision for landscape, green space, and outdoor gathering space(s); and
- f. A discussion of how the proposed concept will meet the University's vision of achieving a development that aligns with the University's stated objectives and is cohesive with the University campus and City of San Marcos, and brings amenities to students, faculty, staff, parents, and community members.



EVALUATION CRITERIA

4.1.3.3 Proposer Qualifications and Experience

1. Description of Proposer

Proposers shall provide the following:

- a. A description of the Proposer, including a description and qualifications of all team members;
- b. An organizational chart;
- c. If there are multiple development entities comprising the Proposer, a development rights assignment matrix should be presented, which allocates development responsibilities to each party and indicates which party or parties will be entering into each proposed ground lease with the University;
- d. The anticipated legal or contractual relationship (governance and capital structure); and
- e. Evidence of formal relationships between all identified team members, such as teaming agreements, memorandums of understanding, intent to or completed formation of special-purpose entity or joint venture, or agreements demonstrating limited and general partners.

Proposers should identify the following team members as part of their Qualifications Submittals, including the organization as well as the individual(s) from those organizations who will be primarily responsible for successful delivery:

1. Lead developer, co-developers and/or sub-developers;
2. Hotel brand;
3. Management/ operating partner
4. Lead architect and design team;
5. General Contractor / Construction manager;
6. Civil engineer;
7. Financial partners; prospective lenders and equity investors; and
8. Others, as appropriate

Proposers must clearly identify each team member's role, and must specifically identify the party that will be responsible for each of the following:

- Site planning and hotel design;
- Horizontal infrastructure work and coordination with utilities; and
- Ground lessee(s).

2. Proposer Background

Proposers shall provide information regarding each member of the Proposer's team, such as brief history, legal structure, service offerings / product type specializations, and geographic concentrations. The Proposer Background shall not exceed three (3) pages for each member of the Proposer's team.

3. Key Personnel

Proposers shall provide resumes for the Proposer's key personnel and describe each person's proposed role in the Project. Two (2) professional references must be provided for each resume submitted.

4. Controlling Interest

Proposers shall identify the individuals or companies who hold a major or controlling interest in each Proposer team member as well as the anticipated controlling interest in the Proposer.

5. Lead Member and Designated Representative

Proposers shall identify the lead member of the Proposer and provide a single point of contact for all future communications related to this RFP. Proposers shall provide the contact person's name, title, organization, address, telephone number, and email address.

6. Demonstrated Performance on Comparable Projects

Proposers shall provide qualifications that demonstrate the Proposer's expertise, experience, and financial capacity in the delivery of at least three (3) but not more than six (6) projects that compare to the Project that were completed within the past ten (10) years ("Comparable Projects"). Proposers shall demonstrate the Proposer's experience in developing hotels of the same or comparable chain scale as will be proposed for Project. For each comparable project, the Proposer should provide, at a minimum:

- a. Name and location of the project;
- b. Year in which the project was completed and occupied;
- c. Proposer team members that were involved with the project and the role or capacity in which Proposer team members were involved;
- d. Development scope (land area, number of hotel rooms, gross square footage by programming element, construction type(s));
- e. Development costs (hard costs, soft costs, fees);
- f. Development financing (amount of debt, amount of equity, sources of financing);
- g. Project timeline, ranging from initial planning to land acquisition to construction completion;
- h. Site plan, photographs, and project renderings;
- i. Partnership with higher education institution or public sector entity, if applicable;
- j. Statement that demonstrates the specific features, objectives, or design elements that were comparable to those envisioned for the Project, including the hotel chain/boutique hotel scale for any Comparable Projects; and
- k. A reference contact for each Comparable Project.

Proposer's Demonstrated Performance on Comparable Projects shall not exceed thirty (30) pages.

EVALUATION CRITERIA

4.1.3.4 Financial Capacity and Ability to Perform

Provide financial statements for the proposed Lead Developer, Financing Partner(s) (if applicable), and the Lead Contractor.

For each entity, include full financial statements in English (auditor opinion letter, income statement, cash flow statement, balance sheet, and notes to the financial statements) for the three most recent available fiscal years. Financial statements must be audited, prepared in accordance with U.S. GAAP or IFRS, and be presented in U.S. dollars.

If financial statements of a parent company or affiliate company (a "Financially Responsible Party") are provided to demonstrate financial capability of the Lead Developer or Lead Contractor, a letter from the applicable Financially Responsible Party must be provided confirming that it will financially support all the obligations with respect to the Project.

Provide a list identifying (1) each entity for which financial statements are provided, (2) a statement indicating whether each entity has a credit rating, (3) and, if so, providing a copy of the most recent credit rating report from each applicable rating agency.

Provide a Surety letter from a duly authorized surety company, stating without conditions or qualifications that the Respondent or applicable member of the Respondent team is capable at the time of its submission of obtaining a performance bond and payment bond, each in an amount of at least \$40 million for the Project. Letters stating that the Respondent has "unlimited" bonding capacity are not acceptable. The letter must specify any assumptions regarding the provision of support from a parent company of a Respondent team member. Any surety company providing a letter must be rated at least "A" or better and "Class VIII" or better by A.M. Best and Company and must be listed on Treasury Department Circular 570. Evidence of the surety's rating shall be attached to the letter. The letter must specifically state that the surety has reviewed this RFP and is familiar with the contractual structure and financial structure described in the RFP and has evaluated the Respondent's backlog and work-in-progress in determining its bonding capacity.

The requirement to provide the Surety Letter and the bond amounts referenced above are solely for the purposes of evaluating the Respondent's financial qualifications and should not be construed as an indication of the ultimate security requirements for the Project.





4.2 FINAL PROPOSAL SCORING, CRITERIA, AND SUBMISSION REQUIREMENTS

4.2.1 Final Proposal Weighted Scoring Guide

Category	Weight
Final Proposal	
Complete proposal	Pass / Fail
Site plan, hotel concept and project design	40%
Construction approach and schedule	10%
Operations and maintenance plan	25%
Financing plan and proforma	5%
Financial offer	10%
Partnership score	10%
Total Score:	100%

EVALUATION CRITERIA

4.2.2 Final Proposal Evaluation Criteria

The selection criteria for evaluating Final Proposals are summarized below, with approximate weighting values as outlined above.

1. Complete proposal:

- a. The Proposer provides a complete submittal, that is inclusive of all required information, and that provides the University with a clear understanding of the Proposer's approach.

2. Site concept, program, and project design

- a. The thoughtfulness of the proposed program for the Project that demonstrates an understanding of market conditions, the community context and the University's programmatic preferences.
- b. An organized, efficient and logical site plan that demonstrates an understanding of the site's existing conditions and considers road access, parking requirements, fire access, traffic mitigation, site circulation, and other relevant factors.
- c. An attractive design and building concept, complementary of the surrounding area and accentuating the site's position and visibility, including demonstration of the following:
 - i. High quality, compelling conceptual drawings of the building and landscape design with descriptions that provide context and highlight key features; and
 - ii. A thoughtful approach to the Project's massing, design and architectural character including any sustainability measures that can be incorporated, and creative approach to supporting and optimizing the guest experience.

3. Construction approach and schedule

- a. The level of demonstrated understanding of the activities necessary to efficiently achieve complete construction of the project, including identification of any expected development and construction risks and constraints and potential solutions;
- b. The degree to which the applicable technical submittals present a logical and credible approach to ensuring safety during the construction period; and
- c. The degree to which the applicable technical submittals present a logical and credible approach to construction scheduling and sequencing with a proposed occupancy as quickly as reasonably possible.

4. Operations and maintenance:

- a. The proposed approach to operating and maintaining the hotel to a high standard throughout the term of the lease, including the approach to providing sufficient labor, materials and equipment to manage the Project during the term of the Agreement;
- b. The reasonableness and thoughtfulness of the proposed approach to mitigating vacancy risk and determining room rates; and
- c. The identification of any expected operations and maintenance risks outside of vacancy risk and potential solutions.

5. Financing plan and proforma

- a. The clarity, robustness, certainty, and perceived risks of the Proposer's financing approach, considering how the approach:
 - i. Aligns with the Proposer's prior experience;
 - ii. Addresses potential risks to minimize execution uncertainty; and
 - iii. Secures competitive and cost-effective sources of equity and debt.
- b. Transparency, clarity, and reasonableness of underwriting assumptions and Developer proforma.

6. Financial Offer

- a. The proposed financial offer representing the best value and competitive market terms to the University.

7. Partnership Score

The Partnership Score will be based on the Shortlisted Proposer's demonstrated partnership with The System and the University throughout the procurement process and the Shortlisted Proposer's proposed Term Sheet redlines. Sub-factors that will be considered in evaluating the University's potential partnership with the Shortlisted Proposer include the following:

- a. High-quality interactions with the University that demonstrate an attitude of partnership, creative approaches to problem-solving, an expression of flexibility in addressing changing conditions and responding to the University feedback, and overall strong team dynamics;
- b. An awareness of project risks and expression of flexibility in addressing changing conditions and responding to the University feedback; and
- c. Reasonableness of Proposer's proposed Term Sheet redlines, demonstrating a willingness to negotiate in good faith and partner with the University to achieve its objectives for the Project.

EVALUATION CRITERIA

4.2.3 Final Proposal Submittal Requirements

Provide an Execution of Proposal: Proposer must complete, sign, scan and return the attached Execution of Proposal (Appendix A) as part of the final proposal. The Execution of Proposal must be signed by an authorized officer of Proposer's firm duly authorized to bind the Proposer to its proposal. Failure to sign and return the Execution of Proposal will result in the rejection of the proposal.

4.2.3.1 Technical Proposal

1. Program and Design

- a. Program: Provide the following, demonstrating the proposed program for the Project:
 - i. Project data sheet including, but not limited to, building square footage broken down by floor and use, including common area space data;
 - ii. Rooms and unit mix sizes, shared facilities, and community spaces; and
 - iii. Total useable and gross square feet tabulations in Excel format.
- b. Design Narrative: Provide a narrative to describe the design intent for the Project. The narrative should address the following areas:
 - i. Include an executive summary of the design intent for the Project. Highlight the unique elements of the Proposer's design solution and explain how they provide value for the University, including plans to incorporate sustainability into the Project and promote an environment that emphasizes occupant wellbeing.
 - ii. Substructure: Describe the basis of design foundation system.
 - iii. Shell: Describe the basis of design systems for the following: super structure, exterior walls, exterior glazing, and roofing.
 - iv. Parking. Detail the parking approach for the Project.

- c. Site Planning Approach: Provide a narrative and site plan drawing to demonstrate the approach to site planning for the Project. The site planning effort shall be inclusive of the following elements:
 - i. Physical planning
 - ii. Land use
 - iii. Open space (including landscape character)
 - iv. Circulation and access
 - v. Utilities (based on understanding of needs to include power distribution, chilled water, heating hot water/steam, potable, fire and non-potable water, sanitary sewer, storm sewer)
 - d. Massing Diagrams: Provide conceptual massing diagrams demonstrating the proposed site massing based on the Project's proposed program.
 - e. Conceptual Renderings: Provide conceptual renderings including the following:
 - i. Aerial view; and
 - ii. Elevation views representing the full view of the project boundary.
2. Construction Approach and Schedule
 - a. Construction Approach: Provide a narrative describing the Proposer's construction approach, including the following:
 - i. An overview of the Project management approach, including how responsibilities will be assigned and coordinated among the Proposer firms and employees to achieve the desired schedule and ensure smooth transitions between negotiations, design, construction, and occupancy;
 - ii. The approach and timeline for moving from ground breaking to Project substantial completion and eventual occupancy readiness;
 - iii. A narrative describing any significant risks that the Proposer has identified with respect to the development, design and construction of the Project, and how those risks can be addressed, mitigated or allocated in order to provide the best outcome for the Project. Describe risk control measures that the Proposer would implement in order to manage risks, including risks related to scheduling, price increases, and subcontractor performance;
 - b. Project Development Schedule: Provide a Project development schedule including the following elements and highlight any critical path items that must be achieved in order to achieve the proposed occupancy date.
 - i. Project Kick-off / Notice to Proceed
 - ii. Schematic Design
 - iii. Design Development (DD)
 - iv. Construction Documents (CD) – Early Subcontractor Bid Package (if required to meet the Occupancy Date)
 - v. Construction Documents – Balance of Work
 - vi. Permitting Process
 - vii. GMP Process
 - viii. Structural top out
 - ix. Dry-in of exterior and commencement of interior finishes
 - x. Substantial Completion
 - xi. Commissioning, Occupancy Permits
 - xii. Occupancy Date

EVALUATION CRITERIA

3. Operations & Maintenance

- a. Operations & Maintenance Approach: Provide a narrative describing the Proposer's operations and maintenance approach, which may include the following:
 - i. Marketing the property
 - ii. Quality Assurance / Quality Control ("QA/QC") program for O&M services
 - iii. Inspection of facilities and corresponding system elements
 - iv. Customer service approach v. Incorporation of industry best practices
 - v. Development and implementation of a preliminary response and corrective action plan for incidents
 - vi. Approach to capital asset and lifecycle cost management and routine maintenance during the Project's operating
 - vii. Use of a Computerized Maintenance Management System ("CMMS")
 - viii. Property Improvement Plans (PIP) for the life of the lease detailing soft refresh and significant refresh schedules
- b. Provide a narrative describing any significant risks that the Proposer has identified with respect to the operations and maintenance of the Project, and how those risks can be addressed, mitigated or allocated in order to provide the best outcome for the Project. Describe risk control measures that the Proposer would implement in order to manage risks. This narrative should identify the risk factors related to occupancy in the Project and describe the Proposer's approach to mitigating occupancy risk, including the Proposer's proposed approach to determining seasonal rate increases for the Project.

