

CITY OF TEXAS CITY
REGULAR CALLED CITY COMMISSION MEETING

AGENDA

WEDNESDAY, SEPTEMBER 4, 2024 - 5:00 P.M.
KENNETH T. NUNN COUNCIL ROOM - CITY HALL
1801 9th Ave. N.
Texas City, TX 77590

PLEASE NOTE: Public comments and matters from the floor are generally limited to 3 minutes in length. If you would like to request to speak, please do so in advance of the meeting by filling out a Request To Address Commission form. All in attendance are required to remove hats and/or sunglasses (dark glasses) during meetings and to also silence all cell phones and electronic devices.

- (1) ROLL CALL
- (2) INVOCATION
- (3) PLEDGE OF ALLEGIANCE
- (4) REPORTS
 - (a) Lowry Fitness Center (Recreation and Tourism)
- (5) PUBLIC HEARING
 - (a) The Interfield Group is requesting a zoning change from District "O" (Open Space) to District "E" (General Business) for a proposed Convenience Store and Retail Development located at 1414 FM 646 on the east side of Vicksburg Lane and west of Hwy 146 N.
 - (b) Alpha Omega Power, LLC is requesting a zoning change from District "F" (Light Industrial) to District "S-P" (Site Plan) for development of an electric power generating station utilizing lithium-ion battery energy storage system (BESS) located at 701 Hwy 146 N., and north of the existing Golden Rule Logistics.
- (6) PRELIMINARY ZONING APPROVAL
 - (a) Consider and take action on The Interfield Group's request for a zoning change from District "O" (Open Space) to District "E" (General Business) for a proposed Convenience Store and Retail Development located at 1414 FM 646 on the east side of Vicksburg Lane and west of Hwy 146 N.

- (b) Consider and take action on Alpha Omega Power, LLC's request for a zoning change from District "F" (Light Industrial) to District "S-P" (Site Plan) for development of an electric power generating station utilizing lithium-ion battery energy storage system (BESS) located at 701 Hwy 146 N., and north of the existing Golden Rule Logistics.

(7) PUBLIC COMMENTS

(8) CONSENT AGENDA

- (a) Approve City Commission Minutes for the August 21, 2024 meeting. (City Secretary)
- (b) Consider and take action on Resolution No. 2024-104, awarding and authorizing the Mayor to enter into an contract for Bid No. 2024-014 Building Materials Annual Contract. (Public Works)
- (c) Consider and take action on Resolution No. 2024-105, approving contracts for employee medical, dental, vision, life and disability, health savings and flexible spending accounts, and an employee assistance program, and authorizing the Mayor to execute those agreements. (Human Resources)
- (d) Consider and take action on Resolution No. 2024-106, awarding and authorizing the mayor to enter into a contract for RFP No. 2024-458 Disaster Recovery Consultant Services. (Purchasing)
- (e) Consider and take action on Resolution No. 2024-107, casting the City of Texas City Ballot for TML Region 14 Board Director. (Mayor's Office)

(9) EXECUTIVE (CLOSED) SESSION

- (a) Convene for Executive (Closed) Session pursuant to the Texas Open Meetings Act, Chapter 551, Texas Government Code to discuss the following:

§551.077 - Personnel Matters: (1) and (2)

(10) RECONVENE FROM EXECUTIVE (CLOSED) SESSION

- (a) Consideration and possible action concerning Personnel Matters discussed in Executive (closed) Session.

(11) COMMISSIONERS' COMMENTS

(12) MAYOR'S COMMENTS

(13) ADJOURNMENT

NOTICE OF ANY SUBJECT APPEARING ON THIS AGENDA REGARDLESS OF HOW THE MATTER IS STATED MAY BE ACTED UPON BY THE CITY COMMISSION.

NOTICE: The City of Texas City will furnish free transportation to handicapped individuals via a 4-door sedan for anyone wishing to attend the City Commission meetings. Call 948-3111, City Secretary's Office before noon on Monday preceding the meeting to make arrangements.

I, THE UNDERSIGNED AUTHORITY, DO HEREBY CERTIFY THAT THIS NOTICE OF MEETING WAS POSTED ON THE BULLETIN BOARDS AT CITY HALL, 1801 9TH AVENUE NORTH, TEXAS CITY, TEXAS, AT A PLACE CONVENIENT AND READILY ACCESSIBLE TO THE GENERAL PUBLIC AND ON THE CITY'S WEBSITE ON AUGUST 30, 2024, PRIOR TO 5:00 P.M. AND REMAINED SO POSTED CONTINUOUSLY FOR AT LEAST 72 HOURS PRECEDING THE SCHEDULED TIME OF SAID MEETING.

RHOMARI LEIGH
CITY SECRETARY

CITY COMMISSION REGULAR MTG

(4) (a)

Meeting Date: 09/04/2024

Lowry Fitness Center (Recreation and Tourism)

Submitted By: Rhomari Leigh, City Secretary

Department: City Secretary

Information

ACTION REQUEST

Lowry Fitness Center (Recreation and Tourism)

BACKGROUND (Brief Summary)

RECOMMENDATION

Fiscal Impact

Attachments

Staff Report



Texas City
EST. 1911

LOWRY FITNESS CENTER

WELCOME TO THE LOWRY FITNESS CENTER



DEPARTMENT OF RECREATION & TOURISM

CITY COMMISSION MEETING
SEPTEMBER 4, 2024



MEMBERSHIP RATES & FEES

Annual Membership Type	*Resident	Non Resident
Adult (<i>ages 18-54</i>)	\$125.00	\$200.00
Senior (<i>ages 55+</i>)	\$60.00	\$135.00
Youth (<i>ages 6-17</i>)	\$75.00	\$80.00

Annual Family Membership (includes two adult memberships ages 18+ and two youth memberships ages 17 and under)	Resident ONLY
Family Each additional youth member	\$315.00 +\$40.00

Daily Guest Use	Fees
Guest (<i>rates apply to all ages</i>)	\$10.00

Additional	Fees
Annual Locker Rental (<i>tall</i>)	\$75.00
Annual Locker Rental (<i>single</i>)	\$50.00
Daily Locker Rental (<i>no personal locks allowed</i>)	\$ 0.25
Replacement Membership Cards	\$10.00



Hours of Operation

Monday-Friday

6:00am-9:00pm

Saturday

9:00am-6:00pm

Youth hours

All members ages 17 and under must adhere to the following hours:

TCISD in session: Monday-Friday-3:00pm-9:00pm

TCISD out-of-session: Monday-Friday-11:00am-9:00pm

Saturday-9:00am-6:00pm



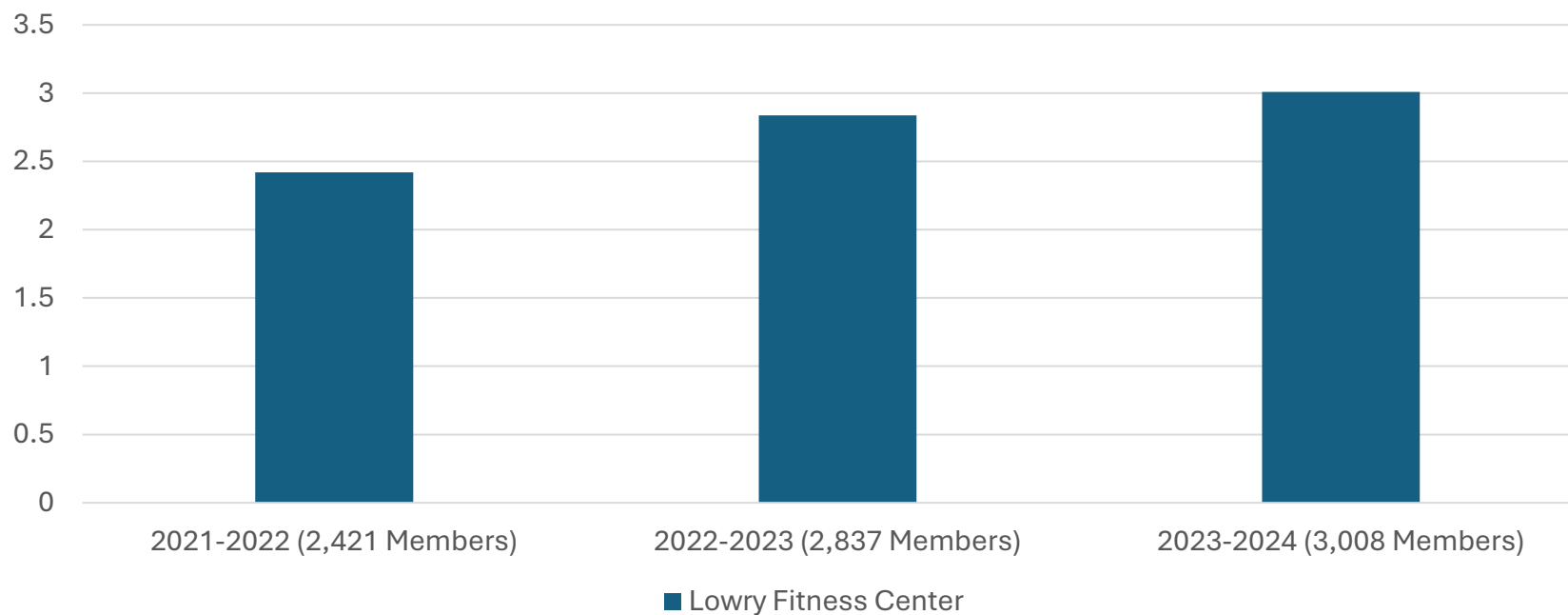
UMAX Dumbbell Set





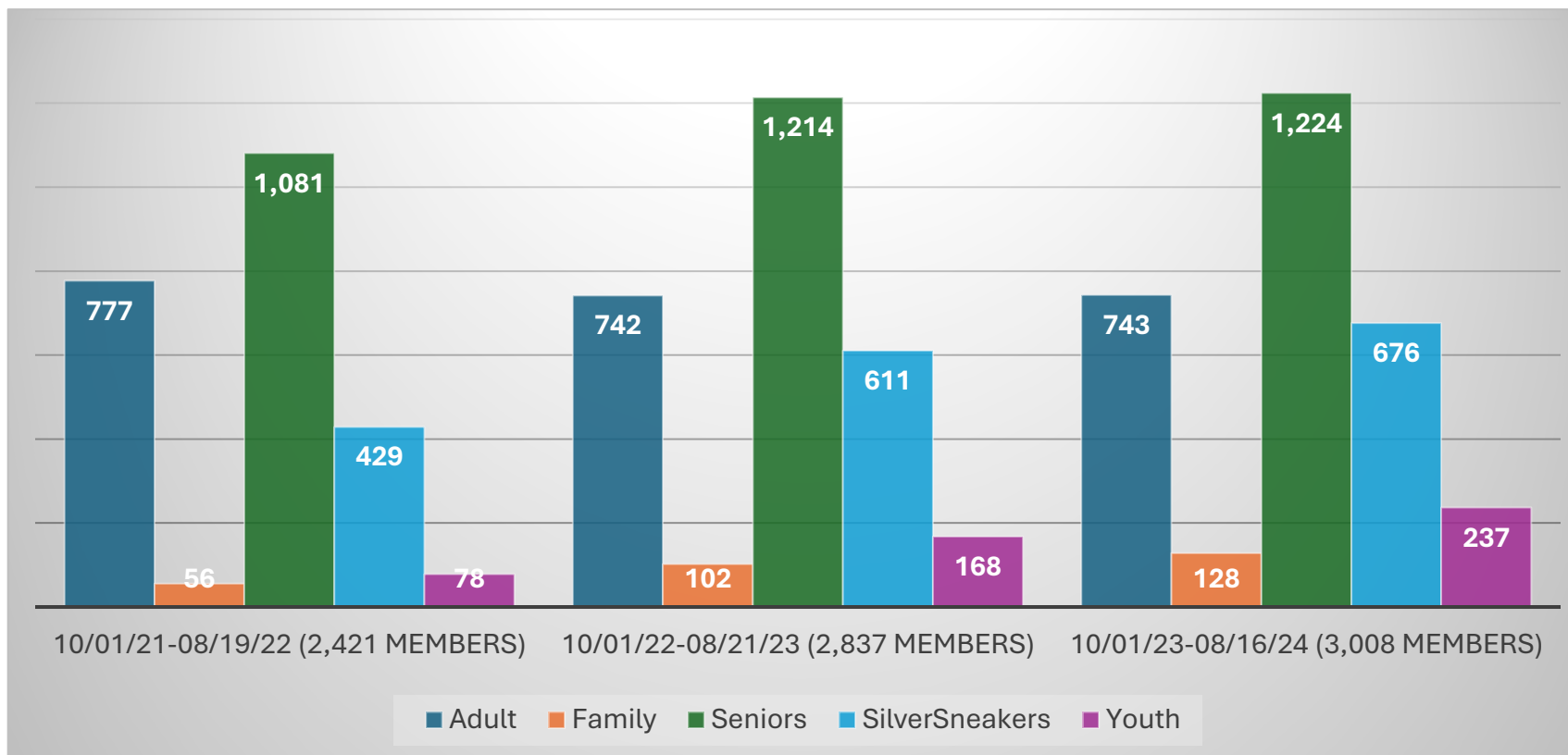
3 YEAR ACTIVE MEMBERSHIP PROFILE

Total Active Members





MEMBERSHIP BREAKDOWN

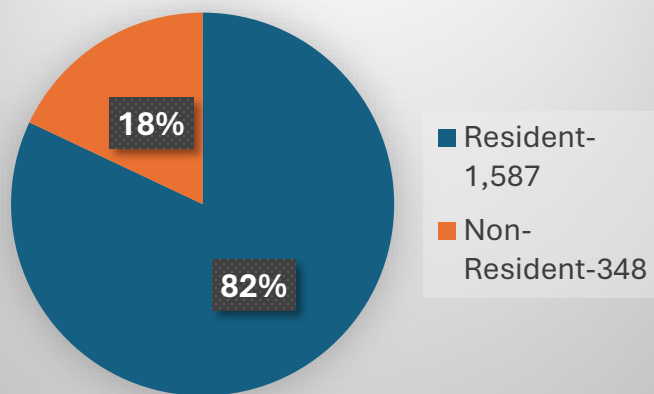




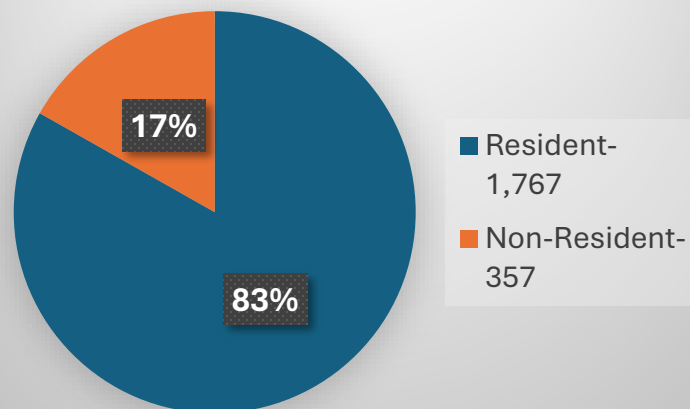
MEMBERSHIP PROFILE

Resident/Non-Resident Breakdown

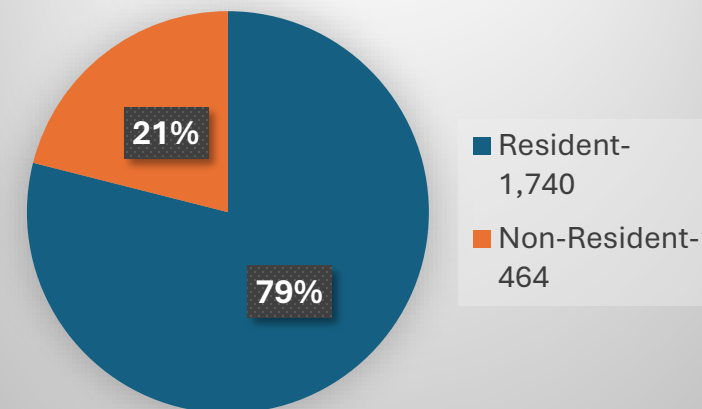
10/01/2021-08/19/2022



10/01/2022-08/21/2023



10/01/2023-08/16/2024





The Hire Up Program

Summer Intern: Savannah Uribe

Week 1 & 2:

Front Desk Duties-Learn Civic Rec System
Set up customers with a membership and or Day Pass
Set up customers with lockers
Learn how to do daily Cash Journal

Week 3 & 4:

Weight & Cardio Room Duties-Learn Machines
Learn how to set members up on a workout plan

Week 5 & 6:

Learn about Purchasing Equipment
Evaluate Equipment-Searching and ordering new equipment

Week 7 & 8:

Learn about Fitness Classes
Learn how to teach a Senior Fitness Class





Texas City
EST. 1911

**“All great achievements take time.
Believe you can. That’s half the battle.”**

Maya Angelou

CITY COMMISSION REGULAR MTG

(5) (a)

Meeting Date: 09/04/2024

The Interfield Group is requesting a zoning change from District "O" (Open Space) to District "E" (General Business) for a proposed Convenience Store and Retail Development. Located at 1414 FM 646 on the east side of Vicksburg Lane and west of Hwy 146 N.

Submitted For: Kim Golden, Transportation and Planning

Submitted By: Veronica Carreon, Transportation and Planning

Department: Transportation and Planning

Information

ACTION REQUEST

This is the Public Hearing on the request from The Interfield Group to change the zoning for 9.46 acres from District "O" (Open Space) to District "E" (General Business) for a proposed Convenience Store and Retail Development. The property is located at 1414 FM 646 on the east side of Vicksburg Lane and west of Hwy 146 N.

The Public Hearing has been advertised in the Galveston Daily News as required by city ordinance and state statute.

BACKGROUND (Brief Summary)

The applicant, Jack Hernandez, The Interfield Group, for owner, Palmer TC Investment LLC, proposes to subdivide 9.56 acres located on the east side of Vicksburg Lane at FM 646 to construct a new 4,700sft convenience store with fuel pumps and a new 12,000sft retail strip centers. The property is currently zoned District O – Open Space and requires rezoning for the proposed uses. An application for an amending plat to subdivide the property into three lots is pending. The location is also within the Gateway Overlay District and requires masonry building facades, enhanced landscaping, and underground utilities among other things.

The site is existing vacant acreage. The property across Vicksburg Lane to the west is zoned District A - Single Family Residential and mostly vacant except for an existing business (Curran International). The adjacent properties to the north and east are zoned District O and have occupied commercial establishments. The property to the south across FM 646 is also zoned District O and has an occupied commercial establishment.

The subject location is currently zoned District O (Open Space) which purpose is to provide for land inside the city limits which is not subdivided and/or relatively undeveloped. It is anticipated that all O districts will be rezoned to other zoning classifications as the city proceeds toward full development. District E (General Business) is intended to provide for an extensive variety of enclosed retail and commercial services to serve the overall needs of the community. Due to the variety and potential intensity of these uses, they should be located along major transportation corridors and be appropriately buffered from residential areas. The enumerated allowed principal uses includes 160.035(B)(12) "any retail sales, commercial business or service which is not included in the O-P, D, or D-1 Zoning Districts, provided that all such uses shall be completely within an enclosed building and are not noxious or offensive by reason of the emission of odor, dust, gas fumes, noise or vibration. The proposed convenience store and retail strip are consistent with the District E General Business zoning classification.

The site DOES NOT have access to Texas City municipal water and sewer. The applicant will need to annex into the Bacliff MUD to obtain access to water and sewer service.

The site drains in part to FM 646, but in large part to a detention pond to be constructed in future Lot 3 which will discharge into the right of way of Vicksburg Lane and flow north into an improved drainage canal in the League City jurisdiction. The detention pond will be donated to a property owners association to be created by the Applicant and burdened with a drainage easement in favor of Lots A & B. Future Lots A & B will share a driveway from FM 646. Lot A will also have a driveway from Vicksburg Lane. Elevation plans provided for the C-Store and Retail strip indicate construction materials will consist of CMU block with stone veneer and stucco, and some pre-finished metal coping and aluminum canopy. The buildings are shown to have standing seam metal roofs. These materials satisfy the requirements of the GWY. Applicant also provided landscaping plans which show landscaping in excess of 15%, which includes the placement of 88 trees of 3-inch caliper and 520 shrubs. The dumpsters are shown to have the necessary enclosures.

RECOMMENDATION

The proposed site improvements include a 4700sft convenience store with 24 striped parking spaces, which includes one designated as accessible. The proposed site improvements also include a 12,000sft retail strip with 60 striped parking spaces, which includes four designated as accessible.

Texas City water and sewer are NOT available to the site. Applicant will be required to annex into the Bacliff MUD to obtain the new water and sewer connections. Mayor Johnson has provided a letter of no objection to the Bacliff MUD. Formal consent to annexation by the City Commission will be required when applicant submits its petition to the MUD.

At its regular meeting on July 1, 2024, the Planning Board voted without opposition (5-0) to approve the proposed site plan, subject to the applicant obtaining the necessary zoning change, the property owners association being created, and the subdivision being recorded in proper form.

At its regular meeting on August 6, 2024, the Zoning Commission held a public hearing. Eight (8) letters with Notice of the Public Hearing were mailed to adjacent property owners. No one appeared at the hearing to give comments in favor or in opposition to the zoning change. The Zoning Commission then deliberated and voted unanimously (5-0) to recommend approval of the zoning change from District "O" Open Space to District "E" General Business for the 9.56 acres at 1414 FM 646.

Staff have no objection to the proposed re-zoning provided it is subject to the establishment of a property owners association and the recording of a subdivision in proper form. The applicant will also be required to obtain water and sewer service as a condition to obtain a building permit.

Fiscal Impact

Attachments

Plat of area to rezone

Minutes

Legal Description of area to rezone

1414 FM 646 - Exhibits

1414 FM 646 - ZC Staff Report

1414 FM 646 - PB Staff Report

07-01-2024 PB Meeting Minutes



STATE OF TEXAS
COUNTY OF GALVESTON

THAT PALMER PC INVESTMENT, LLC ACTION HEREIN BY AND THROUGH ITS DULY AUTHORIZED OFFICERS, DOES HEREBY ADOPT THIS PLAT DESIGNATING THE HEREIN ABOVE DESCRIBED PROPERTY AS PALMER PC INVESTMENTS BUSINESS COMPLEX AMENDING PLAT, AN ADDITION TO THE CITY OF TEXAS CITY, TEXAS AND DOES HEREBY DEDICATE, IN FEE SIMPLE, TO THE PUBLIC USE FOREVER, THE STREETS, ALLEY, AND PUBLIC USE AREAS, SHOWN HEREON, AND DOES HEREBY DEDICATE THE EASEMENTS SHOWN ON THE PLAT FOR THE PURPOSES INDICATED TO THE PUBLIC USE FOREVER, SAID DEDICATIONS BEING FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES EXCEPT AS SHOWN HEREIN. NO BUILDINGS, FENCES, TREES, SHRUBS OR OTHER IMPROVEMENTS SHALL BE CONSTRUCTED OR PLACED UPON, OVER, OR ACROSS THE EASEMENTS ON SAID PLAT. UTILITY EASEMENTS MAY ALSO BE USED FOR THE MUTUAL USE AND ACCOMMODATION OF ALL PUBLIC UTILITIES DESIRING TO USE OR USING THE SAME UNLESS THE EASEMENT LIMITS THE USE TO A PARTICULAR UTILITY OR UTILITIES, SAID USE BY PUBLIC UTILITIES BEING SUBORDINATE TO THE PUBLIC'S AND CITY OF TEXAS CITY'S USE THEREOF. THE CITY OF TEXAS CITY AND ANY PUBLIC UTILITY SHALL HAVE THE RIGHT TO REMOVE AND KEEP REMOVED ALL OR PART OF ANY BUILDINGS, FENCES, TREES, SHRUBS, OR OTHER IMPROVEMENTS OR GROWTHS WHICH IN ANY WAY ENDANGER OR INTERFERE WITH THE CONSTRUCTION, MAINTENANCE OR EFFICIENCY OF ITS RESPECTIVE SYSTEM ON ANY OF THESE EASEMENTS. THE CITY OF TEXAS CITY AND ANY PUBLIC UTILITY SHALL AT ALL TIMES HAVE THE RIGHT OF INGRESS AND EGRESS TO AND FROM AND UPON ANY SAID EASEMENT FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, INSPECTING, PATROLLING, MAINTAINING AND ADDING TO OR REMOVING ALL OF PART OF ITS RESPECTIVE SYSTEM WITHOUT THE NECESSITY AT ANY TIME OF PROCURING THE PERMISSION OF ANYONE.

PALMER PC INVESTMENT, LLC DOES HEREBY BIND ITSELF, ITS SUCCESSORS AND ASSIGNS TO FOREVER WARRANT AND DEFEND ALL AND SINGULAR THE ABOVE DESCRIBED STREETS, ALLEYS, EASEMENTS AND RIGHTS UNTO THE PUBLIC AGAINST EVERY PERSON WHOMSOEVER LAWFULLY CLAIMING OR TO CLAIM THE SAME OR ANY PART THEREOF. THIS PLAT APPROVED SUBJECT TO ALL PLATING ORDINANCES, RULES, REGULATIONS, AND RESOLUTIONS OF THE CITY OF TEXAS CITY.

WITNESS MY HAND THIS ____ DAY OF _____, 2024.

SIGNATURE OF OWNER

BY: SHAJJI FARUQI, MANAGING MEMBER

STATE OF TEXAS
COUNTY OF GALVESTON

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE SAID COUNTY AND STATE ON THIS DAY PERSONALLY APPEARED _____ KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGMENT TO ME THAT HE/SHE EXECUTED THE SAME IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ DAY OF _____, 2024.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

PRINT NAME: _____

MY COMMISSION EXPIRES: _____

KNOW ALL MEN BY THESE PRESENTS: I, THE UNDERSIGNED ROBERT D. ELLIS, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE UNDER MY SUPERVISION AND IN COMPLIANCE WITH CITY AND STATE SURVEY REGULATIONS AND LAWS AND MADE ON THE GROUND AND THAT THE CORNER MONUMENTS WERE PROPERLY PLACED UNDER MY SUPERVISION.

X: _____
ROBERT D. ELLIS
PROFESSIONAL LAND SURVEYOR
TEXAS REGISTRATION NO. 4006

ON THE ____ DAY OF _____, 20____, THIS AMENDING PLAT/ADMINISTRATIVE MINOR PLAT (SELECT ONE) WAS APPROVED BY THE CITY ENGINEER OF THE CITY OF TEXAS CITY.

SIGNED: _____
CITY ENGINEER OF TEXAS CITY

IT IS UNDERSTOOD THAT IF THE FINAL PLANS FOR PALMER PC INVESTMENTS BUSINESS COMPLEX AMENDING PLAT ARE APPROVED BY THE CITY ENGINEER AND PLANNING BOARD OF THE CITY OF TEXAS CITY, THE UNDERSIGNED WILL IN ALL THINGS COMPLY WITH ALL PROVISIONS OF SUCH PLAT AND CONSTRUCTION PLANS AND WILL DULY PERFORM ALL CONSTRUCTION CALLED FOR THEREIN, FULLY AND COMPLETELY, NO CHANGES SHALL BE MADE IN CONSTRUCTION PLANS WITHOUT THE CONSENT IN WRITING OF THE CITY ENGINEER BEING FIRST HAD AND OBTAINED.

OWNER _____ DEVELOPER _____

WITNESSES: _____

ON THE ____ OF _____, 20____

LEGEND:

1. "B.L."	INDICATES BUILDING LINE
2. "G.C.M.R."	INDICATES GALVESTON COUNTY MAP RECORDS
3. "R.O.W."	INDICATES RIGHT-OF-WAY
4. "H.C.D.R."	INDICATES HARRIS COUNTY DEED RECORDS
5. "(VOL./PG.)"	INDICATES RECORDED VOLUME/PAGE
6. "○"	INDICATES IRON ROD SET
7. "●"	INDICATES IRON ROD FOUND
8. "P.O.B."	INDICATES POINT OF BEGINNING
9. "ESMNT."	INDICATES EASEMENT

PLAT NOTES:

- THE COORDINATES SHOWN HEREON ARE TEXAS SOUTH CENTRAL ZONE, 4204 STATE PLANE GRID COORDINATES (NAD83) AND MAY BE BROUGHT TO SURFACE BY APPLYING THE FOLLOWING COMBINED SCALE 1.0000000000000.
- ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM) MAP NO. 48167C0255G AND 48167C0235G, WITH THE EFFECTIVE DATE OF 08/15/2019, THE PROPERTY IS LOCATED IN ZONE "AE" AND SHADED ZONE "X" OUTSIDE OF THE 100 YEAR FLOODPLAIN. ALL FLOODPLAIN INFORMATION NOTED IN THE PLAT REFLECTS THE STATUS PER THE FEMA FIRM MAP THAT IS EFFECTIVE AT THE TIME THAT THE PLAT IS RECORDED. FLOODPLAIN STATUS IS SUBJECT TO CHANGE AS FEMA FIRM MAPS ARE UPDATED.
- ABSENT WRITTEN AUTHORIZATION BY THE AFFECTED UTILITIES, ALL UTILITY AND AERIAL EASEMENTS MUST BE KEPT UNOBSTRUCTED FROM ANY NON-UTILITY IMPROVEMENTS OR OBSTRUCTIONS BY THE PROPERTY OWNER. ANY UNAUTHORIZED IMPROVEMENTS OR OBSTRUCTIONS MAY BE REMOVED BY ANY PUBLIC UTILITY AT THE PROPERTY OWNER'S EXPENSE. WHILE WOODEN POSTS AND PANELED WOODEN FENCES ALONG THE PERIMETER AND BACK TO BACK EASEMENTS AND ALONGSIDE REAR LOT LINES ARE PERMITTED, THEY TOO MAY BE REMOVED BY PUBLIC UTILITIES AT THE PROPERTY OWNERS EXPENSE SHOULD THEY BE AN OBSTRUCTION. PUBLIC UTILITIES MAY PUT SAID WOODEN POSTS AND PANELED WOODEN FENCES BACK UP, BUT GENERALLY WILL NOT REPLACE WITH NEW FENCING.