4.2.3.2 Financial Proposal

Financing Plan: Provide a Financing Plan that outlines the proposed amounts (based on the Proposer's current estimate of the total development cost) and sources of financing, including the percentage and amounts of equity and debt, the type of debt that will be sought, and the presumed financing assumptions (upfront financing fees, commitment fees, base interest rates, credit spreads, swap or hedge costs, assumed credit rating (if applicable), DSCR assumptions, lender

required reserves, debt tenor) at the time of the Final Proposal Due Date. The Financing Plan shall also include the following information:

- i. A detailed timeline with narrative descriptions of financing activities and key milestone dates from Project award until financial close;
- ii. Recent experience successfully executing similar financing plans;
- iii. Why this financing plan was chosen relative to other options; and
- iv. Description of potential risks in achieving financial close and associated mitigation strategies.
- c. Financial Offer: Proposer shall submit their financial offer on the form provided in Appendix C.
- d. Term Sheet Redlines: Provide a redlined markup of the draft Term Sheet with redlines signifying Proposer's proposed changes to the terms of the draft. Proposer represents that it is willing to accept the terms as submitted in the redline markup of the Term Sheet. The System is not bound to accept the markup revisions as proposed by the Proposer and has the right to further negotiate.
- e. Estimated Total Project Development Cost: Provide an estimated total development cost budget for the Project.
- f. Pro Forma Cash Flows: Provide a pro forma cash flow schedule for the Project in editable Microsoft Excel format. The cash flows should include annual estimates for the Project revenue and expenses over the proposed term. At a minimum, the pro forma should include:
 - i. Total development cost budget
 - ii. Sources and uses of financing
 - iii. Indicative financing assumptions
 - iv. O&M expenses
 - v. Capital reserve funding
 - vi. Lifecycle maintenance expenditures
 - vii. Indicative annual ground rent payments
 - viii. Debt service (with DSCR assumption)
 - ix. Equity cashflows and resulting equity IRR (if applicable)



5.0

APPENDIX A Execution of Proposal

APPENDIX B Proposer Questionnaire

APPENDIX C Financial Offer Form

APPENDIX D Terms and Conditions of Proposal

APPENDIX E Texas State University System,
Required Terms and Conditions

APPENDIX F Site Due Diligence

- A. Phase 1 Environmental Site Assessment (Pending)
- B. Survey (Pending)
- C. Title Report (Pending)
- D. Tree Survey
- E. Utility Infrastructure

APPENDIX G Term Sheet





Request for Proposal (“RFP”) No: 758-24-00089
For a Hotel Developer

ALL PROPOSALS MUST BE RECEIVED NO LATER THAN **2:30 p.m. CT**

Initial Submission Deadline: January 23, 2024

Final Submission Deadline: April 12, 2024

Procurement Contact: Jenn DeLeon
The Texas State University System
Jennifer.DeLeon@tsus.edu



APPENDIX A: Execution of Proposal

Proposer shall complete, sign, and submit this Execution of Proposal with their proposal response. The Execution of Proposal must be signed by an authorized officer of Proposer duly authorized to bind the Proposer to its proposal. Failure to sign the Execution of Proposal will result in the rejection of proposal.

By signature hereon, the Proposer hereby certifies that he/she is not currently delinquent in payment of any franchise taxes owed the State of Texas under Chapter 11, Tax Code.

By executing this Proposal, Proposer represents and warrants that he/she has not given, offered, or intends to give at any time hereafter, any economic opportunity, future employment, gift loan, gratuity, special discount, trip, favor, or service to public servant in connection with the submitted Proposal. Failure to sign the Proposal, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the Proposer shall be removed from all proposal lists.

By the signature hereon affixed, the Proposer hereby certifies that neither the Proposer or the firm, corporation, partnership, or institution represented by the Proposer or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal anti-trust laws, nor communicated directly or indirectly the Proposal made to any competitor, or any other person engaged in such line of business.

Acknowledgment of Addenda: The undersigned Proposer hereby acknowledges receipt of the following Addenda issued as a part of this solicitation (initial only if applicable).

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Note: If there was only one (1) Addendum issued, initial just the first blank after No. 1, not all five (5) blanks above.

Federal Employer Identification Number (FEIN): _____

Proposer/Company: _____

Signature: _____ Date: _____

Name (typed/printed): _____

Title: _____

Address: _____

Telephone Number: _____ E-mail: _____

APPENDIX B: Proposer's Questionnaire

The Proposer recognizes that in selecting a Developer, The System will rely in part on the answers provided in response to this Section. Accordingly, Proposer certifies that to the best of its knowledge, all responses are true, correct, and complete.

All Proposals submitted must contain full and complete responses to each of the following questions about Proposer's firm ("Company"). Proposer must demonstrate the ability to successfully provide the Services. If a Proposer cannot meet any qualifications or responsibilities, it must state that, and when appropriate, offer an alternative response. Failure to respond to any item listed may disqualify the Proposal.

COMPANY PROFILE

1. Provide the following information:

Legal name of Company:

Federal Tax ID #

State of incorporation:

Identify the organizational status of the Company (i.e., corporation, partnership, or sole proprietorship). Include:

- Date of incorporation,
- Name of corporate president / principals
- Address of principal place of business

Address of office that would be providing service under the Agreement:

Number of Employees:

Annual Revenue:

Name of Parent Corporation (if any):

Primary Contact Name:

Primary Contact email and phone:

NOTE: If Proposer is a subsidiary, The System prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.

2. State whether Proposer will provide a copy of Company financial statements for the past two (2) years, if requested by The System.
3. Provide financial rating of Company and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.

4. Provide a brief history of the Company. Indicate the number of years the Company has provided the type of services for which this proposal is submitted.
5. Is the Company licensed to solicit business in the State of Texas? If yes, include a copy of the license(s).
6. Disclose any relationships between Company and employees of The System:
7. Is there any current or past relationship(s), including familial relationships through marriage or consanguinity, business relationships, capital-funding agreements, or arrangements, or any other such similar business or personal relationship(s), between the Company and any employee, officer or Regent of The Texas State University System, including Component Institutions? If yes, please explain.
8. Does the Company have any current or former employees who are / were employees of The Texas State University System or Component Institutions? If yes, please explain.
9. Does the Company have any proposed personnel who are, or are related to, current or former employees of The Texas State University System or Component Institutions? If yes, please explain.
10. Is the Company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
11. Is the Company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.
12. Provide any details of all past or pending litigation or claims filed against the Company that would negatively impact the Company's performance under any agreement with The System.
13. Provide the name, title, email, and telephone number of the individual who will serve as the primary day-to-day contact for should a contract be awarded to Company.

QUALITY OF SERVICE

1. Discuss how Company maintains relationships with clients and provides high-level customer service to clients. Describe Company's plan to maintain effective communication with The System.
2. Describe service approach Proposer will use and how quality of service will be measured for this Project. Describe how Proposer's team will address any noted deficiencies in the service performance and Proposer's problem escalation policy.
3. Describe the Proposer's emergency communications protocols, plans, and best practices, including communications with the media, public and TXST staff.

APPENDIX C: Financial Offer

<u>Bid Parameter</u>	<u>Amount / Detail</u>
Assumed 2024 Land Value	\$ _____
Base Ground Rent Constant	_____ %
Initial Annual Base Rent	\$ _____ (per annum) [this value should be equal to the Land Value x Ground Rent Constant]
Base Rent Escalations	_____ %
Base Rent Escalation Frequency	[Detail the proposed interval of Base Rent Escalations]
Land Value Market Resets	[If applicable, please detail any proposed land value resets, including proposed interval and any cap and collar parameters]
Initial Ground Lease Term	_____ years
Ground Lease Term Renewal Options	[include all option periods, if applicable]
Variable / Participating Ground Rent	_____ % (of total annual Gross Revenue)
Participating Ground Rent Details	[Describe the terms of participating rent, including participation hurdles and any additional details.]
Net Present Value of Base Ground Rent	\$ _____ [assuming a 5.5% discount rate]
Capital Event Participation	[If applicable, detail any proposed capital event participation (%) in the first sale, including anticipated exit timeline and any subsequent sale]

APPENDIX D: Terms and Conditions of Proposal

The items below apply to and become a part of the proposal. Exceptions cannot be taken to the RFP document itself, nor can it be redlined. These actions may result in Proposer's disqualification.

PROPOSER IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

4.1 PROPOSAL REQUIREMENTS AND GENERAL INSTRUCTIONS

- 4.1.1 **Rules, Regulations & Statutes:** The System is an agency of the State of Texas. Proposers must comply with all rules, regulations, and statutes relating to purchasing of the State of Texas, The Texas State University System Rules and Regulations, in addition to the Terms and Conditions of this form. Upon engagement, any successful Proposer shall confirm its compliance with all necessary State and/or Federal requirements relative to work performed.
- 4.1.2 **Submittal Deadline Exception:** If The System is closed due to inclement weather and/or emergency situations on the designated Submittal Deadline, the Submittal Deadline will default to the next open business day at the same time.
- 4.1.3 **Late or Unsigned Proposals:** Late and/or unsigned proposals will not be considered under any circumstances. Person signing the proposal must have the authority to bind Proposer's firm in a contract. The Proposer (not The System, the carrier, mail service/courier, or other party) is solely responsible for ensuring that the complete proposal is received in The Texas State University System's Office prior to the specified opening date and time.
- 4.1.4 **Right to Accept or Reject:** The System reserves the right to accept or reject all or any part of any proposal, waive minor technicalities, and award the proposal to best serve the interests of The System and the State of Texas.
- 4.1.5 **Withdrawal:** Any proposal may be withdrawn prior to the date and time set for receipt of proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for a period of 90 days, to provide the commodity or service set forth in the specifications, or until a selection has been made by The System.
- 4.1.6 **Proposal Costs:** Proposers electing to respond to this RFP are responsible for any and all costs of proposal preparation. The System is not liable for any costs incurred by a Proposer in response to this RFP.
- 4.1.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by The System, at The System's sole discretion.

4.2 SPECIFICATIONS

Oral Statements: The System will not be bound by any oral statement or representation contrary to the written specifications of the RFP.

4.3 NON-DISCLOSURE

No public disclosures or news releases pertaining to this RFP shall be made without prior written approval of The System.

4.4 CONFLICTS

In event of a conflict between standard proposal requirements and conditions and the attached description of the transaction, the description of the transaction shall govern.

4.5 PROPOSER AFFIRMATION

Submitting a proposal with a false statement is material breach of contract and shall void the submitted proposal or any resulting contracts, and the Proposer shall be removed from all proposal lists. By submitting a proposal, the Proposer herein affirms:

- 4.5.1 **Vendor Ethics - Gratuities:** As an agency of the State of Texas, The System holds the trust of the public. All Proposers and persons doing business with The System must provide the highest level of ethics and service in all business interactions. A Proposer shall not give, offer to give, nor intend to give at any time any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to an employee of The System that might reasonably appear to influence the employee in the discharge of official duties. The System may, by written notice to the Proposer, cancel any resulting contract without incurring liability if it determined that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Proposer, or any agent or representative of the Proposer, to any officer or employee of The System or its Components with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event any contract resulting from this RFP is canceled by The System pursuant to this provision, The System shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Proposer in providing such gratuities.
- 4.5.2 If Proposer is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Proposer is exempt from the payment of those taxes, or that Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 4.5.3 Neither the Proposer nor the firm, corporation, partnership, or institution represented by the Proposer, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State or the Federal Antitrust Laws nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 4.5.4 Under Section 2155.004, Texas Government Code, a state agency may not accept a proposal or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the proposal or contract is based. By submitting a proposal in response to this RFP, Proposer certifies and affirms that: 1) Proposer has not received compensation for participation in the preparation of the specifications for this RFP; and 2) the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated, and payment withheld if this certification is inaccurate.

4.5.5 If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified payment and acknowledges that any contract resulting from this RFP may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any proposer subject to Section 231.006 must include the names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the proposal. If awarded this RFP, Proposer will provide this information to The System prior to contract execution.

4.5.6 Pursuant to Section 2155.004 Texas Government Code regarding collection of state and local sales and use taxes, the Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.

4.5.7 Proposer agrees that any payments due under any resulting contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

4.5.8 Proposer certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with the executive head of a State agency. If Section 669.003 applies, Proposer will submit the following information in response to this Section with their response in order for the proposal to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of separation from State Agency: _____

Position with Proposer: _____

Date of Employment with Proposer: _____

4.5.9 Proposer represents and warrants that Proposer's provision of services or other performance under any contract resulting from this RFP will not constitute an actual or potential conflict of interest and represents and warrants that it will not reasonably create even the appearance of impropriety.

4.5.10 Proposer and any of its principals (including, but not limited to, an owner, proprietor, sole or majority shareholder, director, president, or managing partner) are not debarred, suspended, or otherwise excluded from doing business with The System.

4.5.11 Proposer certifies that if a Texas address is shown as the address of the Proposer on its proposal, Proposer qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

APPENDIX E: Texas State University System, Required Terms and Conditions

The terms and conditions contained in this **APPENDIX** or, in the sole discretion of The System, terms and conditions substantially similar to these terms, will be required in, and govern, any contract that may result from this RFP.

1. Responsibility for Individuals Performing Work. Each individual who is assigned to perform the Work under this Agreement will be an employee of Developer or an employee of a subcontractor engaged by Developer. Developer is responsible for the performance of all individuals performing the Work under this Agreement.

1.1 Developer will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the Work. Developer will not knowingly assign any individual to perform Work on The System or Component Institution's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

1.2 Background Checks. If Developer's employees will be placed on a campus of The System for an extended period of time, Developer will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on the Component campus:

- A. Sex offender and criminal history databases where the above individuals will be placed on the campus, working with or around students; and
- B. Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by The System.

Developer will provide The System a letter signed by an authorized representative of Developer certifying compliance with this Section. Developer will provide The System an updated certification letters each time there is a change in the individuals assigned to perform the work.

2. Developer's Certifications.

2.1 Entities that Boycott Israel. Pursuant to Chapter 2270.002 of the *Texas Government Code*, Developer certifies that either (1) it meets an exemption criterion under Section 2270.002; or (2) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Developer shall state in this Agreement any facts that make it exempt from the boycott certification.

2.2 Foreign Terrorist Organizations. Pursuant to Chapter 2252.152 of the *Texas Government Code*, Developer certifies Developer is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Developer acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

- 2.3 **Excluded Parties.** Developer certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”, published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 2.4 **Suspension and Debarment.** Pursuant to and in compliance with [Executive Orders](#) 12549 and 12689 and Section 180.300 of the [Code of Federal Regulations](#), The System cannot purchase goods and / or secure services from vendors that have been debarred, suspended, proposed for debarment, or otherwise excluded from or ineligible to participate in Federal or State assistance programs or activities. Developer certifies that, to the best of its knowledge, Developer and / or its principals are not suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by the Federal government and / or the State of Texas. Developer further certifies that it is not subject to a vendor hold by the State of Texas and / or that it is not subject to debarment or suspension by the Texas Comptroller. If it is ever determined that Developer is suspended or debarred from doing business with the State of Texas or U.S. Federal government, The System may immediately terminate the Agreement and will not issue any payment for goods / services rendered.
- 2.5 **Eligibility Certifications (Financial Participation Prohibited / Prior Disaster Relief Contract Violation).** Pursuant to Sections 2155.004 and 2155.006, [Texas Government Code](#), Developer certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.
- 2.6 **Human Trafficking.** Under Section 2155.0061 of the [Texas Government Code](#), Developer certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated, and payment withheld if this certification is inaccurate.
- 2.7 **Restricted Employment for Certain State Personnel.** Pursuant to Section 572.069 of the [Texas Government Code](#), Developer certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for The System involving Developer within two (2) years after the date that the Agreement is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- 2.8 **Child Support Obligation Certification.** Pursuant to [§231.006, Texas Family Code](#), Developer certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 2.9 **Tax Certification.** If Developer is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Developer certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Developer is exempt from the payment of those taxes, or Developer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

2.10 **Firearm Entities and Trade Associations Discrimination.** Pursuant to Chapter 2274 of the [Texas Government Code](#), for Agreements that exceed \$100,000 Developer verifies that it:

- A. does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
- B. will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

2.11 **Energy Company Boycotts.** Pursuant to Chapter 2274 of the [Texas Government Code](#), for Agreements that exceed \$100,000, Developer certifies that it:

- A. does not boycott energy companies as defined in Section 809.001 (1)(A) Texas Government Code (i.e., fossil fuel companies); and
- B. will not boycott energy companies during the term of the Agreement.

2.12 **Vaccine Passport Prohibition.** Developer certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Developer's business. Developer acknowledges that such a vaccine or recovery requirement would make Developer ineligible for a state-funded contract.

2.13 **Critical Infrastructure Affirmation.** Pursuant to Section 2274.0102 of [Texas Government Code](#), Developer certifies that neither it nor its parent company, nor any affiliate of Developer or its parent company, is:

- A. majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103 of Texas Government Code, or
- B. headquartered in any of those countries.

3. Representations and Warranties by Developer.

3.1 **Developer Warranties.** Developer warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Developer has been duly authorized to act for and bind Developer.

3.2 **Ethics Matters; No Financial Interest.** Developer and its employees, agents, representatives and subcontractors have read and understand The System's Conflicts of Interest Policy and Code of Ethics at <https://www.System.edu/about-System/policies.html> and applicable state ethics laws and rules. Neither Developer nor its employees, agents, representatives or subcontractors will assist or cause The System employees to violate The System's Conflicts of Interest Policy. Developer represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement. Neither Developer nor its employees, agents, representatives or subcontractors will assist or cause The

System employees to violate The System's Conflicts of Interest Policy, The System's Ethics Code, or applicable state ethics laws or rules. Developer represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Further, Developer agrees to comply with §2252.908, [Texas Government Code](#) (Disclosure of Interested Parties Statute), and 1 TAC §§46.1 through 46.5 (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and The System with information required on the form promulgated by TEC. Developer may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at: <https://www.ethics.state.tx.us/filinginfo/1295/>

4. Right to Audit.

- 4.1 **The System's Right to Audit.** Developer agrees that The System, or any of its duly authorized representatives, at any time during the term of the Agreement, will have access to, and the right to audit and examine, any relevant books, documents, papers, and records of Developer. Such records will be kept by Developer for a period of four years after the termination of this Agreement.
 - 4.2 **State Auditor's Right to Audit.** Developer understands and agrees, and shall cause each subcontractor that it contracts with that, to the extent Developer accepts funds from The System under this Agreement, then, to the extent permitted by applicable law (including, without limitation, [Texas Education Code](#) Sections 51.9335(c), 73.115(c) and 74.008(c)), the State of Texas Auditor's Office or any successor agency (**Auditor**) shall be permitted to conduct an audit or investigation in connection with those funds. Developer shall cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Additionally, the Auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Developer relating to this Agreement for any purpose.
5. **Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is provided below) or email (to the extent an email address is provided below), when received:

If to The System: The Texas State University System
 Attention: Vice Chancellor and CFO
 601 Colorado Street
 Austin, TX 78701
 Or via email: finance@System.edu

If to Developer: As per address / email information noted on this Agreement.

or other person or address as may be given in writing by either party to the other in accordance with this Section.

6. **INDEMNIFICATION.** DEVELOPER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS THE SYSTEM AND THEIR REGENTS, OFFICIALS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM:
 - 6.1 DEVELOPER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER, OR ANY BREACH OF ANY REPRESENTATION OR WARRANTY BY DEVELOPER UNDER, THIS AGREEMENT OR ANY OTHER AGREEMENT ENTERED INTO BETWEEN DEVELOPER AND THE SYSTEM RELATED TO THE WORK;
 - 6.2 ANY INJURY TO OR THE DEATH OF ANY PERSON OR DAMAGE TO ANY PROPERTY ARISING OUT OF THE PERFORMANCE OF THE WORK OR OTHER ACTIVITIES IN CONNECTION THEREWITH AS CONTEMPLATED HEREIN BY DEVELOPER OR BY ANY EMPLOYEE, CONSULTANTS, DESIGN PROFESSIONALS, INDEPENDENT CONTRACTORS, AND SUBCONTRACTORS OF, EMPLOYED OR RETAINED BY OR ON BEHALF OF DEVELOPER FOR THE PERFORMANCE OF ANY OF THE WORK (COLLECTIVELY, THE "DEVELOPER RESPONSIBLE PARTIES");
 - 6.3 THE NEGLIGENT OR WRONGFUL ACTS OR OMISSIONS OF DEVELOPER AND ANY DEVELOPER RESPONSIBLE PARTIES; OR
 - 6.4 THE VIOLATION BY DEVELOPER OF ANY TERM, CONDITION OR COVENANT IN THIS AGREEMENT.

IN EACH CASE, EVEN IF CAUSED BY THE CONTRIBUTORY NEGLIGENCE OR ALLEGED CONTRIBUTORY NEGLIGENCE OF AN INDEMNITEE OR IF AN INDEMNITEE WOULD OTHERWISE BE STRICTLY LIABLE UNDER LEGAL REQUIREMENTS.

DEVELOPER ACKNOWLEDGES AND AGREES THAT PURSUANT TO THE PROVISIONS OF THIS SECTION 7, DEVELOPER AGREES TO INDEMNIFY THE INDEMNITEES EVEN IF THE INDEMNITEES ARE NEGLIGENT, BUT NOT TO THE EXTENT THAT THE CLAIMS ARISE OUT OF THE ADJUDICATED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNITEES.

IF DEVELOPER AND THE SYSTEM ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT WAIVING ANY SOVEREIGN IMMUNITY AVAILABLE TO THE SYSTEM UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

IN ADDITION, DEVELOPER WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM

INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT.

THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, THE SYSTEM AGREES TO COOPERATE REASONABLY WITH DEVELOPER. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

7. **Limitations.** THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF THE SYSTEM (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON THE SYSTEM'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS OF JURY TRIALS; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE **LIMITATIONS**), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON THE SYSTEM EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
8. **Sovereign Immunity.** Notwithstanding any provision of the Agreement, nothing herein shall be construed as a waiver by The System of its constitutional, statutory or common law rights, privileges, immunities or defenses, including, but not limited to, waiver of The System's (i) sovereign immunity to suit; (ii) sovereign immunity against the recovery of money damages; or (iii) right to a jury trial for any issue arising under this Agreement. To the extent the terms of this paragraph conflicts with any other provision in the Agreement and this Addendum, the terms of this paragraph shall control.
9. **State Property.** Notwithstanding any provision of the Agreement, any grant by The System to Developer of any right to take possession and control of personal property owned by the State of Texas or to have a security interest therein shall be effective only to the extent that The System has authority to grant such rights under the Constitution or laws of the State of Texas.