- SITE DRAINAGE PLANS FOR THE FUTURE DEVELOPMENT OF THIS RESERVE MUST BE SUBMITTED TO THE CITY OF TEXAS CITY.

PALMER PC INVESTMENTS BUSINESS COMPLEX AMENDING PLAT

A SUBDIVISION BEING A 9.5595 ACRE TRACT OF LAND, BEING BLOCK 11 AND 12 OF CLIFTON LAND PRODUCTION COMPANY SUBDIVISION OF LEAGUE CITY SEMI-TROPICAL GARDENS, A SUBDIVISION IN GALVESTON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 11, PAGE 4 OF THE MAP RECORDS OF GALVESTON COUNTY, TEXAS.

RESERVES: 3 BLOCK: 1
REASON FOR REPLAT: TO SHOW THREE (3) PROPOSED RESERVES
JUNE, 2024

OWNER:
PALMER PC INVESTMENT, LLC
17926 HWY. 3, SUITE 104B
WEBSTER, TEXAS 77598

SURVEYOR:
ELLIS SURVEYING SERVICES, LLC.
2805 25TH AVE. NORTH TEXAS CITY,
TX 77590
PHONE: 409-938-8700
FAX: 806-678-7685
TEXAS FIRM REG. #100340-00

The
INTERFIELD GROUP
engineering | architecture

401 STUDEWOOD, SUITE 300 TEL: (713) 780-0909
HOUSTON, TEXAS 77007 TX. REG. NO. F-5611
WWW.INTERFIELD.NET

(INTERFIELD PROJ. #: 22125.00)

ZONING COMMISSION AUGUST 6, 2024

The Zoning Commission of the City of Texas City met in a regular meeting on Tuesday, August 6, 2024, at 5:00 p.m. Zoning Commission members present: Chairman Perry O'Brien, Aric Owens, Bruce Clawson, Fernando Tello and Alternate Member Lisa Salinas. Staff members present were: Kimberly Golden, Casey Bennett (CBO), David Kinchen (DBO) and Veronica Carreon. Guests were: Ben Baty, Chris Johnson, Felix Herrera, Deano Merrigan, Anthony Neva, Stavan Vora, Guillaume Dufay (AOP Renewables), Simon Labrosse Gelin, Jack Hernandez (Interfield) Jill Crawford, Bob Wittmeyer, and Georgia Meisler.

Chairman O'Brien indicated a quorum was present and called the meeting to order.

1) APPROVAL OF MINUTES

A motion to approve the minutes of July 2, 2024 was made by Bruce Clawson/Aric Owens. All other members present voted aye.

2) PUBLIC COMMENTS

There were no Public Comments.

3) ELECTION OF OFFICERS

Ms. Golden stated that at the last Zoning Commission meeting it was mentioned that Mr. Gary Potter had resigned his position on the board. He was previously one of the co-chairs and so there is now a vacancy in the board's office of co-chairs. Ms. Golden asked those in attendance if they would like to hold an election of a new co-chair and it was agreed to have it on the next meeting agenda.

It is now being brought forward for purposes of members to consider the election of another co-chair. Since this was last discussed, Mr. Bruce Clawson has been appointed back to the Zoning Commission and Ms. Thelma Bowie is not in attendance because she is not feeling well.

Chairman Perry O'Brien asked the Zoning Commission if they would like to nominate anyone.

Mr. Aric Owens asked if it was required that they have a co-chair, to which Chairman O'Brien replied it is nice to have a co-chair to lead a meeting if at any time he is not available to attend a meeting.

Mr. Bruce Clawson made a motion to nominate Mr. Aric Owens as co-chair of the Zoning Commission. Mr. Fernando Tello seconded the motion. All other members present voted aye.

Mr. Owens stated he would be glad to serve as co-chair.

4) Zoning Change Request from The Interfield Group to rezone from District "O" (Open Space to District "E" (General Business) for a proposed Convenience Store and Retail Development. Located at 1414 FM 646 on the east side of Vicksburg Lane and west of Hwy 146 N.

a. STAFF REPORT

Ms. Golden stated the location is a 9.56-acre site located on the east side of Vicksburg Lane at FM 646. The Applicant is requesting a rezoning to be able to build a new 4,700 sq ft convenience store with fuel pumps and a new 12,000 sq ft retail strip.

The property is currently zoned District "O" (Open Space) and that is the zoning in place when you have land that is not developed or subdivided. It is intended that District "O" be rezoned as the city grows into that direction.

For the particular use that they're contemplating, District "E" (General Business) would be the appropriate district for them to be rezoned into. The surrounding property that is not vacant is still zoned District "O". Property that is vacant on the other side of Vicksburg Is zoned District "A" (Single Family Residential).

The District "E" zoning would be appropriate and staff have worked with them on our site plan. The main issue they had was getting some developed drainage because the drainage is pretty poor in the area. What they've done is they're going to subdivide into three lots and one of the lots will actually have a detention pond on it and then there'll be a Property Owners Association that will own and operate their detention pond for the benefit of the other two lots of which one will be the convenience store and the other will be the retail strip.

This project is in the Gateway Overlay District so they will have to comply with the requirements of the Gateway Overlay District which again are masonry construction, some setback requirements, landscaping requirements and some screening requirement. The Applicant has indicated they are compliant with all of this.

If the Zoning Commission does recommend to rezone, staff just suggests it be subject to the subdividing going in place and the creation of the Property Owners Association to own and operate that.

Mr. Bruce Clawson then stated traffic along FM 646 is a heck of a deal. He went through there recently and there was a bad wreck on the road. He couldn't tell if there is a turn lane and asked if there is one at the property.

Ms. Golden doesn't believe there is, but indicated this is the next section of FM 646 to be widened. In fact part of their platting is going to go ahead and be dedicating that additional right of way. TxDOT is also in the process of acquiring that right of way.

Chairman Perry O'Brien asked if the retention pond would constructed at the same time, to which Ms. Golden replied construction of the detention pond will be required when they do the project because that's what is allowing them to have the drainage that they need.

Mr. Clawson then asked what the building is on the property, to which the owner, Mr. Stavan Vora, replied it is just a storage building that the previous owner had used.

Mr. Clawson then asked if there were any wells on the property. [The representative "no" by shake of the head.] Ms. Golden advised the site does not have Texas city water and sewer service available to it, so they're going to have to annex into the Bacliff MUD for purposes of getting their water and sewer service. This does not mean they are going to de-annex from Texas City. The MUDS and the city are on top of each other. The mayor has given them a "comfort letter" indicating that at the appropriate time we will take a request to City Commission to give the necessary consent for the annexation.

Chairman O'Brien then asked if this site plan still needed to be presented to the Planning Board, to which Ms. Golden replied it has been through that process. He then asked what the construction timeline would be. Mr. Vora replied if given the green light he will start tomorrow.

Co-Chairman Aric Owens then asked if there would be fire hydrants installed because he recalled a couple years ago they looked at a storage facility further down the road and they weren't there and would have to install on-site water storage. Ms. Golden replied when this happens, it's not going to be on-site water storage but when they start their process of annexing into Bacliff, that is what will have to be worked out – is the capacity to provide the Fire Protection that's necessary for Texas City Fire Marshall to sign off on.

Chairman O'Brien asked if there any additional questions? There were none.

b. PUBLIC HEARING

A motion was made by Fernando Tello/Co-Chairman Aric Owens to open the Public Hearing. All other members voted aye.

Chairman O'Brien stated if anyone in attendance was for or against the zoning change now would be the time to make a comment.

Ms. Golden stated there were eight Public Hearing Notices mailed to neighboring property owners and no comments were received in favor or against the zoning change request.

There were no questions or further discussion, to which a motion was made by Bruce Clawson/Fernando Tello to close the Public Hearing. All other members voted aye.

c. PRELIMINARY ZONING APPROVAL – Consider and take action on the zoning change request from The Interfield Group.

A motion was made by Bruce Clawson/Fernando Tello to approve the zoning change request from The Interfield Group to rezone from District “O” (Open Space) to District “E” (General Business) for a proposed Convenience Store and Retail Development provided it is subject to the establishment of a Property Owners Association and the recording of a subdivision in proper form. All other members present voted aye.

5) Zoning Change Request from Alpha Omega Power, LLC to rezone from District “F” (Light Industrial) to District “S-P” (Site Plan) for development of an electric power generating station utilizing lithium-ion battery energy storage system (BESS). Located at 701 Hwy 146 N., west of Hwy 146 N., and north of the existing Golden Rule Logistics.

a. STAFF REPORT

Ms. Golden stated Alpha Omega Power LLC is looking at a site that is 6.29 acres of vacant land but will use 5.71 acres to install a Battery Energy Storage System (BESS). This is a large installation. Previously approved BESS' have been 10 MW. This project will include up to 106 individual battery containers for 205 MW or 410 MWh at a two-hour capacity, meaning it takes two hours to charge and two hours to discharge. This is approximately twenty times larger than any of the previously approved BESS projects in Texas City.

They have provided in their site plan for the 15 ft spacing all the way around the battery units as required by the city's updated fire code. They're also providing a paved 20 ft perimeter road with two points of access.

The second access is actually through adjacent property which the applicant does not own or control. The owner has provided an easement. Ms. Golden pointed out the recommendation is

for that secondary access to have some sort of platting to it. Staff's concern is that it remained completely open and accessible over time.

The Applicant is also providing a nice masonry fence and landscaping at least 6 ft in height, which again is the standard that the city is applying to these BESS projects which was also applied to the other two that have been approved.

The project site is part of the former ETC Texas City Trucking Terminal. It had some environmental issues and has been through a process with TCEQ and now has no further action required, but it can never be used for anything but industrial or commercial.

The adjacent property to the north is Baker Distributing. There is common ownership of the property to the South which is a logistics company. The property across Hwy 146 N is the TNMP Substation.

Information was provided to Ms. Golden about why the TNMP Heights Substation is a prime location for these types of projects to tie into, which is basically has to do with the size of the substation and the fact that it's set up to take this kind of interconnect.

Also provide was some information about the type of battery chemistry and the manufacturer that they're proposing to use. The battery chemistry is the Lithium Ion Phosphate, which is considered stable and less prone to the thermal runaway concerns.

The manufacturers of both the battery cells and the battery assembly are considered Tier 1. Ms. Golden believes that means that they work really hard to comply with all the codes. They do the extra testing and things to show that their products are safe and then they maintain good quality control as they're being built.

This location is not in the floodplain, and it is inside the Texas City Hurricane Levee.

The specification they are going to have for the containers are the type that you would have for a corrosive environment, such as coastal area. It's the highest level of corrosion protection and the highest level for both the batteries and containers. She stressed that these are the standards that both the Building Official and Fire Marshall will apply at the time of applying for building permits.

Their fire protection will be an on-site system that is specifically designed for this application. There's also a robust monitoring system that is monitored remotely 24/7, but indicated that for a project this size the operator would have a crew stationed within the nearby area [LaMarque] to make proper response in the event that remote monitoring shows there is something going on.

Information about decommissioning was provided for the Zoning Commission. Staff do anticipate that at the time of permitting some sort of decommissioning bond or security will be required through the permitting and plan review process. This process is still in development by the building official and fire marshals.

Ms. Golden stated that the item that might need consideration is the second point of access. Again, the Applicant has provided a signed easement agreement, but staff would prefer to see it as a plat because those things are usually just easier to keep track of.

This company was formed in 2023, so it would be considered a startup.

The Planning Board has looked at this because the zoning changes to District "S-P" (Site Plan) requires review by the Planning Board first to look at the site plan. The Planning Board approved the site plan conditioned upon the Zoning Commission approving the zoning change. If the zoning change is approved the Applicant would have to be subject to the site plan as approved by the

Planning Board. There could not be any changes to the site plan without approval from the Planning Board.

The Zoning Commission's action is to make a recommendation to the City Commission. The City Commission is the one that approves or disapproves the actual zoning change. The Planning Board approved the site plan on a 3-2 vote.

Ms. Golden completed her report and stated she can answer any questions and that the Applicant was also in attendance to answer any questions.

Chairman O'Brien asked if this project fits the Land Use Plan. Ms. Golden replied she was not sure if there is anything specific in the Land Use Plan about these kinds of uses, but it does fit a light industrial use.

Mr. Clawson then stated he had a question for the developer and one for the landowner. He then asked if this is a brown field. Mr. Deano Merrigan [landowner] replied that it had a leaking tank out there and they had monitoring wells out there. TCEQ monitored the wells for some time, and they said, per TCEQ, whatever is there is there and it's not migrating. The trucking facility that was there was responsible for it the cleanup and the monitoring. They had them [the monitoring wells] pulled out and fill them back in and there's no further action.

Mr. Clawson stated that nothing can be built out there, to which Mr. Merrigan stated that was correct. Only commercial or industrial can be built out there.

Mr. Clawson then added that he is not quite clear on the fire suppression system.

Mr. Guillaume Dufay (AOP Renewables) replied batteries are known for being pretty good devices and are everywhere, but large batteries have always had Fire Protection systems. As Ms. Golden mentioned, the way these things are operated is they comply with every fire rule that you can think of and that exists. There have been dozens of thousands of these containers deployed across the nation and they have A National Fire Protection Agency (NFPA) protocol that's called NFPA 855 and each of these have to meet the requirements. One of the requirements is that they have to have several layers of protection. layer No. 1 is monitoring, and No. 2 is to remove the activation, layer #3 is active suppression of fire in the case of a fire, and then the final element of the NFPA 855 is that every battery that gets installed and that complies with NFPA 55 has to go through a burn test.