10. Electronic and Information Resources.

- 10.1 **Access by Individuals with Disabilities.** Developer represents and warrants (the **EIR Accessibility Warranty**) that the electronic and information resources and all associated information, documentation, and support that it provides to The System under the Agreement (collectively, the **EIRs**), if any, comply with the applicable requirements set forth in Title 1, Chapter 213 of the [Texas Administrative Code](#) and Title 1, Chapter 206, Rule §206.70 of the [Texas Administrative Code](#) (as authorized by Chapter 2054, Subchapter M of the [Texas Government Code](#).) To the extent Developer becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Developer represents and warrants that it will, at no cost to The System, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Developer fails or is unable to do so, then The System may terminate the Agreement and Contractor will refund to The System all amounts The System has paid under the Agreement within thirty (30) days after the termination date. Developer will provide all assistance and cooperation necessary for the performance of

accessibility testing conducted by The System or The System's third party testing resources as required by [1 TAC §213.38\(g\)](#).

- 10.2** If Developer is providing Information Resource Services (per TAC 202.1), the terms and conditions of the Security & Accessibility Standards Exhibit found at <https://www.System.edu/offices/finance/terms-and-conditions.html> (the **IT Exhibit**) are also incorporated into the Agreement and shall also take precedence over any contrary term and condition contained in Developer's proposal or additional documentation provided by Developer.
- 11. Public Information Act.** The System strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act (**TPIA**), Chapter 552, [Texas Government Code](#). In accordance with §§552.002 and 2252.907, [Texas Government Code](#), and at no additional charge to The System, Developer will make any information created or exchanged with The System pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by The System that is accessible by the public.
- 12. Media / Press Releases.** Except when defined as part of the Work provided under the Agreement, Developer will not make any press releases, public statements, or advertisement referring to the Work or the engagement of Developer as an independent contractor of The System in connection with the Work or release any information relative to the Work for publication, advertisement, or any other purpose without the prior written approval of The System.
- 13. Insurance Requirements.** Prior to commencement of any work, and at all times, during the term of this Agreement, Developer must obtain and maintain the minimum insurance coverages set forth below. Developer is not relieved of any liability or other obligations assumed or pursuant to the Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.
- 13.1 Workers' Compensation Insurance** with statutory limits for the State of Texas, and Employer's Liability Insurance with limits of not less than:
- Employers Liability - Each Accident - \$1,000,000
Employers Liability - Each Employee - \$1,000,000
Employers Liability - Policy Limit - \$1,000,000
- Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of The System.
- 13.2 Commercial General Liability Insurance** with limits of not less than:
- Each Occurrence Limit - \$1,000,000
Damage to Rented Premises - \$300,000
Medical Expenses (any one person) - \$10,000
Personal & Advertising Injury - \$1,000,000
General Aggregate - \$2,000,000
Products - Completed Operations Aggregate - \$2,000,000

Policy must include independent contractor's liability, covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring Developer's (or subcontractor's) liability for bodily injury (including death) and property damage.

- 13.3 **Business Auto Liability Insurance** covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage.
- 13.4 **Umbrella and/or Excess Liability Insurance** with limits of not less than \$50,000,000. This policy shall provide excess coverage over all underlying policies required above.
- 13.5 **Professional Liability Insurance (Errors and Omissions)** with limits of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate for Services Fee equal to or less than \$1,000,000) and with limits not less than \$1,000,000 per claim and \$4,000,000 annual aggregate for Services Fee of \$1,000,001 and above.
- 13.6 **Pollution Liability Insurance (including Contractors' Pollution Liability Coverage)** with limits of not less than \$1,000,000 per loss and \$2,000,000 annual aggregate.
- 13.7 **Builders Risk Insurance** covering the Work in an amount equal to the total contract sum under Developer's construction contract for the Work and cost of materials supplied or installed by others, plus any change orders, comprising total value for the Work on a replacement cost basis. The builder's risk policy shall cover materials located on-site, located off-site and in transit. The policy coverages shall include, without limitation, damage resulting from collapse, from rainfall and from water, and shall include permission to occupy. The policy shall provide business income, expediting and contractor's extra expense and delayed opening/delayed start-up coverages. The time element coverages shall include a waiting period of not more than thirty (30) days and shall provide proceeds which will cover actual loss during a period of not less than twelve (12) months from the date of casualty or loss. The policy must be endorsed to include ordinance or law coverage no less broad than that no less broad than those in the primary policy.

The builder's risk policy shall cover "Special Form Causes of Loss" (also known as "all risk"), and will include the following coverages (with sublimits as are acceptable to Developer): (A) flood, named storms, separately and in an aggregate amount not less than the amount of the contract sum (as the same may be adjusted from time to time); and (B) earthquake and earth movement, in an aggregate amount not less than the amount of the contract sum (as the same may be adjusted from time to time), debris removal, demolition and increased cost of construction, interruption by civil or military authority, ingress/egress and terrorism coverage to the extent offered and available under the Federal Terrorism Risk Insurance Act (as extended under the Terrorism Risk Insurance Extension Act of 2007) (provided that terrorism coverage may be subject to an annual aggregate limit of not less than the lesser of the full replacement value of the Work or the amount of the contract sum (as the same may be adjusted from time to time; and (C) loss or use, business income and interest expense coverage at levels acceptable to the Developer. Equipment breakdown (boiler and machinery) shall be included and specifically cover insured equipment during installation and testing, including cold and hot testing.

The deductible for the builder's risk policy shall not exceed a commercially reasonable amount and shall be the responsibility of the Developer or other applicable subcontractor or sub-subcontractor. The builder's risk policy shall be maintained until no earlier than when substantial completion of the Work has been achieved, or until a later time after substantial completion as approved by The System and the Developer.

- 13.8** **Bonds.** Developer shall obtain and maintain, or cause its general contractor to obtain and maintain, the following surety bonds at all times during the performance of the Work:

- 13.8.1** Payment and Performance Bonds. Developer shall obtain, or cause its general contractor to obtain, payment and performance bonds meeting all applicable requirements of Texas law, written by a surety satisfying (ii) below and in the form attached to the construction contract or such other form as reasonably approved by The System.
- 13.8.2** Qualified Surety. Any surety providing a payment bond or performance bond shall be listed on the US Department of the Treasury's Listing of Approved Sureties maintained by the Bureau of Financial Management Services (**FMS**), www.fms.treas.gov/c570, stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (FMS Circular 570).
- 13.8.3** Bond Indemnification. The process of requiring and accepting bonds and making claims hereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253 and Tex. Prop. Code, Chapter 53. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONSTRUCTION CONTRACT WILL REQUIRE THE GENERAL CONTRACTOR TO FULLY INDEMNIFY AND HOLD THE SYSTEM AND DEVELOPER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.
- 13.8.4** Furnishing Bond Information. Pursuant to the construction contract, the general contractor shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code § 2253.026 and Tex. Prop. Code, Chapter 53.
- 13.8.5** Claims on Payment Bonds. The System is not responsible in any manner to a claimant under a payment bond for collection of unpaid bills and accepts no such responsibility because of any representation by any agent or employee.
- 13.8.6** Obligees. The general contractor will be the principal obligee under the payment and performance bonds and Developer and The System will be dual/multiple obligees by endorsement to the payment and performance bonds.
- 13.9** **Aviation Insurance (including coverage for Drones)** with limits of not less than \$1,000,000 and coverage extended to Bodily Injury, Property Damage, Personal Injury and Advertising Injury.
- 13.10** **Additional Insurance Requirements.**

- 13.10.1** Insurance must be placed with insurers duly licensed or authorized to do business in the state of Texas and with an "A.M. Best" rating of not less than A-VII.
 - 13.10.2** Before the commencement of any work, Developer must furnish to The System's Risk Manager an original, latest edition Certificate of Insurance written on a standard ACORD form acceptable to The System, evidencing that it has procured the insurance required herein. The System reserves the right to require Developer to provide updated certificates of insurance, declaration pages, and/or endorsements evidencing the terms and conditions required herein at any time. Developer must replace all such certificates with new ones within 10 days of expiration. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project.
 - 13.10.3** With the exception of Workers' Compensation, Employer's Liability, and Professional Liability, The System, its officers, employees, agents, and volunteers must be included as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Developer. Commercial General Liability must include The System and its officers, employees, agents, and volunteers as additional insureds for both on-going and completed operations.
 - 13.10.4** All policies must be endorsed to provide a waiver of subrogation in favor of The System.
 - 13.10.5** All policies of insurance must be endorsed to be primary and non-contributory with any insurance coverages and/or self-insurance maintained by The System.
 - 13.10.6** All insurance policies must provide for written notice of cancellation to be sent to The System in accordance with policy provisions. In the event of notice of cancellation of or material change in any insurance required herein, within two (2) days upon receiving such notice, Developer shall provide written notice to The System.
 - 13.10.7** Developer must require and verify that any and all contractors, architects, engineers and other consultants which are not protected under Developer's own insurance policies maintain insurance of the same nature and in the same amounts as required of Developer in this Agreement.
- 13.11** The insurance policies required in this Agreement will be kept in force for the periods specified below:
- 13.11.1** Commercial General Liability Insurance and Business Automobile Liability Insurance will be kept in force until the Work has been performed in accordance with this Agreement.
 - 13.11.2** Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Work has been performed in accordance with this Agreement.

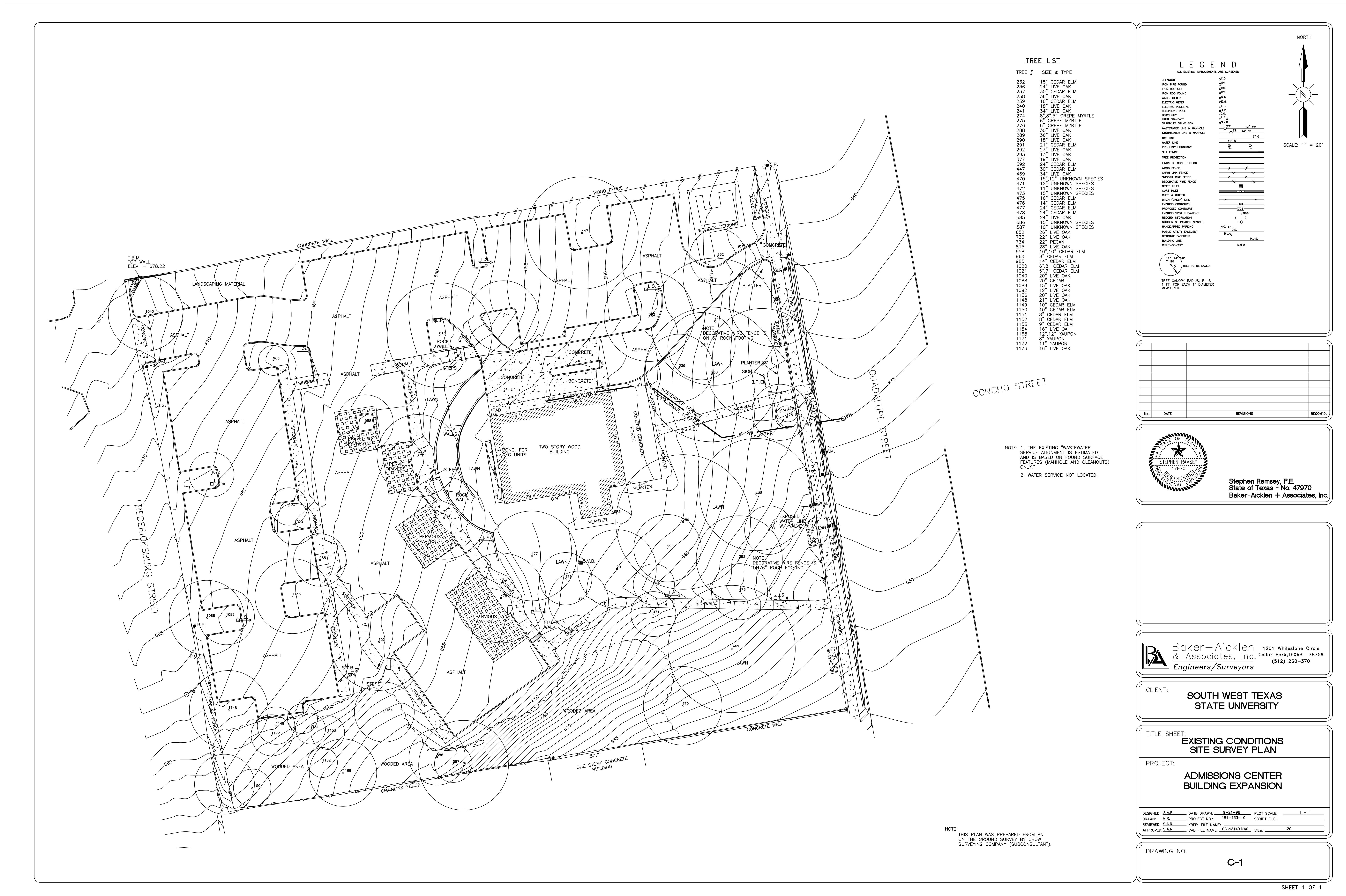
13.11.3 If any insurance coverage required herein is written on a “claims made” basis, the policy retroactive date must precede the effective date of this Agreement and must not be advanced during the term of this Agreement. Developer agrees that such coverage must remain in force, either by maintaining continuous “claims made” coverage or by purchasing an extended reporting option, until the applicable preemptive period or statute of repose for any claims has expired. Developer must provide The System with proof of continuous coverage at the time the policy is renewed.