The way this works is that you set one battery on fire by putting some fire in it and you see what happens. You see how it propagates; you see how the fire gets extinguished by the system. There are several levels of a burn test that can be done on a cell, on a module, on the full rack or on a full container.

Power suppliers are Tier 1 suppliers and Tier 1 suppliers tend to go the extra mile where they do full container/full unit test, and they test what a fire looks like. They then have a passing or failing criteria that come into play into how much you pay for insurance. All the batteries that they choose from show that fires never propagate to the next unit over and there is never an explosion, so the worst case of fire that you can see that is being tested is when you burn a cell and module, and it doesn't go to the next one. You will then have some smoke and then you're going to have to let it burn because the extinguishing system is going to take care of it.

You do not throw water on it, and they train their fire departments on this all the time. Two months ago, they just went through a full fire department training in the City of La Marque where they have another project. They are very actively engaged with fire departments.

Again, you do not throw water on a fire, you let it burn. Once the reaction stops, which will take a couple of hours, you will then take the container and send it to a recycling area. You check the ones around, making sure that integrity is not compromised, and you replace it or you do whatever needs to be done post-removal.

Mr. Clawson then asked what the fire suppression system would be. Mr. Dufay replied there are two types of fire suppression system and added before going into a thermal runaway, a battery cell just like the one in your phone is going to show some early signs of failures. The voltage is going to be off, the balancing with the other modules is going to be off. Mr. Dufay claims they have the best control system in the world. They use a company called Individuation Austin. They monitor every cell, voltage, charge, temperature, etc. You're talking about several hundreds of thousands of cells in this installation. Every one of them has a temperature and voltage sensor that is being monitored. If one of them is off, they deactivate the module, remove it, and replace it with a new one. The early signs are showing what is going to happen and, if for whatever reason, that fails, the second level is you have an early detection system on the battery. If you feel that there is off-gassing of the cells or if you feel there's a higher temperature in the container itself, the container is going to auto shut down. That should stop any discharging that would cause some further fires. If for whatever reason that fails, they are talking about very low probability events here, then there is a fire suppression system at the battery inside each of the battery container.

Depending on the technology, sometimes it uses a FM 200 or state X aerosol and the modern one that they are using are most likely going to be an aerosol-based extinguisher. They are going to spray into the container on the area that was detected and is going to fill the container with the aerosol and that supposedly is going to stop whatever reaction is causing the problem. 9-1-1 will then be called and like Ms. Golden stated their guys will be nearby to respond to the emergency.

Co-Chairman Owens asked Mr. Dufay if he stated earlier that these batteries never explode because he's seen some videos where they have. He added that another thing Mr. Dufay stated, that he thinks is kind of crazy, is that Mr. Dufay stated "supposedly they put them out". He asked if this was just a choice of words because this is a huge concern to him.

Mr. Dufay replied that he came four years ago in front of these Zoning Commission and it was a pretty long meeting to build a 10MW site, which he indicated on the map. He stated this site has never had any problem and it works well. They are involved in and will be around for a long time. They are investing \$150 million in this project. If this explodes, they are going bankrupt – and there is a lot of their personal money in this too. They are strongly incentivized for these to be safe.

Have there been batteries that have exploded, yes absolutely. That was before the times of NFPA 855. That was before the time when they had clean and clear codes where they were smart people from fire departments across the world and particularly here in the United States that had worked on it. There was a site in Arizona that was known for catching fire and had an explosion when a first responder came into the battery system. It caused several injuries to the first responders and there's been massive changes to the design of the system since then. He believes this happened back in 2017.

There are many changes since then and the chemistry of the batteries has changed. These batteries, lithium iron phosphate, have a lower flammable limit, meaning that they exhaust less gas and they basically catch on fire with less strength and what they are seeing when they do the testing is that when they ignite the cell because they put a resistor in there and overheat it until they ignite the cell.

What you're seeing is that the next cell over ignites too but with less power, and then it just dies out within the module. This is because these batteries are not as reactive as the previous

technologies being used. So that's a major change that makes these batteries much safer. The other thing that was changed was the enclosures, the container of the battery, was rethought and redesigned.

They were talking to the president of Fluence, their main supplier, who is also the #2 US manufacturer for batteries, and he said they have had some failures and they learned from them. That's actually better than having no failures and not learning. Everybody had to redesign and rethink the process because it's possible that a cell is going to have a thermal runaway. What you want to make sure is that it doesn't trigger a catastrophic reaction. The whole mindset of avoiding an accident completely to avoiding catastrophic occurrence has changed in a way that now if a cell goes into a thermal runaway, which again is unlikely because they have 3 levels of suppression, but if cell does go into thermal runaway, there's a deflagration vent at the top of the container according to NFPA 68. There's a deflagration vent at the top, so in the likely event where you have a chain reaction of everything going wrong that possibly could go wrong, and again, it's been tested and showing that it doesn't happen, but, if it happens the deflagration is going to happen overhead, not causing any damages to the first responder or anything. The other main cause of catastrophic consequences to these batteries accidents was if you have first responders getting into the enclosure. It use to be that they would put these batteries into buildings or into enclosures that would allow somebody to walk in there and that's the problem because that puts somebody at risk if there's a thermal runaway.

So yes, there have been batteries that have exploded. Mr. Dufay is not aware of any LFP battery that has exploded. He is aware of some LNO batteries that have had some trouble runaway, but every single time they have self ignited and they have not propagated to the next unit over and they have never caused any accidents.

Co-Chairman Owens then asked in an event they have this gas coming out, are there any studies that show what the carry of that is? For instance, they have approved some generators out here on Humble Camp Road and Attwater Drive and they talked about the decibel noise for like so many feet but if you have a fire what does that plume look like? Is it a quarter mile? Half a mile? A couple 100 feet? Who's in harm's way at that point? And do you have protection for that?

Mr. Dufay replied they work with a company called ESRG. They are a fire consultant everywhere and they are the main fire consultant for battery energy storage. They were actually created by 9-1-1 heroes, so they know about fires. They do the HMA (Hazard Mitigation Analysis), fair mode, and affect analytics which will be part of this project. As they go into the design there will be an HMA down to meet the NFPA 855 requirements and that HMA is going to consider the risk of gas dissipation and any danger for any public or for any walker. All of that is going to be studied in detail from quantitatively and qualitatively.

The qualitative answer is that when one of these thermal runways does happen the common kind of point of comparison, it doesn't create more toxic gas exhaust than a typical office building catching on fire.

Mr. Owens stated that could be put out in a couple hours. How many hours would this project take to burn out?

Mr. Dufay replied that is the whole benefit of the new testing that they do because they show that the fire does not propagate any further than one container. There's a limited quantity that can burn and so the exhaust is going to be limited. He believes the time concept is about a couple of hours, maximum six hours for a fire to be completely out and then you can open the container and start to disassemble the pieces and there will be weeks of investigation. He reiterated that it is not weeks, it's not days, it's hours.

Co-Chairman Owens stated that just seems different than what we we've heard on the other projects.

Chairman O'Brien added that the one in Arizona that Mr. Dufay spoke of was a totally different battery design.

Ms. Georgia Meisler (AOP Renewables) replied that was a different battery chemistry as well. It was a LMC battery instead of LFP, which is part of why this standard has moved to the LFP, because it is less volatile, it's more stable, so the end result of thermal runaway is a lesser outcome. She wanted to make sure one question that was asked was clearly answered was how far all the smoke travels. So obviously that depends on winds, but the important factor to consider is that testing would indicate that it's always within EPA standards. And again, the smoke itself, it's typical. Think about what it is that's going to be burning. What is a battery? It's going to have plastics; it's going to have some metals, the same kind as building materials. And it's relevant, not really unique, in that perspective as far as what will actually catch fire.

Alternate Lisa Salinas stated the concern she has is that this place is going to be upwind of the apartment complex nearby. Here the winds are always out of the South, so anything that's coming out of there is going directly toward those apartment complexes. She asked if there is anything that is going to protect those people or notify them that something is blowing their way.

Mr. Dufay replied there are two things to consider. First, this is a light industrial zoning land and of all the light industrial application you can think of, a battery does not create any pollution at all. So, they don't burn anything. They don't have diesel generators. This is just purely charging and discharging energy. There is a very minimal footprint and exhaust of anything. He believes in this respect, it's beneficial for the community around because those apartment complexes will not have any impact.

As part of the emergency response plan, yes, there will be a concerted response plan with the first responder and the first responder, perhaps the Police Department, will oversee flagging any issue or any concern to the public safety. He thinks that it is going to be their top priority is going to be to protect the citizens in a large apartment complex close by. And again, that they will be in the case of an emergency situation, one of the first measures will be when they are on the site is making sure that it does not exceed the EPA standard. If it does, there will be some steps to be taken that will be all part of this emergency response.

Mr. Fernando Tello asked if there would be a leak detection. Will there be hydrocarbon detectors around the units to catch a leak? If a leak is there what will they use to catch that besides them telling the Zoning Commission that somebody offsite will come by and look.

Mr. Dufay replied they will have an operation and maintenance crew that will be spending time at the site mostly during business hours, but because we have the other site in La Marque that's actually fairly close by, they will be spending their time between the two sites.

As far as leaks, they have never heard of a leak on a operating battery, so the only time when a leak may happen is in the case of a deflagration of the battery, which is thermal runaway. In that case there is really two elements that you need to think of. The first element is that every cell is contained in two modules and these modules are IP67 meaning that they are fully water tight and dust proof. So there is nothing that goes in or out of these of these modules and then the container is a 20 ft Conex container. There is a drip pan at the bottom, so anything that leaks is going to fall in the drip pan. The reason for the drip pan is not really for the toxic elements of it, but there is a cooling system that keeps the batteries cold. The cooling system is water and glycol, so if that gets in the drip pan there is going to be a warning that the Operator is going to take care of.

The final other important element is that our site is going to have a ring road, so if there was a massive leak of something bad, but there is no reason for anything of that magnitude to leak, but the surge of leakage would not go past the ring rug, and certainly not into the higher elevation elements like the canal half a mile away. They have got a lot of layers of protection on that, and this is not an element that has not been seen.

Explosion of batteries is a really important element and Mr. Dufay is glad they are talking about this because they want everybody to be aware of this because it is an important element. Leaking is not something that has been seen as a risk associated to the batteries.

Mr. Chris Johnson (Attorney for Alpha Omega) stated he wanted to address the easement for the second access. One of the things that the Fire Marshal wanted to see for this project was two points of access into the site and they went about doing is obtaining a perpetual and uninterrupted ingress and egress easement from the neighboring landowner.

One of the things that Ms. Golden mentioned is that you'd like to see a plat, but legally speaking, there is no difference between having a permanent ingress and egress easement that cannot be obstructed or a plat and the reason being is he actually thinks this is the better way to go because it is something that what they call "runs with the land" is a superior right of the neighboring property meaning this site will have a superior right for that second point of access to come through that neighbor's land forever.

It is not dependent on owners. It is not dependent on any changes to the site. It exists, so no replat can change the fact that that easement is there, meaning it's a contractual superior right that runs with the land. So regardless of who owns the neighboring property going forward, that right of ingress and egress will exist. Also, it is very difficult to try to get a neighbor to replat their property for the benefit of the neighboring property. He has never seen that happen, but he thinks it is important for the Commission to know that legally speaking, there is no difference as far as the rights that are conveyed via this easement. This easement gives a perpetual right for ingress/egress that cannot be interrupted by any subsequent owner of that property. He thinks it is important to know that that second point of entry is a guaranteed point of entry, and that Alpha Omega has already gone and done the work to obtain that right.

Mr. Clawson asked where this is at. Mr. Johnson indicated it on the site plan. Ms. Golden added that it is on the far west side of the site and then it crosses and follows the northern line of the land.

Mr. Ben Baty stated he has 2.1 acres near this project, and no one has talked to him about an easement. Mr. Johnson replied that he does not believe the property Mr. Baty indicated is his property.

Mr. Johnson then conclude the reason for having a perpetual easement is for that concern that it's not a maybe, it is a recorded document. When you talk about recording it in the real property records, it puts the public on notice that right is going to be there forever.

Chairman O'Brien then asked if there were any other questions?

A motion was made by Fernando Tello/Co-Chairman Aric Owens to open the Public Hearing. All other members voted aye.

Chairman O'Brien explained that the Public Hearing was open, and this is where those in the room, hearing everything that's already been said, has an opportunity to voice whether they are for or against this request. The Zoning Commission would first take any comments from anyone

that is against the zoning change request first and then they would listen to those who are in favor of the request after.

Mr. Baty spoke first and stated he owns the nearby Baker Building and the land immediately west of the Baker building. He recalled that Chernobyl also have all fail safe in place and they had little problem too. As a matter of fact, a week ago today, the Fire Chief of Texas City addressed his Rotary Club and he was asked about the lithium batteries and what do you do if you have a fire with a lithium battery? He said we get everybody away from it because we can't put it out.

Mr. Baty stated that he knows nothing about lithium batteries. He is not a chemist and can only go by what the professionals have told them. Another question during the Rotary Club was what happened if you have a Lexus vehicle - do they have lithium batteries? What if it is on fire on the freeway? What do you do? He said we get away from it to keep people from inhaling the toxins from it.

So again, immediately to the west of his property is the apartment complexes and he has never seen many fires that didn't have smoke. He is sure the southeast winds are going to blow the smoke toward the apartments if there were a fire or chemical reaction. He is just concerned of what will happen in the event of a fire.

He added that this will also kill the value of his property if he tries to sell it and a potential buyer see a lithium battery storage next to it – there goes the tax value.

Chairman O'Brien asked Mr. Baty to indicate his property on the map. He did so and then stated this may just keep the vagrants out.

Chairman O'Brien asked if there were any more comments against the zoning change request. There were none.

Chairman O'Brien then asked if anyone had any comments that are for this request they would take them now. He then introduced Mr. Bob Wittmeyer, who was in attendance, to speak about the benefits of battery energy storage.

Mr. Bob Wittmeyer stated he is a professional engineer and has spent his early life at Ercot and has been doing this for a long time. He then asked if Ms. Veronica Carreon could go to Ercot.com. and then began his presentation.

He then presented why batteries are particularly important to the grid today. He indicated on the website a chart that showed a solar chart in orange, a wind chart in blue, and an aggregate chart in purple. He indicated real time on the site and stated shortly after 8:00 PM, things get really, really tight in the grid, which he also indicated. Five years ago, this was not a problem. He indicated where the grid would peak, and that the generation would be fine the rest of the day.

The problem we have now is we have a ton of wind and solar, and we know every day the solar is going to do that. He indicated in the summertime, the target window for these batteries and stated this is why we need the batteries. We need the batteries because of our demand line; this is our supply line. He promised that they will never serve more load in Ercot than they have generation do so.

What he did not recognize when he got in the power business is every time we turn on appliance at our house, somewhere on the system a generator's fuel valve opens and makes more power. It really is that tight. They measure that with frequency and when it is at 60 Hertz, everything is good. We run out of generation that frequency will fall off 60 Hertz. It doesn't have to fall very far off 60 Hertz and we are all sitting in the dark.

The batteries are particularly helpful now because of all the wind and solar they have on the system, and that's why the batteries are really critical to them. Now, where they weren't so important before, can they raise prices in Texas City by having a battery there? No, they cannot.

The way the ERCOT electric grid works is ERCOT procures services from the least cost resource. Anytime somebody tries to jack with the price a little bit, they'll just move it to someplace else. If the system gets inherently tight, there is an independent market monitor that overlooks the grid and makes sure these guys are playing about it.

Mr. Wittmeyer then asked if there were any Ercot related any questions.

He then added that the other thing batteries are really good for are when there is a load shed event, the operator has to fix the wires first and before they can take the load up, they have to make sure they have enough generation to pick up the load. The problem is the load that was on the system when that load went off causes all of your air conditioners to immediately fire up. If they break that link at 60 Hertz, the load comes back out.

Batteries are a giant shock absorber around the system. They can move from a generator to a load in 1/4 of a second. So they're very important for bringing load back up on the system.

Chairman O'Brien asked if it was appropriate to say that the batteries stabilize this system, to which Mr. Wittmeyer stated that is appropriate and we don't normally need that stabilization, but when we do, we really do.

Chairman O'Brien asked if there were any other comments in favor of?

Mr. Dufay replied that he would like to recommend on the apartment building and the air quality. As part of the emergency response plan in the hazard mitigation analysis, there will be a very quantitative study of all the gassing that's possible from the batteries. There will be a quantitative analysis of how much pollutant can get in the air and may impact the residents. If the studies show that these levels exceed EPA standards that would be a failure and they will not be able to build finance to ensure the assets. So, there are many, many levels of controls on these assets that are here to protect the citizens, to the investors, to thank the first responders and everybody involved in the project.

These HMA documents will be provided to the city as needed and they have to be provided and reviewed by the fire department in order for the project to comply with NFPA 855. They have to comply with NFPA 855, otherwise they do not get insurance on their project.

There are checks and balances control systems in place for these large investments and it's \$150,000,000+ that is being invested. There are a lot of highs and a lot of very expensive lawyers who look at this stuff. There are a lot of eyes on it and very important, like are they going to kill their neighbor is going to be looked at very attentively because no investor wants to be involved with the project that has killed a neighbor. That is how you get a lot of people running away and going bankrupt, so with this being said, this project is going to be intrinsically safe.

Staff will have access to all the documentation they need at the fire department level. The Applicant will also be very happy to discuss any questions. They love batteries so they can talk batteries all day.

Deano Merrigan (Property Owner) then stated that the Zoning Commission approved a battery site exactly across the street and exactly South of the apartments behind Kroger and none of this was brought up. Planning and Zoning voted for it across the street.

Now this project is coming up on his side of the street and it's a little different and it just makes him wonder. He stated that he would like to be treated fair and be shown the same respect. He

stated that he has run into some challenges here and understands the concerns, but he pointed out that across the street is another battery storage facility. He only wants the same questions to be asked when this is presented to City Commission.

He added that this is a \$160,000,000 project. The city makes a lot of money on property taxes and this could make about \$2,000,000 a year for the city and property taxes. It's a light industrial site. This is what it is designed for - light industrial use.

Wind direction has been discussed. He reminded everyone that we live in Texas city, it's not The Woodlands and we everyone in here knows someone who has cancer. This is a safe product and if this building burns down, you got toxic glue and all kinds of stuff that's going to burn in here. And if you put your head over this fire right here on the building to get you some, you probably get sick. And so, it's the same output as a battery.

If they don't do a battery facility and they build a building and it burns down and it is south of the apartments, all that smokes goes towards them. He asked that everyone look at this with an open mind.

There were no questions or further discussion, to which a motion was made by Bruce Clawson/Fernando Tello to close the Public Hearing. All other members voted aye.

c. PRELIMINARY ZONING APPROVAL – Consider and take action on the zoning change request from Alpha Omega Power, LLC.

Co-Chairman Owens asked Ms. Golden about the mitigation study and then they are asked to approve something or not and then say we're going to have this study afterwards to determine if it's good or bad.

Ms. Golden replied what he's talking about the hazard mitigation analysis and a lot of other things will be made available during the building permitting process. That's when the building official will review it, and the Fire Marshall will also review it. We actually are going to contract with a third-party reviewer that specializes in BESS projects to review all of those projects when they come through as building permits.

She believes the reason that it comes later is it's very costly to do it and the Applicant needs to know if they're going to be able to do this site or not. She believes that's the way it comes out. They kind of have to know they can do it here, if they're going to do it anywhere, before they go to the expense of showing models of the factories.

She asked Mr. Dufay if this was correct, to which he replied they are absolutely doing all this level of analysis that they talked about costs them between \$1,000,000 to \$2,000,000. As of today, they are still in a position where if the Zoning Commission denies the project, they have nothing, and the project dies.

They have already invested about \$1,000,000 in the project, but they can't invest another \$2,000,000 for the design and \$2,000,000 for the lawyer fees. They can't invest a lot of money in a project that may die tomorrow.

As much as he would like to come in front of the Zoning Commission with a full package that's fully detailed and fully defined where you can make a strong decision based on very clear criteria, that is impossible to do at that stage. That's where the city staff comes in and they are mandated, and they see this in every jurisdiction that they work with. It is always that process where there's

an initial discretionary approval from the Board of Zoning or Planning and City Council to give an indicative idea of whether the city likes this business, but then the city administration is in charge of enforcing that this project is done well.

Ms. Meisler added that the hazards are known and quantified already. What is unique and what is addressed in the HMA is the site-specific information which is proximity to sensitive receptors and direction some of those other specific things and those drill down and provide detail that may cause some changes in design. The hazards are known and from what has been seen, even in the rare instance of a thermal event, is that the effluent smoke from a thermal event is within EPA standards. That is not something you don't know and that level of detail we absolutely could provide today. It's just what's unique about this specific application in this location that will be addressed, and we'll fine tune the design upon admission of the building permits.

Co-Chairman understand that a vote would be a lot easier to make if you have all this information and wished there was a better way to do this.

Mr. Dufay stated the consultant that Ms. Golden was referring to, he doesn't know if staff will be using this one specifically, but he is a very well-known consultant in this industry. They are in the middle of construction of a project in California right now. That project came through the county of San Luis Obispo, which is very nice wine country. That city was using the same consultant and they went after every single detail. They looked at thousands of pages of studies and documents and into every single line item. That's the kind of scrutiny you get from these guys. They probably charge a lot of money for that, but hopefully permitting fees are going to cover that, but they are good at it, and they are in for the city's best interest.

Chairman O'Brien asked if there were any other questions or comments.

A motion was made by Bruce Clawson/Alternate Lisa Salinas to approve the zoning change request from Alpha Omega Power, LLC to rezone from District "F" (Light Industrial) to District "S-P" (Site Plan) for the development of an electric power generating station utilizing lithium-ion battery energy storage system (BESS). There was a 4 – 1 vote in favor of the zoning change request. Co-Chairman Aric Owens voted against the request.

Chairman O'Brien reminded everyone that the Zoning Commission is seated by volunteers/citizens of the City of Texas City and that City Commission will have the final vote on the zoning change request. He also encouraged those in attendance to be at the City Commission meeting to answer any questions the Commissioners may have.

4. GENERAL UPDATES

There were no updates.

5. OTHER BUSINESS (Any conceptual development proposal requesting to come before the Zoning Commission)

A motion was made by Co-Chairman Aric Owens/Alternate Lisa Salinas to adjourn. All members present voted aye.

Kimberly Golden, Secretary

Date

Minutes approved by the Planning Board at its meeting on _____.



7500 San Felipe, Suite 1020
Houston, TX 77063
713.589.9000 (OFFICE)
713.231.5028 (FAX)

CITY PLANNING LETTER

GF Number: 7910-23-1011

Date: March 15, 2023

To: City of Texas City

Title Houston Holdings (Title Company) certifies that a diligent search of the real property records of Title Houston Holdings title plant has been made, as to the herein described property, and as of 8:00 AM on the 9th day of March 2023, we find the following:

Property Description:

BEING a 9.5595 acre (416,413 Sq. Ft.) tract of land out of and a part of Blocks Eleven (11) and Twelve (12) of Clifton Land Production Company Subdivision of League City Semi-Tropical Gardens, a subdivision in Galveston County, Texas, according to the map or plat thereof recorded in Volume 11, Page 4, of the Map Records of Galveston County, Texas, said 9.5595 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at the southwest corner of said Block 12, same being the point of intersection of the north right of way line of F.M. 646 (100' R.O.W.) with the east right of way line of Vicksburg Lane (40' R.O.W.) and from which a 5/8" iron rod was found at;

THENCE N29°11'06"W along and with east right of way line of said Vicksburg Lane, a distance of 646.12' (called 645') to a point for the northwest corner of the tract herein described, same being the southwest corner of a tract of land conveyed to Katie Mathews, as described in Instrument No. 2005007015, of the Deed Records of Galveston County, Texas and from which a 5/8" iron rod was found at S58°55'31"W 0.28';

THENCE N58°55'31"E along and with the south line of said Mathews Tract, a distance of 645.00' to a point for the northeast corner of the tract herein described and being in the west line of a tract of land conveyed to SS Dickinson LP, as described in Instrument No. 2021083617, of the Deed Records of Galveston County, Texas and from which a 2" iron pipe was found at S58°55'31"W 0.46';

THENCE S29°09'49"E along and with west line of said SS Dickinson LP tract, a distance of 646.04' (called 645') to a capped iron rod "RD ELLIS 4006" set for the southeast corner of the tract herein described and being in the north right of way line of said FM 646;

THENCE S58°55'03"W along the north right of way line of said FM 646, a distance of 644.76' to the POINT OF BEGINNING of the tract herein described.

Owner(s) of Record: Palmer PC Investment LLC

By virtue of General Warranty Deed dated May 3, 2022, recorded in Clerk's File No. 2022030654.

Deed Restrictions:

None of Record

Easements and other encumbrances:

Right of Way granted to Gulf Refining Company, as set out in Volume 1029, Page 489 and Volume 1247, Page 296 of the Deed Records of Galveston County, Texas.

Easement granted to Reliant Energy HL&P, a division of Reliant Energy, Incorporated, as set out in Clerk's File No. 2001005683.

Affidavit to the Public as to a surface application on-site wastewater treatment system, as set out in Clerk's File Nos. 2005055479 and 2005055481.

Lien Holder(s):

Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated May 3, 2022, recorded in Clerk's File No. 2022030655, executed by Palmer TX Investment, LLC, a Texas Limited Liability Company, payable to PTAK HOLDING LLC, a Texas Limited Liability Company, in the principal amount of \$2,100,000.00.

No examination has been made as to abstracts of judgments, state or federal tax liens, the status of taxes, tax suits or paving assessments.

This letter is used for the use of, and shall inure to the benefit of PLATTING. The liability of the Title Company, Title Houston Holdings, for mistakes or errors in this letter is hereby limited to the cost of said letter.

This letter is issued with the express understanding, evidenced by the acceptance thereof, that the Title Company does not intend to give or express any opinion as to the validity or effect of the instruments listed, and this letter is neither a guaranty nor a warranty of title.

Liability hereunder is limited to the amount paid for same. This report is furnished solely as an accommodation to the party requesting same and should not be relied upon, as a warranty or representation as to the title to the property described herein, and may not be given to or used by any third party. Title Houston Holdings assumes no liability whatsoever for the accuracy of this report or for any omissions or errors with respect hereto. You agree to release, indemnify, and hold harmless Title Houston Holdings of any negligence by them (whether sole, joint or otherwise) for any claim, loss, liability or damages arising out of this report.

This report is not title insurance. If a policy of title insurance is purchased, any liability thereunder shall be determined solely by the terms of such policy.

Caution: Title Houston Holdings assumes no liability for errors or omissions in this report or for verbal statements. This is a copy of a preliminary report made for use of Title Houston Holdings only, to determine whether a title insurance policy can be issued. If a copy is furnished to the parties involved in the transaction, it is to facilitate preparation of the necessary instruments, to point out curative requirements (if any) and to show the results of the company's title search (upon which on the company may rely).

None of the information contained herein, or the absence of other information, constitutes a representation to any party, other than the company, as to the status of title. If a title defect or encumbrance should exist which is not disclosed herein, the company shall not be liable by reason of furnishing the report or for any verbal statements related thereto. The company shall not be liable for any title defect unless a title insurance policy is issued insuring against such defect. The applicable premium paid and the company's liability shall exist only under the terms of its policy (as prescribed by the state board of insurance) and is measured and limited thereby.

Notice: Title Houston Holdings disclaims any warranties, expressed or implied, concerning the information. This information is solely for the use of the party requesting it and no one else. Title Houston Holdings liability for errors and/or omissions in this information is limited to the amount paid for this report. By accepting this form, the party requesting the information agrees that the disclaimer of warranties and liability

limitation contained in this paragraph is a part of its contract with Title Houston Holdings and will cover all actions arising by statutes, in contract, or in tort.