14. General.

- 14.1 Loss of Funding.** Performance by The System under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (Legislature) and/or allocation of funds by the Board of Regents of The Texas State University System (Board). If the Legislature fails to appropriate or allot necessary funds, or the Board fails to allocate necessary funds, then The System will issue written notice to Developer and The System may terminate this Agreement without further duty or obligation. Developer acknowledges that appropriation, allotment, and allocation of funds are beyond The System’s control.
- 14.2 Buy Texas Affirmation.** If Developer will provide services under the Agreement, Developer covenants and agrees that in accordance with Section 2155.4441, [Texas Government Code](#), in performing its duties and obligations under the Agreement, Developer will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
- 14.3 Buy American Iron and Steel.** For services in which iron or steel products will be used, Contractor agrees to comply with Section 2252.202, [Texas Government Code](#), requiring any iron or steel products produced through a manufacturing process and used in the project be produced in the United States.
- 14.4 Governing Law and Venue.** The Agreement and all claims arising from the Agreement shall be interpreted and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Any judicial action or proceeding between the parties relating to the Agreement and all claims arising from the Agreement shall be brought in the federal or state courts serving Travis County in the State of Texas.
- 14.5 Entire Agreement; Modifications.** The Agreement (including all exhibits, schedules, supplements and other attachments (collectively, Exhibits) supersedes all prior agreements, written or oral, between Developer and The System and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by The System and Developer.
- 14.6 Title and Risk of Loss.** Title to and risk of loss to any improvements to be delivered under this Agreement will not pass to The System until The System actually receives and takes possession of such improvements.

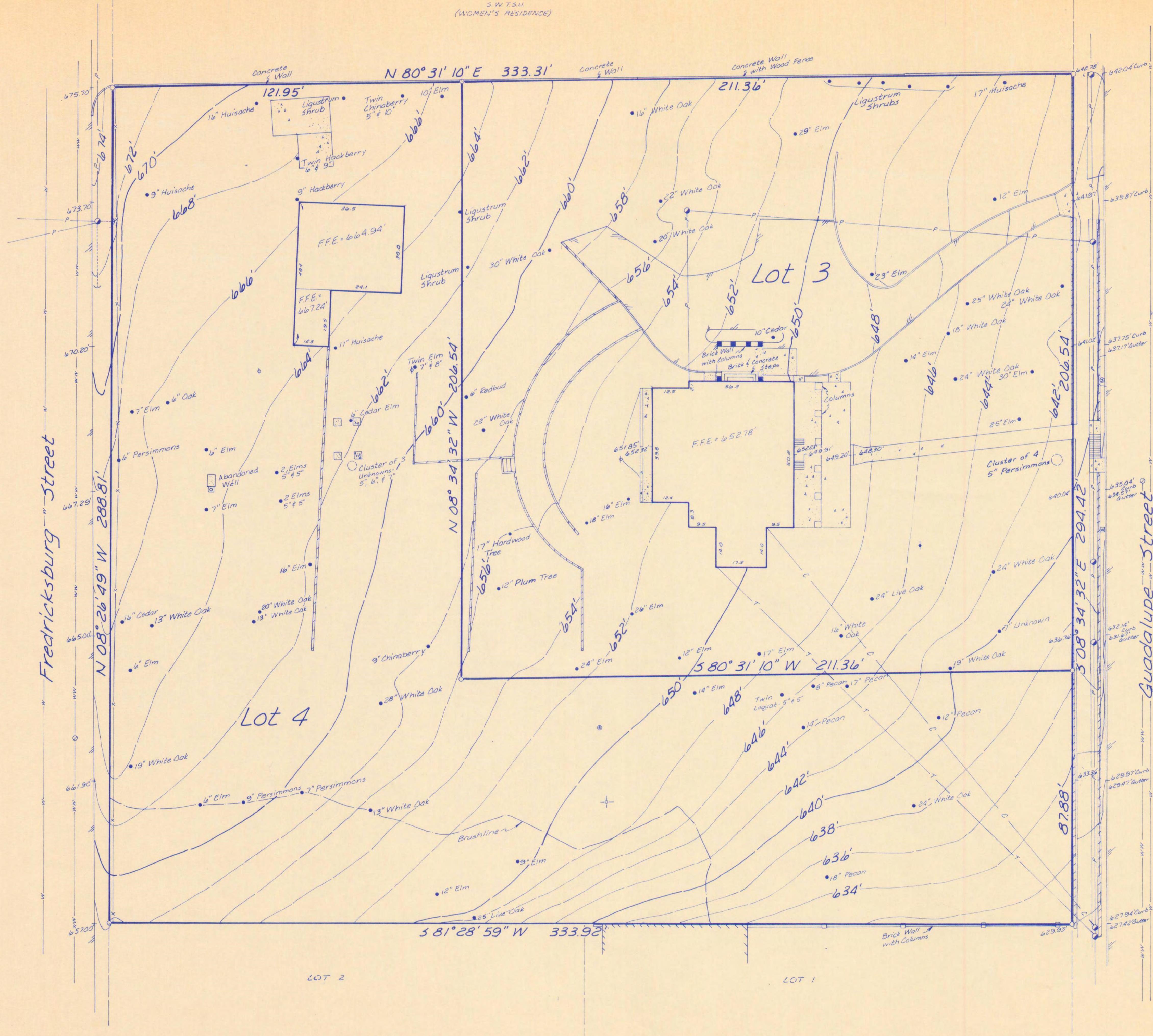
- 14.7 Dispute Resolution (Breach of Contract Claims).** To the extent that Chapter 2260, [Texas Government Code](#), is applicable to the Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by The System and Developer to attempt to resolve any claim for breach of contract made by Developer that cannot be resolved in the ordinary course of business. The chief business officer of The System will examine Developer's claim and any counterclaim and negotiate with Developer in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Agreement by The System nor any other conduct, action or inaction of any representative of The System relating to the Agreement constitutes or is intended to constitute a waiver of The System's or the state's sovereign immunity to suit; and (ii) The System has not waived its right to seek redress in the courts.
- 14.8 Nondiscrimination.** In their execution of the Agreement the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of the Agreement.
- 14.9 External Terms.** The Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Developer's performance under this Agreement (**External Terms**). External Terms are null and void and will have no effect under this Agreement, even if The System or its employees, contractors, or agents express assent or agreement to the External Terms. External Terms include any shrink wrap, clickwrap, browse wrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that The System or its employees, contractors, or agents are required to accept or agree to before or in the course of Developer's performance under this Agreement.
- 14.10** In accordance with [Texas Education Code](#), Section 51.9335 (h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:
- (1) Whether the provision appears on the face of the Agreement or Contract; or
 - (2) Whether the Agreement or Contract includes any provision to the contrary

APPENDIX F(B) - Survey



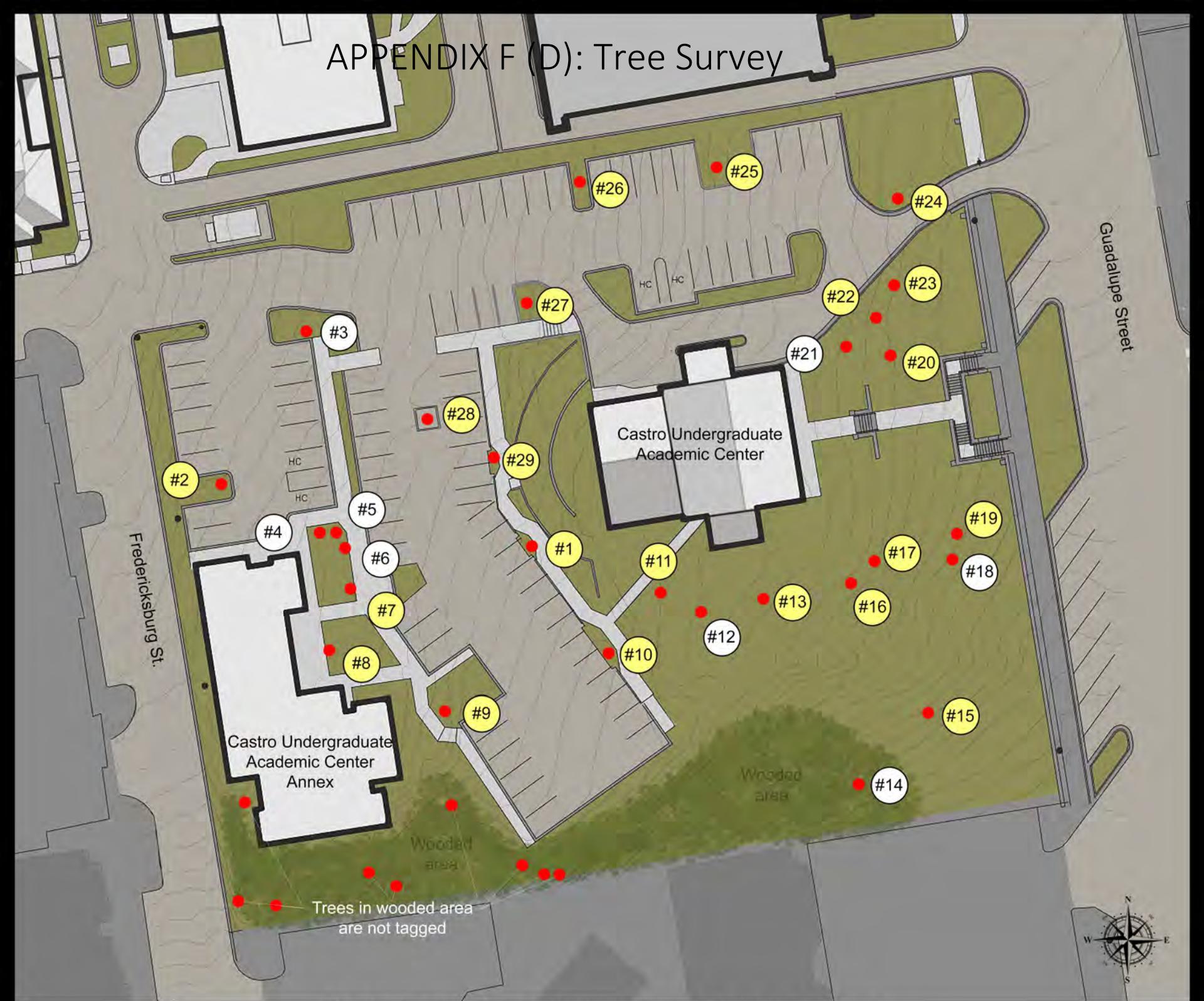
Legend

- CONCRETE
- WIRE FENCE
- WATER LINE
- WASTEWATER LINE
- POWER POLE
- WATER METER
- WATER SPIGOT
- WASTEWATER MAN HOLE
- STORM SEWER MAN HOLE
- ELECTRIC SOCKET
- LIGHT POLE
- AS-PUNCHED FLOOR ELEVATION
- WATER SPIGOT
- STONE WALL
- CABLE TV LINE
- TELEPHONE LINE
- GUY WIRE ANCHOR