Title Houston Holdings



Katie Greene
Title Examiner

TITLE HOUSTON HOLDINGS



Country Liquor
Liquor store

The Force Fitness

McDonald's
Fast Food · \$

Jack in the Box
2 for \$6

Grand Ave

646

Hull St

Industrial Specialists

Genesis All Upholstery
Upholstery shop

Gary's Anything Auto

645

R and Energy and
Infrastructure Services

Faith For Life Church

Simply Self Storage
Rent Online & Save
First Month Free

Acie's Outboards

R O Water Resources

Vicksburg St

Vicksburg St

Curran International

Vicksburg St

645

VICINITY MAP



OVERALL ACREAGE IS 9.56 ACRES (416,413 SQF) FOR LOTS 11 AND 12, OF CLIFTON LAND PRODUCTION COMPANY SUBDIVISION OF LEAGUE CITY SEMITROPICAL GARDENS

ZONING DISTRICT - CURRENT ZONE "O" PROPOSED ZONE "P-1" ADJACENT ZONES "O"

LOT "A" 104,867 SF
LOT "B" 89,678 SF
LOT "C" 214,764 SF

MIN F.F.E. - 14.00'

PARKING SYNOPSIS

OCCUPANCY TYPE	PARKING COUNT	REQUIRED	PROPOSED
SHELL BUILDING "A" C-STORE	6,700/1,300 X 5	23.5 (24)	
SHELL BUILDING "B" RETAIL	4,000/1,000 X 5	50	
VACANT LAND "C"			
TOTAL		74	74

LANDSCAPING ANALYSIS

STREET R.O.W. - TYPE/CATEGORY	CALIPER SIZE	REQUIRED	PROPOSED
VICKSBURG STIGUERUS VIRGINIANA (D&K)	2"	571/571	10
FM ALBUQUERQUE VIRGINIANA (D&K)	2"	555/129 - 21.5	22
LIGUSTRUM JAPONICUM (MAXLEAF LIGUSTRUM) (SHRUB)	5 GAL	32K/320	320
QUERCUS TEXANA RED (RED OAK)	3"		56
LIGUSTRUM JAPONICUM (MAXLEAF LIGUSTRUM) (SHRUB)	5 GAL		200

TOTAL SQF	15% OF TOTAL ACREAGE	PROPOSED
708,449 SF	30,247 SF	37,825 SF
	REQUIRED # OF TREES	
	10,267 / 500 = 60	61

REVISIONS

DATE	ISSUED FOR	CLIENT REVIEW	PERMIT	BIDDING	CONSTRUCTION	FINAL REVIEW
03.06.23						

INTERFIELD
engineering | architecture
401 STUDEWOOD, SUITE 300 TEL (713) 780-0909
HOUSTON, TEXAS 77007 TX. REG. NO. F-5611
WWW.INTERFIELD.NET

PROPERTY OWNER
SBA ALLIANCE
STAVAN VORA PH: 832-338-8688
17928 HWY 3, SUITE 104B,
WEBSTER, TX, 77598



06.28.24

40' 20' 0 40'
SCALE: 1 INCH = 40 FEET

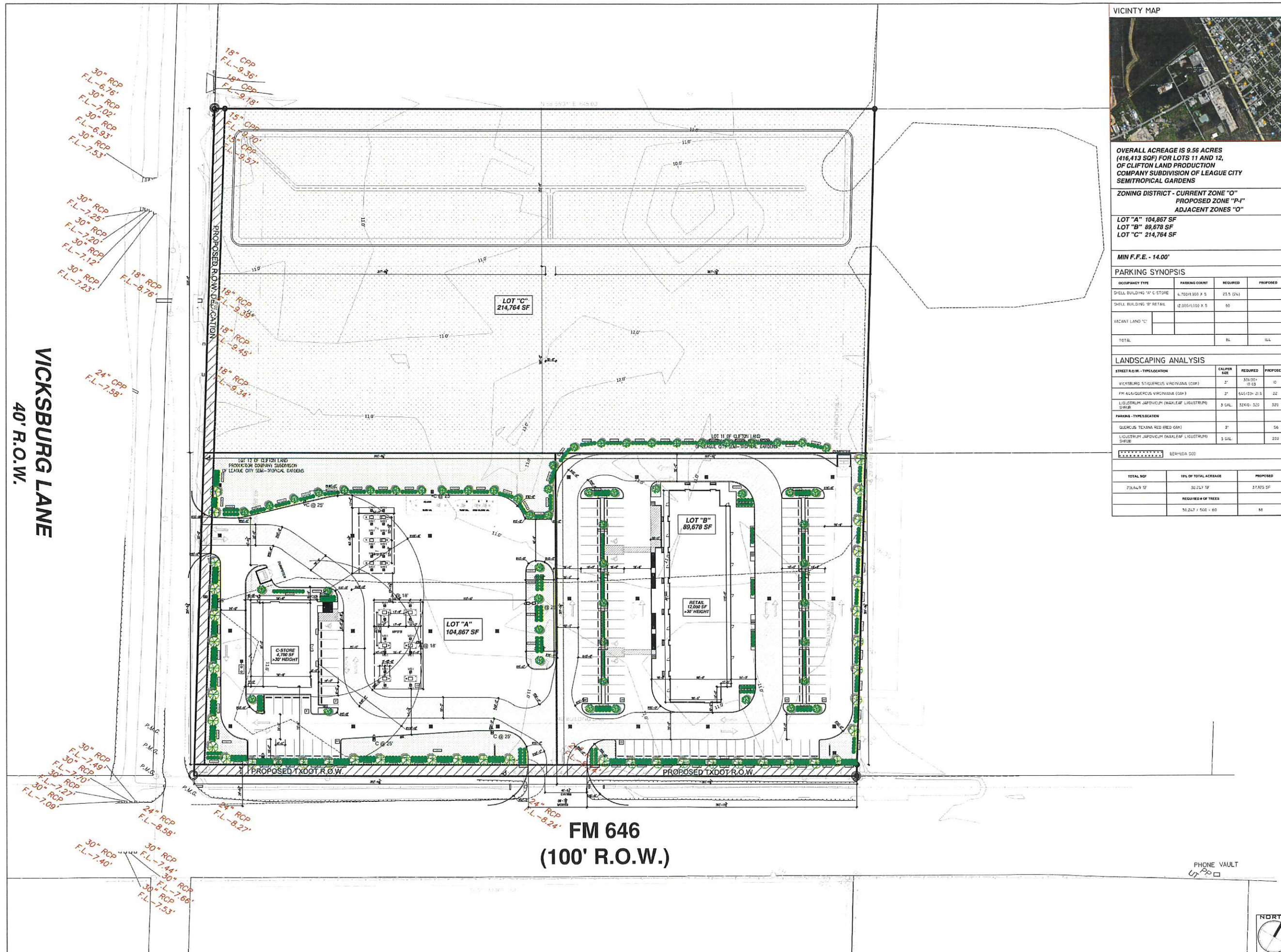
SBA ALLIANCE
PROPOSED C-STORE &
SHELL RETAIL BLDGS
1414 FM 646
DICKINSON, TX

DETAILED SITE PLAN
GROSS ACREAGE: 9.56 ACRES
TEXAS CITY, GALVESTON COUNTY, TEXAS
PROJECT # 22125.00

DATE: 09.19.23
DRAWN BY: JJH
CHECKED BY: MFO



A1.00 OF: 1



VICKSBURG LANE
40' R.O.W.

FM 646
(100' R.O.W.)

PHONE VAULT
UT 220

30" RCP F.L.-6.76'
30" RCP F.L.-7.02'
30" RCP F.L.-6.93'
30" RCP F.L.-7.53'

30" RCP F.L.-7.25'
30" RCP F.L.-7.20'
30" RCP F.L.-7.12'
30" RCP F.L.-7.23'

24" RCP F.L.-8.76'

18" CPP F.L.-9.36'
18" CPP F.L.-9.18'

15" CPP F.L.-9.70'
15" CPP F.L.-9.57'

18" RCP F.L.-9.39'
18" RCP F.L.-9.45'
18" RCP F.L.-9.34'

24" CPP F.L.-7.35'

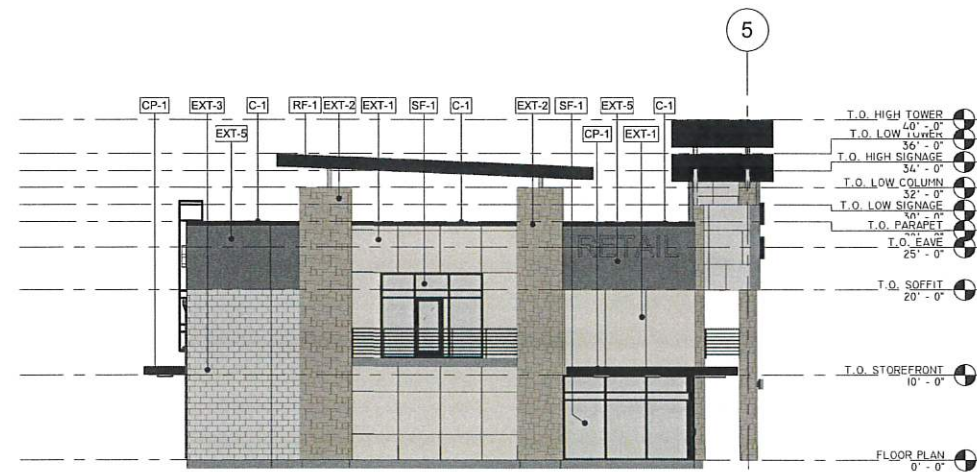
30" RCP F.L.-7.49'
30" RCP F.L.-7.70'
30" RCP F.L.-7.27'
30" RCP F.L.-7.09'

24" RCP F.L.-8.58'

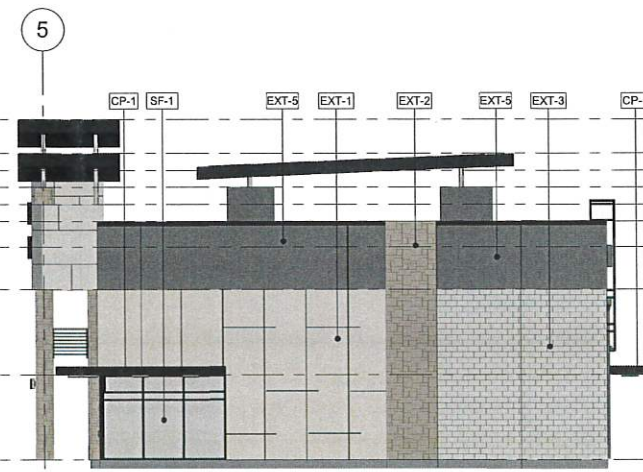
24" RCP F.L.-8.27'

30" RCP F.L.-7.44'
30" RCP F.L.-7.66'
30" RCP F.L.-7.53'

24" RCP F.L.-8.24'



4 RETAIL NORTH ELEVATION
1" = 10'-0"



3 RETAIL SOUTH ELEVATION
1" = 10'-0"



2 RETAIL EAST ELEVATION
1" = 10'-0"

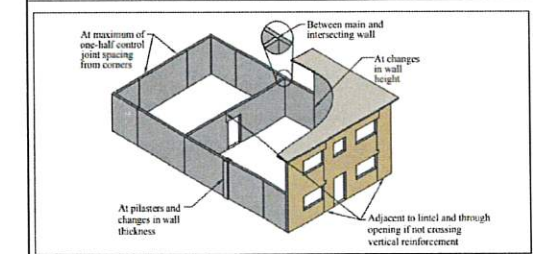


1 RETAIL WEST ELEVATION
1" = 10'-0"

EXTERIOR MATERIAL LEGEND

MARK	DESCRIPTION	MANUFACTURER	TYPE / COLOR
EXT-1	STUCCO SYSTEM	SHERWIN WILLIAMS	PAINTED: SW 7008 - ALABASTER
EXT-2	THIN STONE VENEER	CORONADO	COUNTRY CASTLE - CHABLIS
EXT-3	SPLIT FACE CMU - 8" X 8" X 16"	REVELS BLOCK	SPLIT FACE/355 LIMESTONE
EXT-4	STUCCO SYSTEM	SHERWIN WILLIAMS	PAINTED: SW 7656 - RHINESTONE
EXT-5	STUCCO SYSTEM	SHERWIN WILLIAMS	PAINTED: SW 7067 - CITYSCAPE
C-1	PRE-FINISHED METAL COPING	TO BE SELECTED BY CONTRACTOR	DARK BRONZE
CP-1	ALUMINUM CANOPY	AVADEX OR APPROVED EQUAL	DARK BRONZE
RF-1	STANDING SEAM METAL ROOF	MBCI OR APPROVED EQUAL	DARK BRONZE
SF-1	STOREFRONT SYSTEM	OLDCASTLE	GLAZING: TEMPERED, LOW-E; FRAME: DARK BRONZE

CMU CONTROL JOINT DIAGRAM:



- REFER TO SHEET A6.10 FOR DOOR TYPES AND A6.20 FOR WINDOW TYPES.
- PROVIDE SILICONE SEALANT OVER BACKER RODS AROUND ALL WINDOWS, DOORS, AND CONTROL JOINTS.
- PRE-FINISHED METAL DOWNSPOUT TO CONNECT TO STORM SEWER.
- DISTANCES BETWEEN CONTROL JOINT FOR MASONRY WALLS SHOULD NOT EXCEED THE LESSER OF:
A. LENGTH TO HEIGHT RATIO OF 1-1/2:1
B. 25' IN LENGTH
- STUCCO JOINT SPACING SHOULD NOT BE GREATER THAN 18'.
- NO STUCCO PANEL SHOULD EXCEED 144 S.F. ON VERTICAL APPLICATIONS OR 100 S.F. ON CURVED OR ANGULAR APPLICATIONS.
- NO STUCCO PANEL SHOULD EXCEED THE LENGTH-TO-WIDTH RATIO OF 2-1/2:1.
- USE PLYWOOD AT SIGNAGE LOCATIONS FOR PROPER ANCHORAGE AS NOTATED IN THE ZONES ON THE ELEVATION TO THE LEFT. IN THE SITUATION WHERE THE CONSTRUCTION TYPE IS II-B, THE PLYWOOD IS TO BE FIRE-RETARDANT-TREATED WOOD PER IBC 2012 SECTION 603.

ISSUE HISTORY		REVISIONS	
DATE	ISSUED FOR	REV#	REVISION DESCRIPTION
	CLIENT REVIEW		
	PERMIT		
	BIDDING		
	CONSTRUCTION		

INTERFIELD
engineering | architecture
401 STUDEWOOD, SUITE 300
HOUSTON, TEXAS 77007
TEL: (713) 780-0909
TX. REG. NO. F-5611
WWW.INTERFIELD.NET




PRELIMINARY ONLY
NOT FOR
CONSTRUCTION

01.18.24
1" = 10'-0"
PALMER TC INVESTMENT, LLC
646 RETAIL
1414 FM 646,
DICKINSON, TX 77539

EXTERIOR
ELEVATIONS - RETAIL
22125.20
DATE: 07/11/23
DRAWN BY: NB
CHECKED BY: JJH/SCB
SHEET: A2.10



STAFF REPORT

TO: Zoning Commission – regular meeting August 6, 2024
FROM: Kim Golden, P.E., City Engineer 
CC: Doug Kneupper, P.E.
DATE: June 27, 2024
RE: 1414 FM 646 – Zoning change request from District O (Open Space) to District E (General Business) - Proposed C-Store and Retail

Background: The applicant, Jack Hernandez, The Interfield Group, for owner, Palmer TC Investment LLC, proposes to subdivide 9.56 acres located on the east side of Vicksburg Lane at FM 646 to construct a new 4,700sft convenience store with fuel pumps and a new 12,000sft retail strip. The property is currently zoned District O – Open Space and requires rezoning for the proposed uses. An application for rezoning is pending, as well as an amending plat to subdivide the property into three lots. The location is also within the Gateway Overlay District and requires masonry building facades, enhanced landscaping, and underground utilities among other things.