TOPOGRAPHIC & TREE
LOCATION SURVEY OF
Lots 3 & 4
University Plaza
Book 4, Page 189
Hays County, Texas

APPENDIX F (D): Tree Survey



Tree Inventory - Castro Undergraduate Admissions Center

Map ID	Tree #	Species	Circumference (inch)	Diameter
1	2558	Pecan	119	37.8
2	2910	Live Oak	64	20.3
3	2911	Cedar Elm	47	14.9
4	2912	Cedar Elm	36	11.5
5	2912	Cedar Elm	25	8.0
6	2913	Cedar Elm	37	11.8
7	2914	Cedar Elm	32	10.3
8	2915	Cedar Elm	64	20.3
9	2916	Live Oak	74	23.7
10	2917	Live Oak	118	37.5
11	2918	Cedar Elm	101	32.1
12	2919	Cedar Elm	85	27.1
13	2920	Cedar Elm	58	18.3
14	2922	Cedar Elm	85	27.1
	2925	Honey Locust	55	17.6

Map ID	Tree #	Species	Circumference (inch)	Diameter
15	2926	Live Oak	113	35.9
16	2927	Live Oak	67	21.4
17	2928	Live Oak	103	32.9
18	2931	Texas Red Oak	60	19.1
19	2933	Live Oak	112	35.5
20	2937	Live Oak	120	38.2
21	2938	Cedar Elm	55	17.6
22	2939	Live Oak	74	23.7
23	2940	Live Oak	115	36.7
24	2942	Cedar Elm	74	23.7
25	2946	Cedar Elm	95	30.2
26	2952	?	65	20.6
27	2955	Live Oak	113	35.9
28	2956	Cedar Elm	70	22.2
29	2957	Live Oak	83	26.4

Highlighted trees have a greater than 20" diameter

APPENDIX G: TERM SHEET

Parties	Texas State University ("Lessor"); and [Lessee] ("Lessee")
Project Description	The development of a [room count]-room hotel project (the "Facility") on the site located at 429 N. Guadalupe St., San Marcos, TX 78666 (the "Premises") using a Ground Lease with a term of [term] years (the "Project"). The Lessee, in partnership with a Development Team consisting of a Lead Architect, a Lead Contractor, and a Lead Operator, will be responsible for designing, constructing, financing, operating, and maintaining the Facility over the term of the Ground Lease.
Ground Rent	Lessee shall pay Lessor annual ground lease payments ("Ground Rent") of no less than [\$ ground rent amount or % of gross revenue] in the first year of occupancy (the "Initial Ground Rent") [escalated at [escalation]% per year].
Lessee's Responsibilities	<ul style="list-style-type: none"> ● <u>Design:</u> Lessee will be responsible for the design for the Project, which must comply with any design or program requirements provided by Lessor and all applicable laws and regulations. Lessor shall have approval rights of the schematic design package and design development package not to be unreasonably withheld, conditioned, or delayed. ● <u>Construction:</u> Lessee will be responsible for turnkey construction, test-out and commissioning of the Project, including any required movement or relocation of overhead or underground utilities to allow for construction of the Project. ● <u>Permits/Approvals:</u> Lessee will be responsible for obtaining all permits and approvals necessary for construction, use, and occupancy of the Project. ● <u>Security:</u> During construction, Lessee will be responsible for work site security and for control, protection, and public safety of pedestrians and traffic within or around any construction zone associated with the Project, including any staging or material/equipment lay-down areas. ● <u>Finance:</u> Lessee and its Financing Partners, if applicable, shall be solely responsible for securing the financing necessary for the Project, including all required debt, equity, and liquidity or credit facilities. ● <u>Occupancy:</u> Lessee will be responsible for all aspects related to the occupancy of the Project, including marketing, room night rentals, and collection. Texas State University will list the project on

	<p>Texas State University's website as the university's preferred lodging option for students, parents, and the general campus community. Texas State shall not provide any financial support to the Project, including but not limited to occupancy guarantees or direct financial support.</p> <ul style="list-style-type: none"> • <u>Operations and Maintenance:</u> Lessee will be responsible for all operations and maintenance activities for the Project, including payment of all operating expenses such as utilities, insurance, and taxes (or any type of payments in lieu of taxes paid to a taxing entity). The Project will be maintained in good condition using industry best practices.
Target Date for Closing	The ground lease will be executed by the parties on or before [xxx, 2024].
Due Diligence and Site Work	Lessee shall be responsible for all due diligence and site work needed to construct the Project.
Projected Occupancy Date	Occupancy is scheduled for [insert proposed occupancy date] (the "Occupancy Date").
Performance Security, Insurance and Indemnity	Lessee and/or its Lead Contractor shall provide both payment and performance security as well as customary insurance coverage in connection with the construction work. Lessee and its Lead Contractor shall indemnify, defend and hold Lessor and related entities, its advisors and other persons harmless against third party and other claims.
Governing Law	The Agreement will be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of laws or principles.
Parking	Parking requirements will need to meet San Marcos municipal code, either on site or through parking agreements negotiated between the parties.
No Reimbursement from Lessor	As will be further defined in the Agreement, unless termination of the Agreement is at Lessor's convenience or due to Lessor's default, Texas State University shall not reimburse the Developer or any Proposers for any costs associated with developing its Initial Proposal or Final Proposal; negotiating the Term Sheet or Agreement; or designing, constructing, financing, operating, or maintaining the Project.
Lessor Right of First Offer	If at any time during the lease term, the Lessor decides to sell, lease, or otherwise transfer the leased property (or any part thereof), the Lessor agrees to first offer the Lessee the right of first offer to purchase or lease the property on the same terms and conditions as those being offered to any third party.
Reversion	At the University's discretion, the Developer may be required to demolish the improvements upon Ground Lease expiration at Developer's expense.

Pre-Submittal Conference - Attendee List

The Texas State University System
RFP 758-24-00089 Hotel Developer
December 11, 2023

Aaron Gentry

TVS

agentry@tvsdesign.com

404-593-9073

Ed Hensler

Preston Hollow Design

ehensler@phccap.com

Matt Levin

Stifel

Matt.levin@stifel.com

214-706-9483

Arman Azad

KeyBanc Capital Markets (Financing Partner)

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Stephen Hill

KeyBanc Capital Markets (Financing Partner)

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Wendy Dunnam Tita

Principal Page

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Cady Zawatson

Arquitectonica (Architect)

Czawatson@arquitectonica.com

Hossam Ahmed

Development Advisory Director

Altus Group (Technical Advisory)

hossam.ahmed@altusgroup.com

Rob Reiter

Alta Architects

rob.reiter@alta-architects.com

Clayton Freels

Midway (Developer)

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Sara Ibarra

Business Development Director

Page (Architecture & Engineering)

512-382-3408

sibarra@pagethink.com

Karen Krueger Guerrero

UTSA

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Allison Walling Ellis

OJB Landscape Architecture

awalling@ojb.com



Addendum No. 1

Issued: 12/13/23

RFP No.:

758-24-00089

Hotel Developer

FOR
THE TEXAS STATE UNIVERSITY SYSTEM
AUSTIN, TEXAS

Notice To All Potential Respondents:

This Addendum to Request for Proposal (RFP) No. 758-24-00089 modifies the bid documents originally posted on 11/28/2023 with the amendments and additions noted below.

Prepared By:

Jenn DeLeon

The Texas State University System

Jennifer.deleon@tsus.edu

I. Questions and Answers:

The questions below were asked during the pre-proposal conference held on December 11, 2023, and have been answered by The System.

1. Does the University have a preferred financing structure for this project?

Answer: No. The University is agnostic as to the financing structure and encourages the creativity of the development community to present structures that can deliver on the University's objectives, as outlined in the RFP.

The University is agnostic as to the form of ground rent (fixed/variable) and will give preference to a structure that provides the greatest return to the University while first delivering on the University's objectives, as outlined in the RFP.

2. How will the University support this project's success?

Answer: The University is promoting the success of this project through a variety of measures, including:

- Advertised as the official Texas State hotel on the University website, including for all prospective students, faculty and staff, athletic and art events, and LBJ Student Center conferences and events.
- Require all lodging paid for by the University in the San Marcos market to book through this hotel, unless the hotel is fully booked.
- Facilitate collaboration with the LBJ Student Center, Texas State Athletics, and university admissions to capitalize on events and conferences hosted on campus.
- Offer market-rate parking for the project in adjacent University-owned parking garages for the length of the ground lease, to offset the construction of parking onsite.

3. Are any local incentives being offered for the Project?

Answer: As a University-hotel serving the public, and based on preliminary conversations with Hays County, it is Texas State's goal that the project remains 100% exempt from property taxes. The University will facilitate a meeting between the shortlisted proposers and Hays County representatives to discuss the tax treatment.

The City of San Marcos supports the development of this hotel and will consider occupancy tax abatements for the project. The University will facilitate a meeting between the shortlisted proposers and the City of San Marcos representatives to discuss the tax treatment.

4. Does the solicitation process allow for the University to move directly into the selection of a developer without the qualifications and/or final submission stage?

Answer: No. The System intends to follow the solicitation process outlined in the RFP, which consists of an Initial Submission that will qualify a shortlist of firms and a Final Submission that will include a technical and financial offer. It is from this two-step process that The System intends to select a development partner. This approach is intended to respect the time and energy of the proposers and to limit the amount of work needed to participate in the first phase.

5. Please detail the plans for the existing site improvements – what will happen to those structures and the occupants therein?

Answer: The University is consolidating the functions of the admissions center into the J.C. Kellam Administration Building and all occupants of the Richard A. Castro Undergraduate Admissions Center, and the Annex building will be relocated prior to construction of this facility.

The Richard A. Castro Undergraduate Admissions Center building will be relocated prior to commencement of construction. The use of the Annex building on the back of the property will be left to the developer's discretion to be used or demolished.

6. Are there restrictions or specific mitigation actions required for the trees on the site?

Answer: The University has included a tree survey as part of the site due diligence materials that are included in the RFP. While there were no heritage trees identified on the site, the University encourages the preservation of as many trees as possible, both for stewardship as well as to promote the character of the hotel. The University is recognized by Tree Campus USA and, as such, will replace in kind a similar caliper-inch of trees removed from the site elsewhere on University-owned land.

II. Provision of Pending Documents:

The survey (Appendix F, Item B) and the title report (Appendix F, Item C) were pending when the RFP was originally posted. Both documents are included in the pages following the end of this Addendum.

END OF ADDENDUM 1



APPENDIX F – ITEM B

SURVEY

ALTA/NSPS LAND TITLE SURVEY

OF LOTS 3 AND 4
UNIVERSITY PLAZA SECTION TWO
VOLUME 4, PAGE 189
PLAT RECORDS, HAYS COUNTY, TEXAS,



0 20 40
SCALE: 1" = 20'

LEGAL DESCRIPTION

TRACT 1:
LOT 3 AND LOT 4 OF UNIVERSITY PLAZA SECTION TWO,
AS RECORDED IN VOLUME 4, PAGE 189
OF THE PLAT RECORDS OF HAYS COUNTY.

GENERAL NOTES:

- 1) THIS PROPERTY IS SUBJECT TO ALL AND ANY RECORDED AND UNRECORDED EASEMENTS. SURVEYOR HAS MADE NO INVESTIGATION FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS OR OTHER DOCUMENTED AGREEMENTS.
- 2) SUBJECT TO ALL APPLICABLE DEVELOPMENT CODES AND ZONING ORDINANCES.
- 3) DUE TO DIFFERENT BUILDING PRACTICES, BUILDING DIMENSIONS ARE APPROXIMATE.
- 4) ANY UTILITIES SHOWN HEREON MAY BE EXAGGERATED FOR GRAPHIC REPRESENTATION ONLY.
- 5) DIVISION LINES SHOWN ON RECORD IN VOLUME 696, PAGE 265, HAYS COUNTY RECORDS.
- 6) THIS SURVEY ONLY SHOWS ABOVE GROUND IMPROVEMENTS.

UTILITY NOTES:

1. SURVEYOR MAKES NO GUARANTEES THAT THE UTILITIES SHOWN COM普RISE ALL THE UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. SURVEYOR HAS NOT LOCATED ALL UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED. UTILITIES SHOWN HEREON MAY BE EXAGGERATED FOR GRAPHIC REPRESENTATION.
2. SURVEYOR MAKES NO GUARANTEES THAT UTILITIES ARE LOCATED AS ACCURATELY AS POSSIBLE FROM THE INFORMATION AVAILABLE.

TITLE COMMITMENT NOTES:

COMMITMENT FOR TITLE INSURANCE PREPARED BY: FIDELITY NATIONAL TITLE INSURANCE COMPANY, COMMITMENT NO. 23-0782-C, EFFECTIVE DATE: OCTOBER 26, 2023.

THE SURVEYOR HAS RELIED UPON THE REFERENCED COMMITMENT FOR TITLE REGARDING EASEMENTS, RESTRICTIONS AND OTHER MATTERS AFFECTING THIS PROPERTY. NO ADDITIONAL RESEARCH WAS DONE FOR THE PURPOSE OF THIS SURVEY. SURVEYOR'S NOTES AND/OR OBSERVATIONS SHOWN IN BRACKETS. []

NO ITEMS TO BE ADDRESSED BY SURVEYOR, PER TITLE COMMITMENT REFERENCED ABOVE.

DATUM & BEARING BASIS

TEXAS STATE PLANE COORDINATE SYSTEM,
SOUTH CENTRAL ZONE (4204); NAD 83, GRID NORTH,
ELEVATION DATA NAVD 88, GEOD 18.
DISTANCES IN US SURVEY FEET (GRID).

FLOOD INFORMATION

SAID DESCRIBED PROPERTY IS LOCATED WITHIN AN AREA HAVING A ZONE DESIGNATION X (UNSHADED) BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ON FLOOD INSURANCE RATE MAP NO. 4820000389P, WITH A DATE OF IDENTIFICATION OF 09/02/2005, FOR COMMUNITY NUMBER 485505, IN HAYS COUNTY, STATE OF TEXAS. REFER TO THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PROPERTY IS SITUATED.

TO: FIDELITY NATIONAL TITLE INSURANCE COMPANY AND THE STATE OF TEXAS:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEY, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS AND APPROVED BY THE TEXAS LAND TITLE ASSOCIATION, 1, 2, 7, 8, 9, 10, 11, 13, 16, AND 17 OF TABLE A THEREOF.

THE FIELDWORK WAS COMPLETED ON NOVEMBER 07, 2023.

DATE OF PLAT OR MAP: NOVEMBER 08, 2023
PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT

JAD DUPLECHAN, R.P.L.S. No 6906

DRAWN BY: GGM REVIEWED BY: JAD
FIELD CREW: EM & JZ

REVISION #:

SHEET SIZE = 24"X36"

VOL. 216, PG. 265
D.R.H.C.
N/F
THE STATE OF TEXAS.

CALLED 0.183 ACRES
VOL. 217, PG. 385
D.R.H.C.
N/F
THE STATE OF TEXAS

LEGEND

○	1/2" IRON ROD SET
●	1/2" IRON ROD SET (PINK CAP STAMPED "SURVEY WORKS")
△	1/2" IRON ROD FOUND (UNLESS NOTED)
▽	CALCULATED POINT
▼	MAG NAIL FOUND
◆	MAG NAIL SET WITH WASHER STAMPED "SURVEY WORKS" (UNLESS NOTED)
✖	COTTON GIN SPINDLE SET
✖	GAS METER
✖	ELECTRIC METER
✖	WATER METER
✖	CLEAN OUT
✖	POWER POLE
✖	SIGN
✖	MAILBOX
✖	GUY ANCHOR
✖	ELECTRIC VAULT
✖	TRAFFIC SIGNAL POLE
✖	LIGHT POLE
✖	TRANSFORMER
✖	TELEPHONE PEDESTAL
✖	IRRIGATION CONTROL VALVE
✖	BOLLARD
✖	MONITORING WELL
✖	WATER VALVE
✖	HANDICAP PARKING SPACE
✖	TRASH CAN
✖	BIKE RACK
✖	AIR CONDITIONING UNIT
✖	FIRE HYDRANT
✖	MANHOLE (TYPE UNKNOWN)
✖	WASTE WATER MANHOLE
✖	STORM DRAIN MANHOLE
✖	ELECTRIC MANHOLE
✖	OVERHEAD UTILITY
✖	CHAIN LINK FENCE
✖	WOOD FENCE
✖	EDGE OF PAVEMENT
✖	PROPERTY LINE
✖	ADJACENT LINE
✖	CONCRETE AREA
✖	WALLS
✖	BRICK AREA
P.R.H.C.	PLAT RECORDS
VOL. PG.	HAYS COUNTY
O.P.R.H.C.	VOLUME AND PAGE OF PUBLIC RECORDS
D.R.H.C.	DEED RECORDS
ON/OFF	HAYS COUNTY
✓	ON/OFF SUBJECT PROPERTY
✗	RIGHT OF WAY
✓	RECORD INFORMATION
✗	NOW OR FORMERLY
✓	SQUARE FEET
✗	BREAKLINE

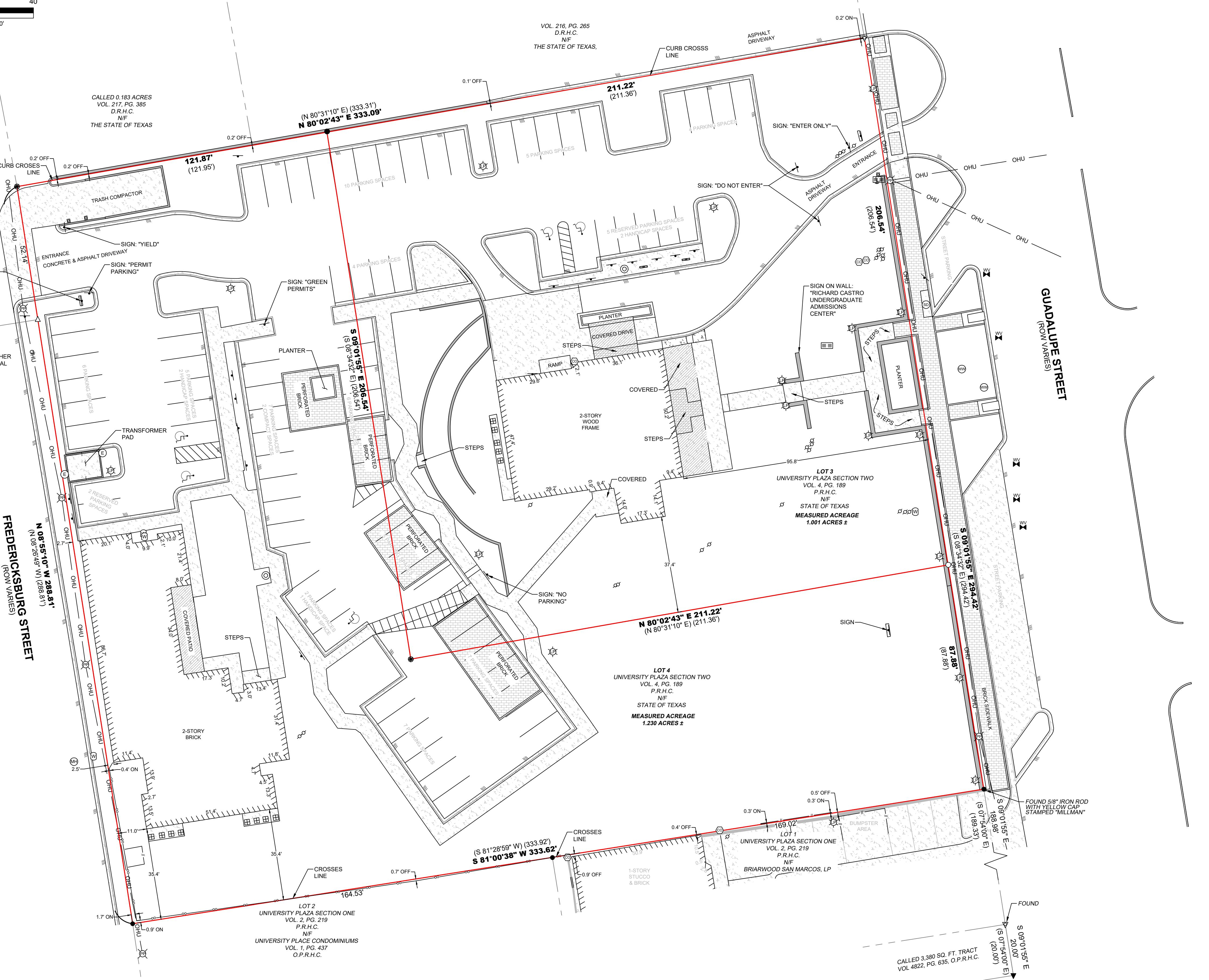


TABLE A - ALTA NOTES	
1.	MONUMENTS PLACED AT ALL MAJOR CORNERS
2.	ADDRESS(IES) OF THE SURVEYED PROPERTY DISCLOSED.
4.	GROSS LAND AREA: 1.001 (LOT 3) 1.230 (LOT 4) 2.231 ACRE TOTAL
7(a).	EXTERIOR DIMENSIONS OF ALL BUILDINGS AT GROUND LEVEL SHOWN HEREON.
8.	SUBSTANTIAL FEATURES OBSERVED IN THE PROCESS OF CONDUCTING FIELDWORK SHOWN HEREON.
9.	GENERAL SPACES: 68 HANDICAP SPACES: 5 RESERVED SPACES: 7 COMPACT SPACES: 2 TOTAL: 82
10.	NO PARTY WALL DETERMINATION WAS REQUESTED BY CLIENT.
11.	ONLY ABOVE GROUND UTILITIES ARE DEPICTED HEREON (SEE UTILITY NOTE).
13.	NAMES OF ADJOINING OWNERS ACCORDING TO CURRENT TAX RECORDS SHOWN HEREON.
16.	NO EVIDENCE OF RECENT EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS WERE OBSERVED IN THE PROCESS OF CONDUCTING FIELDWORK.
17.	THERE IS NO EVIDENCE OF PROPOSED STREET RIGHT OF WAY CHANGES AS PROVIDED BY THE CLIENT OR GOVERNING MUNICIPALITY.

SURVEYED FOR:
JAD DUPLECHAN, R.P.L.S.
PROJECT NO. 23-0137.01
429 NORTH GUADALUPE STREET
SAN MARCOS, TX

SURVEY WORKS

INFO@SURVEYWORKS.COM

AUSTIN, TX 78741
FIRM #10194157
(512) 599-8067

SHEET 1 of 1



APPENDIX F – ITEM C

TITLE REPORT



*First American
Title Guaranty Company*

Commitment for Title Insurance (T-7)

ISSUED BY

First American Title Guaranty Company

Commitment

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN **SCHEDULE A** AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

We **FIRST AMERICAN TITLE GUARANTY COMPANY** will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

First American Title Guaranty Company



Christopher M. Leavell
Christopher M. Leavell
President

Jeffrey S. Robinson
Jeffrey S. Robinson
Secretary

CORRIDOR TITLE LLC

By:

Linda Y. Sanchez

Authorized Countersignature

(This Commitment is valid only when Schedules A, B, C, and D are attached)

This jacket was created electronically and constitutes an original document

TEXAS TITLE INSURANCE INFORMATION

<p>Title insurance insures you against loss resulting from certain risks to your title.</p> <p>The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.</p>	<p>El seguro de título le asegura en relación a perdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad.</p> <p>El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.</p>
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Your Commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

- MINERALS AND MINERAL RIGHTS may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- EXCEPTIONS are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.

- EXCLUSIONS are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

- CONDITIONS are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-888-632-1642 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.
2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements, or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.