The site is existing vacant acreage. The property across Vicksburg Lane to the west is zoned District A - Single Family Residential and mostly vacant except for an existing business (Curran International). The adjacent properties to the north and east are zoned District O and have occupied commercial establishments. The property to the south across FM 646 is also zoned District O and has an occupied commercial establishment.

At its regular meeting on July 1, 2024, the Planning Board voted without opposition to approve the proposed site plan, subject to the applicant obtaining the necessary zoning change, the property owners association being created, and the subdivision being recorded in proper form.

Requested Action: The applicant is requesting a zoning change from District O (Open Space) to District E (General Business) to allow for the construction and operation of a new convenience store with fuel pumps and retail strip, subject to approval of rezoning to an appropriate district.

Staff Review and Recommendation: The subject location is currently zoned District O (Open Space) which purpose is to provide for land inside the city limits which is not subdivided and/or relatively undeveloped. It is anticipated that all O districts will be rezoned to other zoning classifications as the city proceeds toward full development.

District E (General Business) is intended to provide for an extensive variety of enclosed retail and commercial services to serve the overall needs of the community. Due to the variety and potential intensity of these uses, they should be located along major transportation corridors and be appropriately buffered from residential areas. The enumerated allowed principal uses



Texas City

EST. 1911

ENGINEERING & PLANNING

includes 160.035(B)(12) "any retail sales, commercial business or service which is not included in the O-P, D, or D-1 Zoning Districts, provided that all such uses shall be completely within an enclosed building and are not noxious or offensive by reason of the emission of odor, dust, gas fumes, noise or vibration. The proposed convenience store and retail strip are consistent with the District E General Business zoning classification.

The proposed site improvements include a 4700sft convenience store with 24 striped parking spaces, which includes one designated as accessible. The proposed site improvements also include a 12,000sft retail strip with 60 striped parking spaces, which includes four designated as accessible.

Texas City water and sewer are NOT available to the site. Applicant will be required to annex into the Bacliff MUD to obtain the new water and sewer connections. Mayor Johnson has provided a letter of no objection to the Bacliff MUD. Formal consent to annexation by the City Commission will be required when applicant submits its petition to the MUD.

The site drains in part to FM 646, but in large part to a detention pond to be constructed in future Lot 3 which will discharge into the right of way of Vicksburg Lane and flow north into an improved drainage canal in the League City jurisdiction. The detention pond will be donated to a property owners association to be created by the Applicant and burdened with a drainage easement in favor of Lots A & B.

Future Lots A & B will share a driveway from FM 646. Lot A will also have a driveway from Vicksburg Lane.

Elevation plans provided for the C-Store and Retail strip indicate construction materials will consist of CMU block with stone veneer and stucco, and some pre-finished metal coping and aluminum canopy. The buildings are shown to have standing seam metal roofs. These materials satisfy the requirements of the GWY.

Applicant also provided landscaping plans which show landscaping in excess of 15% which includes the placement of 88 trees of 3-inch caliper and 520 shrubs. The dumpsters are shown to have the necessary enclosures.

Staff have no objection to the proposed re-zoning provided it is subject to the establishment of a property owners association and the recording of a subdivision in proper form.

"the place where COMMUNITY MATTERS"

1801 9th Avenue North * P.O. Drawer 2608 * Texas City, TX 77592-2608

(409) 948-3111 * www.texascitytx.gov

STAFF REPORT

TO: Planning Board – regular meeting July 1, 2024
FROM: Kim Golden, P.E., City Engineer *KG*
CC: Doug Kneupper, P.E.
DATE: June 27, 2024
RE: 1414 FM 646 – Proposed C-Store and Retail

Background: The applicant, Jack Hernandez, The Interfield Group, for owner, Palmer TC Investment LLC, proposes to subdivide 9.56 acres located on the east side of Vicksburg Lane at FM 646 to construct a new 4,700sft convenience store with fuel pumps and a new 12,000sft retail strip. The property is currently zoned District O – Open Space and requires rezoning for the proposed uses. An application for rezoning is pending, as well as an amending plat to subdivide the property into three lots. The location is also within the Gateway Overlay District and requires masonry building facades, enhanced landscaping, and underground utilities among other things.

The site is existing vacant acreage. The property across Vicksburg Lane to the west is zoned District A Single Family Residential and mostly vacant except for an existing business (Curran International). The adjacent properties to the north and east are zoned District O and have occupied commercial establishments. The property to the south across FM 646 is also zoned District O and has an occupied commercial establishment.

Requested Action: The applicant is requesting approval of a Development Plan for the construction of a new convenience store with fuel pumps and retail strip, subject to approval of rezoning to an appropriate district.

Staff Review and Recommendation: The proposed site improvements include a 4700 sft convenience store with 24 striped parking spaces, which includes one designated as accessible. The proposed site improvements also include a 12,000 sft retail strip with 60 striped parking spaces, which includes four designated as accessible.

Texas City water and sewer are NOT available to the site. Applicant will be required to annex into the Bacliff MUD to obtain the new water and sewer connections. Mayor Johnson has provided a letter of no objection to the Bacliff MUD. Formal consent to annexation by the City Commission will be required when applicant submits its petition to the MUD.

The site drains in part to FM 646, but in large part to a detention pond to be constructed in future Lot 3 which will discharge into the right of way of Vicksburg Lane and flow north into an improved drainage canal in the League City jurisdiction. The detention pond will be donated to a property owners association to be created by the Applicant and burdened with a drainage easement in favor of Lots A & B.

Future Lots A & B will share a driveway from FM 646. Lot A will also have a driveway from Vicksburg Lane.

Elevation plans provided for the C-Store and Retail strip indicate construction materials will consist of CMU block with stone veneer and stucco, and some pre-finished metal coping and aluminum canopy. The buildings are shown to have standing seam metal roofs. These materials satisfy the requirements of the GWY.

Applicant also provided landscaping plans which show landscaping in excess of 15% which includes the placement of 88 trees of 3-inch caliper and 520 shrubs. The dumpsters are shown to have the necessary enclosures.

The submitted site plan satisfies the applicable ordinance requirements; staff have no objection to **approval conditioned upon the rezoning being approved, the property owners association being created, and the subdivision being recorded in proper form.**

PLANNING BOARD MINUTES JULY 1, 2024

The Planning Board of the City of Texas City met in a regular meeting on Monday, July 1, 2024, at 5:00 p.m. Planning Board members present: Chairman Dickey Campbell, Commissioner Thelma Bowie, Commissioner Jami Clark, Jayla Weatherspoon, Alternate Member Aric Owens, and Alternate Member Jose Boix. Staff members present: Kimberly Golden (Secretary), David Kinchen (Deputy Building Official) and Veronica Carreon. Guests were: Enrique Munoz and Bryan Carnes (Carnes Builders), Mary Villareal and Jack Hernandez (The Interfield Group), Steven Vora, and Julie Tovar (S.H.I.P. Intern).

Chairman Dickey Campbell indicated a quorum was present and called the meeting to order.

1) APPROVAL OF MINUTES

A motion to approve the minutes of June 3, 2024, was made by Jayla Weatherspoon/Commissioner Jami Clark. All other members present voted aye.

2) PUBLIC COMMENTS

There were no public comments.

3) REGULAR AGENDA

- a. Consider and take action on the Development Plan for 6th Street North Parking Lot for Brazos Urethane Building. Located at the northeast corner of 6th Street North and 11th Avenue North.**

Ms. Golden stated Brazos Urethane is building an office building to the south of this location that was previously approved by the Planning Board as a separate project and it is currently ongoing.

This is currently a vacant lot that will contain 39 new parking spaces with 2 of them designated accessible. This location has 3 zoning districts that apply to it. The basic zoning district is District "E-1" (Central Business). The other two zoning districts are the 6th Street Revitalization District and the Gateway Overlay District.

The property fits all of those zoning requirements and they will be adding some landscaping and a 6' stacked stone wall along the east property line to provide separation for the adjacent residential use. The site plan did not receive details of this wall, but it will be required on the plans when submitting for permitting as well as the location and placement of the street sign and street light pole(s).

Staff recommend approval of the Development Plan subject to confirming the stacked stone wall system will be at least 6' in height.

Ms. Golden then indicated on Google maps where the parking lot would be located and also indicated where the new office building is being constructed.

Chairman Dickey Clark asked if there was an intent to keep the old office building across the street. Mr. Bryan Clark wanted to be clear and replied that these properties are not owned by Brazos Urethane. They are owned by Scoggins Holdings. They are leased to Brazos Urethane on a long-term basis right now and the intent is once the employees are moved to the new office building, they will redo the exterior of the current Brazos Urethane building to make it look like the new building.

Mr. Clark added that the stacked stone fencing along the parking lot will match what they have constructed behind the new building.

Chairman Campbell noted the parking lot entrances being placed on 11th Avenue North and not 6th Street North. Mr. Clark replied that is correct and they have agreed with staff that they will keep the gates open for city events as needed.

Alternate Member Jose Boix asked if the parking lot would be gated and would it be paved concrete. Mr. Clark replied yes.

Alternate Member Aric Owens asked whether the Development Plan meets the 15% landscaping requirement, to which Ms. Golden replied yes. He then asked if the new office building meets this requirement as well. Ms. Golden replied that it did when the plans were originally approved. The Applicant then found a discrepancy between the survey and what was actually there and so the lot ended up being smaller. The building had already been built and there was an accommodation to remedy this.

Mr. Clark added that the survey was actually 10' shorter and they figured out quickly that they did not have room on each side and had to make those accommodations. Ms. Golden added that the project lost 2 parking spaces, but they were able to keep all the landscaping.

Chairman Campbell asked if there were any additional questions. There were none.

A motion was made by Alternate Member Jose Boix/Commissioner Thelma Bowie to approve the Development Plan for 6th Street North Parking Lot, subject to confirming the stacked stone wall will be at least 6' in height. All other members present voted aye.

b. Consider and take action on the Development Plan for a Proposed C-Store and Retail from The Interfield Group. Located at 1414 FM 646 on the east side of Vicksburg Lane.

Ms. Golden stated this a vacant piece of property on 9.56 acres located on the east of Vicksburg Lane at FM 646, which is in the Gateway Overlay District. It is currently zoned District "O" (Open Space) and there is also an application for rezoning that is coming through the process at the same time.

The Applicant is also subdividing the land into three lots – two that will front on FM 646, one that will front on Vicksburg Lane. The property that will front on Vicksburg Lane will have a detention pond on it and will serve the other two lots. There will be easements in favor of those lots and dedicated to the Property Owner's Association to maintain the detention pond.

The convenience store is 4,700 sq. ft and will include 24 striped parking spaces with one designated as accessible. There will also be a 12,000 sq. ft. retail strip with 60 striped parking spaces with four designated as accessible.

This site is not served by Texas City water and sewer, so the Applicant will be required to annex into the Bacliff MUD to obtain the new water and sewer connections. Mayor Johnson has provided a letter of no objection to the Bacliff MUD. The Applicant will have to go through an annexation process that the City Commission will actually have to formally consent to.

The site drains in part to FM 646, but in large part to a detention pond to be constructed in future Lot 3, which will discharge into the right-of-way of Vicksburg Lane and flow north into an improved drainage canal in the League City jurisdiction.

The property is located in the Gateway Overlay District so it will have masonry construction along with an excess of the required 15% landscaping which will include 88 trees of 3" caliper and 520 shrubs. Dumpsters will be screened.

Ms. Golden indicated that there was a representative to answer any questions from the Board.

Commissioner Jami Clark asked if there are any retail tenants identified at this time. The owner, Stavan Vora, replied they do not have any tenants at this time, and they are just constructing the buildout of the shopping center and will go from there.

Ms. Golden recommended that the Board's approval be conditioned on the rezoning being approved and on the property owner's association being created and the subdivision being recorded in proper form.

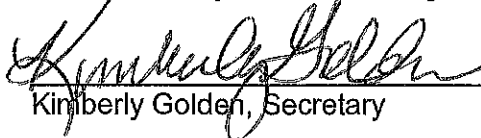
A motion was made by Commissioner Thelma Bowie/Jayla Weatherspoon to approve the Development Plan conditioned upon the rezoning being approved, the property owner's association being created, and the subdivision being recorded in property form.

4) GENERAL UPDATES

Ms. Golden introduced Julie Tovar, the department's S.H.I.P. intern. She comes from a family of construction and is learning about permitting and has completed some projects and working on more. Engineering & Planning and Inspections are happy to have her working with them.

5) OTHER BUSINESS (Any conceptual development proposal requesting to come before the Planning Board)

Chairman Dickey Campbell asked if there was any other business to which there was none. **A motion was made by Commissioner Jami Clark/Commissioner Thelma Bowie to adjourn. All members present voted aye.**

 7-22-2024
Kimberly Golden, Secretary Date

Minutes approved by the Planning Board at its meeting on 7-22-2024.

CITY COMMISSION REGULAR MTG

(5) (b)

Meeting Date: 09/04/2024

Alpha Omega Power, LLC is requesting a zoning change from District "F" (Light Industrial) to District "S-P" (Site Plan) for development of an electric power generating station utilizing lithium-ion battery energy storage system (BESS). Located at 701 Hwy 146 N., and north of the existing Golden Rule Logistics.

Submitted For: Kim Golden, Transportation and Planning

Submitted By: Veronica Carreon, Transportation and Planning

Department: Transportation and Planning

Information

ACTION REQUEST

This is the Public Hearing for request from Alpha Omega Power LLC to change the zoning of 6.29 acres from District "F" (Light Industrial) to District "SP" Site Plan for the development of a proposed electric power generating station utilizing lithium ion battery energy storage system (BESS). The site is located at 701 S.H. 146 which is on the west side of SH 146, north of Golden Logistics, LLC and south of Baker Distributing.

As a BESS installation the application is being processed as a District SP (Site Plan) rezoning consistent with Section 160.051(A)(1)(f) *provide for the development of specific uses which are not normally found in zoning districts*, and (h) *provide additional information and regulatory controls concerning the proposed use or uses for the protection of the public health, safety, morals and general welfare of the community*.

A Notice of Public Hearing was advertised in the Galveston Daily News in accordance with city ordinance and state law.

BACKGROUND (Brief Summary)

Background

The applicant is AOP Holdings, LLC d/b/a Alpha Omega Power, which was established in 2023. The proposed project, Southern Select Energy, will encompass approximately 5.71 acres on 6.29 acres of vacant land. The location of the project is on the west side of S.H 146 N and north of the existing Golden Logistics. The property owner is LM Storage, LLC. The property is zoned District F. The project proposes to develop up to 106 lithium-ion battery containers for 205MW, 410MWh capacity at the site.