*First American
Title Guaranty Company*

Important Notice

ISSUED BY

First American Title Guaranty Company

IMPORTANT NOTICE

To obtain information or make a complaint:

You may call First American Title Guaranty Company's toll-free telephone number for information or to make a complaint at:

1-888-632-1642

You may also write to First American Title Guaranty Company at:

**1 First American Way
Santa Ana, California 92707**

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact First American Title Guaranty Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener información o para presentar una queja:

Usted puede llamar al número de teléfono gratuito de First American Title Guaranty Company's para información o para presentar una queja al:

1-888-632-1642

Usted también puede escribir a First American Title Guaranty Company:

**1 First American Way
Santa Ana, California 92707**

Usted puede comunicarse con el Departamento de Seguros de Texas para obtener información sobre compañías, coberturas, derechos, o quejas al:

1-800-252-3439

Usted puede escribir al Departamento de Seguros de Texas a:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: <http://www.tdi.texas.gov>
E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS POR PRIMAS DE SEGUROS O RECLAMACIONES:

Si tiene una disputa relacionada con su prima de seguro con una reclamación, usted debe comunicarse con el First American Title Guaranty Company primero. Si la disputa no es resuelta, usted puede comunicarse con el Departamento de Seguros de Texas.

ADJUNTE ESTE AVISO A SU PÓLIZA:

Este aviso es solamente para propósitos informativos y no se convierte en parte o en condición del documento adjunto.

COMMITMENT FOR TITLE INSURANCE T-7

ISSUED BY

FIRST AMERICAN TITLE GUARANTY COMPANY

SCHEDULE A

Effective Date: **November 16, 2023, 08:00 am**

GF No. 23-2986-CH

Commitment No. _____, issued **November 27, 2023, 08:00 am**

1. The policy or policies to be issued are:

- a. OWNER'S POLICY OF TITLE INSURANCE (Form T-1)
(Not applicable for improved one-to-four family residential real estate)
Policy Amount:
PROPOSED INSURED:
- b. TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE
ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)
Policy Amount:
PROPOSED INSURED:
- c. LOAN POLICY OF TITLE INSURANCE (Form T-2)
Policy Amount:
PROPOSED INSURED:
Proposed Borrower: **Texas State University**
- d. TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)
Policy Amount:
PROPOSED INSURED:
Proposed Borrower:
- e. LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)
Binder Amount:
PROPOSED INSURED:
Proposed Borrower:
- f. OTHER
Policy Amount:
PROPOSED INSURED:

2. The interest in the land covered by this Commitment is: Fee Simple

3. Record title to the land on the Effective Date appears to be vested in:

Tract 1: State of Texas, for the use and benefit of Southwest Texas State University n/k/a Texas State University

Tracts 2 and 3: Texas State University

4. Legal description of land:

Tract 1: Lots 3 and 4, UNIVERSITY PLAZA, SECTION TWO, a subdivision in Hays County, Texas, according to the map or plat of record in Volume 4, Page 189, of the Plat Records of Hays County, Texas.

Tract 2: Lot 1, UNIVERSITY PLAZA, SECTION ONE, a subdivision in Hays County, Texas, according to the map or plat of record in Volume 2, Page 219, of the Plat Records of Hays County, Texas.

Tract 3: Being a 3,380 square foot tract of land, more or less, out of FARM LOT 22, OF THE ORIGINAL TOWN OF SAN MARCOS, a subdivision in Hays County, Texas, according to the map or plat of record in Volume 46, Page 448, of the Deed Records of Hays County, Texas, being that same 3,380 square feet conveyed in Volume 4822, Page 635, of the Official Public Records of Hays County, Texas, and being more particularly described by metes and bounds in Exhibit "A" attached hereto.

NOTE: The company is prohibited from insuring the area or quantity of the land described herein. Any statement in the legal description contained in Schedule "A" as to area or quantity of land is not a representation that such area or quantity is correct, but is made only for informal identification purposes and does not override Item 2 of Schedule "B" hereof.

EXHIBIT "A"

Being 3,380 square feet of land, more or less, out of Farm Lot 22 of the Original Town of San Marcos, as recorded in Volume 46, Page 448, Hays County, Texas; being that same property conveyed in Warranty Deed to The Southland Corporation, a Texas corporation, dated October 16, 1981, recorded in Volume 365, Page 852, Deed Records, Hays County, Texas, and being described as follows:

Beginning at a 1" iron pipe found for the southeast corner of the aforereferenced Scrutchin Properties, Inc. tracts, in the west line of Guadalupe Street for the southeast corner of this tract;

THENCE leaving the place of beginning and Guadalupe Street with the south line of the Scrutchin Properties, Inc. tracts S 82 degrees, 01' 48" W 169.02 feet to a point for the southwest corner of the herein described tract;

THENCE entering the Scruchin Properties, Inc. tracts N 07 degrees, 54' 00" W 20.00 feet to a point for the northwest corner of the herein described tract;

THENCE N 82 degrees 01' 48" E 169.02 feet to an iron rod set for the northeast corner of the herein described tract, in the west line of Guadalupe Street and to the east line of the Scrutchin Properties, Inc. tracts;

THENCE with the east line of the Scrutchin Properties, Inc. tracts S 07 degrees 54' 00" E 20.00 feet to the PLACE OF BEGINNING, there being described by these metes and bounds 3380 square feet, more or less, of land area.

SCHEDULE B
EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

Those recorded in Volume 4822, Page 635 (Tracts 2 and 3), of the Official Public Records of Hays County, Texas, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
 - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
 - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
 - c. to filled-in lands, or artificial islands, or
 - d. to statutory water rights, including riparian rights, or
 - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.
(Applies to the Owner's Policy only.)
5. Standby fees, taxes and assessments by any taxing authority for the year **2023**, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year _____ and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)
8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance

(T-2R) only.) Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):
- a. **Rights of parties in possession. (Owner's Policy Only)** This exception may be deleted at the request of the proposed insured, upon a physical inspection by the Title Company and payment of its reasonable and actual costs thereof.
 - b. **All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not.** There may be leases, grants, exceptions or reservations of mineral interest that are not listed.
 - c. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land. The term "encroachment" includes encroachment of existing improvements located on the Land onto adjoining land, and encroachments on the Land of existing improvements located on adjoining land. In the event of a conflict between this exception and Covered Risk '1.(c)', this exception shall control. (Applies to Owner's Policy only)
 - d. **Rights of tenants in possession under unrecorded leases or rental agreements.**
 - e. **All conveyances, contracts, deeds, reservations, exceptions, limitations, leases, and similar interests in or to any geothermal energy and associated resources below the surface of land, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not, all as provided by Section 2703.056 (a) of the Texas Insurance Code.**
 - f. **Easement executed by Scrutchin Properties, Inc., to the City of San Marcos, dated September 8, 1981, recorded in [Volume 364, Page 599](#), of the Deed Records of Hays County, Texas. (Tracts 2 and 3)**
 - g. **Easement reserved in Warranty Deed, dated October 16, 1981, recorded in [Volume 365, Page 852](#), of the Deed Records of Hays County, Texas. (Tract 3)**
 - h. **Easement executed by Southland Corporation, to University Place Joint Venture, dated October 26, 1983, recorded in [Volume 405, Page 203](#), of the Deed Records of Hays County, Texas. (Tract 3)**
 - i. **Terms, conditions and stipulations of that certain Lease Agreement by and between _____, as Lessor, and _____, as Lessee, as evidenced by Memorandum dated ___, 2023, and recorded in Document No. _____, of the Official Public Records of Hays County, Texas.**

SCHEDULE C

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
 - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
 - b. all standby fees, taxes, assessments and charges against the property have been paid,
 - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
 - d. there is legal right of access to and from the land,
 - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. **This is a preliminary commitment only, and is subject to review and approval from Regional Underwriting. Upon receipt of same, additional requirements and/or exceptions may be made.**
6. **If survey amendment is requested for Schedule B, Item 2, Company must be furnished with a survey plat, with correct metes and bounds description of the property to be insured, by a Licensed Public Surveyor acceptable to this Company. When same is submitted, it is to be returned to the examiner for inspection and approval and possible further requirements.**
7. **Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.**
8. **The Company must be furnished evidence of the authority and/or capacity of the party executing the conveying document.**
9. **We must be furnished with a properly executed Affidavit of Debts and Liens, executed by the record owner and/or seller.**
10. **We must be furnished with a properly executed Waiver of Inspection executed by the Purchaser(s).**
11. **This file must be updated prior to closing.**
12. **If a durable power of attorney is to be used in this transaction:**
 1. **Company requires an original power of attorney be provided that is suitable for filing of record, as required by Section 751.151 of the Texas Estates Code.**

2. The Agent under the Durable Power of Attorney shall provide an executed Certification of Durable Power of Attorney in a form acceptable to the underwriter.
3. All documents in this transaction to be filed of record, including but not limited to any durable power of attorney used in this transaction, must wholly be in the English language, as required by Texas Property Code Section 11.002(a), in order to be filed in the real property records. If not wholly in the English language, company requires and requests a sworn English translation as described in Section 11.002, subparagraphs (b) or (c), of the Texas Property Code, suitable for filing of record.
13. FOR INFORMATIONAL PURPOSES ONLY: The following conveyances involving the subject property were recorded within the last 24 months (or, if none, the most recent conveyance): Vesting being recorded in [Volume 656, Page 263](#) (Tract 1), of the Real Property Records; and Document No. [23036950](#), and [Volume 4822, Page 635](#), (Tracts 2 and 3), of the Official Public Records of Hays County, Texas.

COMMITMENT FOR TITLE INSURANCE

SCHEDULE D

GF No. **23-2986-CH**

Effective Date: **November 16, 2023, 08:00 am**

Pursuant to the requirements of Rule P-21, Basic Manual of Rules, Rates and Forms for the writing of Title Insurance in the State of Texas, the following disclosures are made:

1. The following individuals are directors and/or officers, as indicated, of the Title Insurance Company issuing this Commitment
Shareholder owning or controlling, directly or indirectly, ten percent or more of the share of the Underwriter: First American Title Guaranty Company is a wholly owned subsidiary of First American Title Insurance Company, a Nebraska Corporation.

Directors: Dennis J. Gilmore, Christopher M. Leavell, Jeffrey S. Robinson, Mark E. Seaton

Officers: President: Christopher M. Leavell; Vice President, Secretary: Jeffrey S. Robinson; and Vice President, Treasurer: H. Matthew McCreadie

2. The following disclosures are made by the Title Insurance Agent issuing this Commitment: CORRIDOR TITLE, LLC

a. The names of each shareholder, owner, partner or other person having, owning or controlling one percent (1%) or more of the Title Insurance Agent that will receive a portion of the premium are as follows:

Patrick M. Rose

b. Each shareholder, owner, partner or other person having, owning or controlling ten percent (10%) or more of an entity that has, owns, or controls one percent (1%) or more of the Title Insurance Agent that will receive a portion of the premium are as follows: None.

c. The following persons are managers and officers of the Title Insurance Agent:

MANAGERS

Patrick M. Rose

OFFICERS

Patrick M. Rose, President

Jayne Heckmann, CFO

3. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium* is:

Owner's Policy	\$0.00
Loan Policy	\$328.00
Endorsement Charges	\$0.00
Other	\$0.00
Total	\$328.00

Of this total amount: 15% will be paid to the policy issuing Title Insurance Company: 85% will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

<u>Amount</u>	<u>To Whom</u>	<u>For Services</u>
---------------	----------------	---------------------

" *The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance."

DELETION OF ARBITRATION PROVISION

(Not applicable to the Texas Residential Owner's Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.

The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

SIGNATURE

DATE



First American Title Guaranty Company

Privacy Information

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site.

There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

FirstAm.com uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

Fair Information Values

Fairness We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

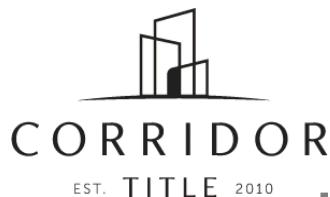
Public Record We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

Use We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

Accuracy We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

Education We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

Security We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.



Privacy Policy Notice

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of Corridor Title Company.

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you such as on applications or other forms.
- Information about your transactions we secure from our files, or from others.
- Information we receive from a consumer reporting agency.
- Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you. We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform services on our behalf or with whom we have joint marketing agreements:

- Financial service providers such as companies engaged in banking, consumer finance, securities and insurance.
- Non-financial companies such as envelope stuffers and other fulfillment service providers.

WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

We restrict access to non-public personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your personal information.