PROPOSED SITE IMPROVEMENTS - The Site improvements will include a 20ft concrete perimeter fire lane with access to all containers and two access roads as required by the Fire Marshal, security fencing, and landscaping of at least 6ft in height to provide screening of the battery containers from S.H. 146. The fencing along SH 146 will be a 6ft masonry wall. Container spacing has been adjusted to the 15ft minimum required by the Fire Marshal. In addition to the generating station, offsite improvements include electric transmission infrastructure that connects to Texas-New Mexico Power facilities in the vicinity. No water or sewer will be needed for this development. Site drainage will be accomplished using an on-site collection system that outfalls into the adjacent drainage systems.

EXISTING SITE - The project site is part of the former ETC Texas City Trucking Terminal. The site has been determined to have certain environmental concerns affecting the groundwater. Specifically, a barium plume. Monitoring wells have been established and were monitored for a required amount of time. Applicant has indicated and provided documentation that the monitoring has been concluded and the wells have been or will be removed. The location of the monitoring wells have been indicated on the site plan. As part of an approved Response Plan, the property is subject to a deed restriction which limits its use to commercial/industrial use. A Revised Response Action Plan dated June 9, 2021, and

prepared for the previous owner, Enterprise Logistic Services, LLC, to provide to TCEQ, represented expected future use to remain a trucking facility. The current property owner advises it has received a No Further Action Required order from TCEQ

ADJACENT PROPERTIES - The adjacent property to the north is Baker Distributing Company at 801 SH 146. The adjacent property to the south is burdened with an easement to TNMP for the location of transmission poles and wires. No survey has been provided, but the width of the easement when scaled with the Google Maps tool indicates a width of approximately 200ft. However, the existence of overhead power lines in close proximity to the location should be noted. Immediately south and adjacent to the TNMP easement is Golden Rule Logistics, another distribution entity. Golden Rule Logistics is a tenant on the property. Records show the property south of the proposed site to have common ownership, LM Storage, LLC, with the subject location. It is understood the project owner, Alpha Omega Power, LLC, will also be a tenant. The property is bounded on the west by the railroad. Gulf Coast Water Authority owns the vacant property which is immediately west of the railroad. The site is bounded on the east by S.H. 146. The TNMP substation is located immediately east of SH 146.

TNMP HEIGHTS SUBSTATION - The applicant's submission includes the following information regarding the location in proximity to the TNMP Heights Substation:

The project location near the TNHeights substation was chosen based on detailed power flow analysis of the transmission system within TNMP service area. This analysis identified the TNHeights substation as an ideal candidate for a utility-scale BESS, providing sufficient injection capacity while remaining close to TNMP critical load centers. Injection capacity is a metric used to show how much electrical power (in MW) can be transmitted into a point of interconnection, such as a substation. The TNHeights substation has the highest injection capacity (over 800MW), making it the ideal point of interconnection for multiple BESS projects to support regional grid reliability and electricity demand. Currently, one BESS project is operational at the TNHeights substation (BRP Heights, 10MW project), while three others are in queue to interconnect (Zeya 256MW, IEP Blackhawk 100 MW, and Southern Select 100MW). The combined capacity of these four projects (466MW) is well below the available injection capacity of the substation, indicating the substation is capable of supporting multiple BESS projects.

BATTERY CHEMISTRY and MANUFACTURER - The application indicates an intent to use LFP (lithium iron phosphate) battery cells which is the cell chemistry which currently available information indicates may be less prone to thermal runaway than the NMO (nickel manganese cobalt) battery cells. Applicant has indicated Fluence or Tesla are likely manufacturers, and that they intend to use CATL cells. CATL cells are considered Tier 1 cells.

FLOOD PLAIN/COASTAL ENVIRONMENT - The site is not located in a flood plain. It is located inside the area protected by the Texas City Hurricane Levee. Container foundations will be placed at elevation 7.0ft in accordance with Texas City ordinances.

Regarding protection from the saltwater/coastal environment, the applicant advises in an email received 7.19.2024 that the containers are fully integrated cabinets and shipped to the site as such, so there is no exposure to the elements during the installation process. The containers will meet the requirements of IP 67 at the Pack level and IP55 at the Battery Container level. IP67 means the individual battery packs do not allow for the ingress of dust particles. They are protected against the ingress of water from spraying/water jets and are rated to be submersed in up to 3' of water for up to 30 minutes without penetration. IP55 means the battery containers themselves provide protection from dust, low pressure water jets and damp and wet weather. The storage units also meet an anti-corrosion class of up to C5-H depending on the local environment. C5 is the highest class of anti-corrosion coating. Air filter maintenance is also a critical element of maintaining the units for optimal operating conditions and will be performed by a regular maintenance crew as often as needed, which may be weekly. Some of the indications in the email are different from the spec sheet provided with the application. The representations of the email are considered to supersede the spec sheet insofar as the conditions being presented to the Planning Board and others for approval at this time. **The codes and standards most appropriate for saltwater/coastal environment will be applied by the Fire Marshal and Chief Building Official during the permitting process.**

FIRE PROTECTION - Fire protection will be provided by on-site systems specifically designed for this application with Fire Marshal coordination. The project will be subject to the 2024 fire codes and building codes. The Fire Marshal may require additional submittals at the time of permitting and has advised these requirements will include at minimum commissioning and decommissioning plans, site safety plan, all UL test results for the batteries to be installed, a bond or other security for decommissioning and some requirements for insurance. The Chief Building Official is likely to require annual certification and inspection of ventilation systems at minimum. The Applicant acknowledges these, and other requirements must be satisfied to obtain the necessary permits.

DECOMMISSIONING - The costs of decommissioning have been identified as an issue of concern for cities because it is known that batteries have a service life which expires. Additionally, as technology evolves, installations become obsolete. A recent article from the Green Clean Solar, January 11, 2023, references some key findings from a study of the Electric Power Research Institute. The study estimated the cost of decommissioning for a 1-MWh NMC lithium-ion based grid energy storage system as \$91,500. Applying this factor to the 410 MWh capacity proposed for this project would estimate the decommissioning cost as \$37,515,000. Although this project is not proposing NMC lithium-ion batteries, the estimated decommissioning cost is based upon 40% dismantling and packaging, 30% transportation and only 30% recycling. The battery chemistry would have the most impact on the cost of recycling. The estimated cost is significant enough to warrant the posting of substantial security.

SECOND POINT OF ACCESS: The secondary access is proposed to be through adjacent property which is represented as having common ownership with the site being rezoned. The area is also burdened with an easement in favor of TNMP. Applicant provided a proposed easement and access agreement with the adjoining property owner just before the Planning Board meeting. Staff have subsequently provided comments on the access easement and recommend the final location be dedicated by plat as a fire lane for secondary access to the site. Such platting is necessary to be sure the access can be maintained permanently through the adjacent property which is burdened with an easement in favor of TNMP. Fire Marshal has indicated a requirement for lockbox access. **THE APPLICANT HAS NOT AGREED TO PROVIDE THE ACCESS BY PLAT BUT IS MAINTAINING THE EASEMENT AGREEMENT AS SUFFICIENT.**

APPLICANT'S EXPERIENCE/COMPANY HISTORY – The applicant is AOP Holdings, LLC d/b/a Alpha Omega Power, which was established in 2023. The company profile and resumes of the key personnel are attached to the staff memos.

RECOMMENDATION

At its regular meeting on July 22, 2024, the Planning Board voted 3-2 to approve the proposed Detailed Site Plan and to recommend approval of the zoning change to the Zoning Commission and to the City Commission. The minutes of the Planning Board are attached in AgendaQuick.

At its regular meeting on August 6, 2024, the Zoning Commission held a public hearing. Notices of Public Hearing were mailed to eight (8) adjacent property owners before the hearing. One property owner appeared at the hearing and asked questions about the proposed development but did not state an opposition to the request for rezoning or to the project. Following discussion and deliberation the Zoning Commission voted 4-1 to recommend the rezoning to the City Commission. The minutes of the Zoning Commission meeting will be attached in AgendaQuick.

Fiscal Impact

Attachments

701 Hwy 146 N - ZC Staff Report

701 Hwy 146 N - Exhibits

701 Hwy 146 N - Legal Description

701 Hwy 146 N - PB Staff Report

07-22-24 PB Minutes


701 Hwy 146 N - Alpha Omega Supplemental Submission 1

701 Hwy 146 N - Alpha Omega Supplemental Submission 2

701 Hwy 146 N - Access Easement Agmt with LM Storage LLC

Minutes

STAFF REPORT

To: Zoning Commission - Regular Meeting – August 6, 2024
From: Kim Golden, P.E., City Engineer 
CC: Doug Kneupper, P.E.
Date: July 29, 2024
Re: Southern Select Energy Storage Project (BESS) – 701 Hwy 146 N

Background: The applicant is Alpha Omega Power, LLC. The proposed project will encompass approximately 5.71 acres on 6.29 acres of vacant land. The location of the project is on the west side of S.H 146 N and north of the existing Golden Logistics. The property owner is LM Storage, LLC. The property is zoned District F. The project proposes to develop up to 106 lithium-ion containers for 205MW, 410MWh capacity at the site.

At its regular meeting on July 22, 2024, the Planning Board voted 3-2 to approve the proposed Detailed Site Plan and to recommend approval of the zoning change to the Zoning Commission and to the City Commission.

Requested Action: The applicant is requesting approval of a zoning change for development of an electric power generating station utilizing lithium-ion battery energy storage system. The application is being processed as a District SP (Site Plan) rezoning consistent with Section 160.051(A)(1)(f) *provide for the development of specific uses which are not normally found in zoning districts*, and (h) *provide additional information and regulatory controls concerning the proposed use or uses for the protection of the public health, safety, morals and general welfare of the community*. Zoning Commission recommendation will be presented to the City Commission for action regarding the requested zoning change.

Staff Review and Recommendation: The project will include up to 106 individual battery containers for 205MW, 410MWh two-hour capacity at the site. The two-hour designation is in reference to the time to fully charge and fully discharge under standardized conditions.

This proposed BESS installation is approximately 20times larger in battery capacity than the previously approved BESS installations. The site is also physically much larger than the previously approved. This site is 6.29 acres with 5.71 acres in use for batteries, as compared to the two previously approved projects which were 0.48 acres and 1.5 acres respectively.

PROPOSED SITE IMPROVEMENTS - The Site improvements will include a 20ft concrete perimeter fire lane with access to all containers and two access roads as required by the Fire Marshal, security fencing, and landscaping of at least 6ft in

"the place where COMMUNITY MATTERS"

height to provide screening of the battery containers from S.H. 146. The fencing along SH 146 will be a 6ft masonry wall. Container spacing has been adjusted to the 15ft minimum required by the Fire Marshal. In addition to the generating station, offsite improvements include electric transmission infrastructure that connects to Texas-New Mexico Power facilities in the vicinity. No water or sewer will be needed for this development. Site drainage will be accomplished using an on-site collection system that outfalls into the adjacent drainage systems.

EXISTING SITE - The project site is part of the former ETC Texas City Trucking Terminal. The site has been determined to have certain environmental concerns affecting the groundwater. Specifically, a barium plume. Monitoring wells have been established and were monitored for a required amount of time. Applicant has indicated and provided documentation that the monitoring has been concluded and the wells have been or will be removed. The location of the monitoring wells have been indicated on the site plan. As part of an approved Response Plan, the property is subject to a deed restriction which limits its use to commercial/industrial use. A Revised Response Action Plan dated June 9, 2021, and prepared for the previous owner, Enterprise Logistic Services, LLC, to provide to TCEQ, represented expected future use to remain a trucking facility. A copy of the Revised Action Plan will be included in the agenda packet with this staff report.

ADJACENT PROPERTIES - The adjacent property to the north is Baker Distributing Company at 801 SH 146. The adjacent property to the south is burdened with an easement to TNMP for the location of transmission poles and wires. No survey has been provided, but the width of the easement when scaled with the Google Maps tool indicates a width of approximately 200ft. However, the existence of overhead power lines in close proximity to the location should be noted. Immediately south and adjacent to the TNMP easement is Golden Rule Logistics, another distribution entity. Golden Rule Logistics is a tenant on the property. Records show the property south of the proposed site to have common ownership, LM Storage, LLC, with the subject location. It is understood the project owner, Alpha Omega Power, LLC, will also be a tenant. The property is bounded on the west by the railroad. Gulf Coast Water Authority owns the vacant property which is immediately west of the railroad. The site is bounded on the east by S.H. 146. The TNMP substation is located immediately east of SH 146.

TNMP HEIGHTS SUBSTATION - The applicant's submission includes the following information regarding the location in proximity to the TNMP Heights Substation:

The project location near the TNHeights substation was chosen based on detailed power flow analysis of the transmission system within TNMP service area. This analysis identified the TNHeights substation as an ideal candidate for a utility-scale BESS, providing sufficient injection capacity while remaining close to TNMP critical load centers. Injection capacity is a metric used to show how much electrical power (in MW) can be transmitted into a point of interconnection, such as a substation.

The [attached map] shows the individual injection capacity for four of the largest substations within city limits. The TNHeights substation has the highest injection capacity (over 800MW), making it the ideal point of interconnection for multiple BESS projects to support regional grid reliability and electricity demand. Currently, one BESS project is operational at the TNHeights substation (BRP Heights, 10MW project), while three others are in queue to interconnect (Zeya 256MW, IEP Blackhawk 100 MW, and Southern Select 100MW). The combined capacity of these four projects (466MW) is well below the available injection capacity of the substation, indicating the substation is capable of supporting multiple BESS projects.

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FIRE PROTECTION - Fire protection will be provided by on-site systems specifically designed for this application with Fire Marshal coordination. The project will be subject to the 2024 fire codes and building codes. The Fire Marshal may require

additional submittals at the time of permitting and has advised these requirements will include at minimum commissioning and decommissioning plans, site safety plan, all UL test results for the batteries to be installed, a bond or other security for decommissioning and some requirements for insurance. The Chief Building Official is likely to require annual certification and inspection of ventilation systems at minimum. The Applicant acknowledges these, and other requirements must be satisfied to obtain the necessary permits.

DECOMMISSIONING - The costs of decommissioning have been identified as an issue of concern for cities because it is known that batteries have a service life which expires. Additionally, as technology evolves, installations become obsolete. A recent article from the Green Clean Solar, January 11, 2023, references some key findings from a study of the Electric Power Research Institute. The study estimated the cost of decommissioning for a 1-MWh NMC lithium-ion based grid energy storage system as \$91,500. Applying this factor to the 410 MWh capacity proposed for this project would estimate the decommissioning cost as \$37,515,000. Although this project is not proposing NMC lithium-ion batteries, the estimated decommissioning cost is based upon 40% dismantling and packaging, 30% transportation and only 30% recycling. The battery chemistry would have the most impact on the cost of recycling. The estimated cost is significant enough to warrant the posting of substantial security.

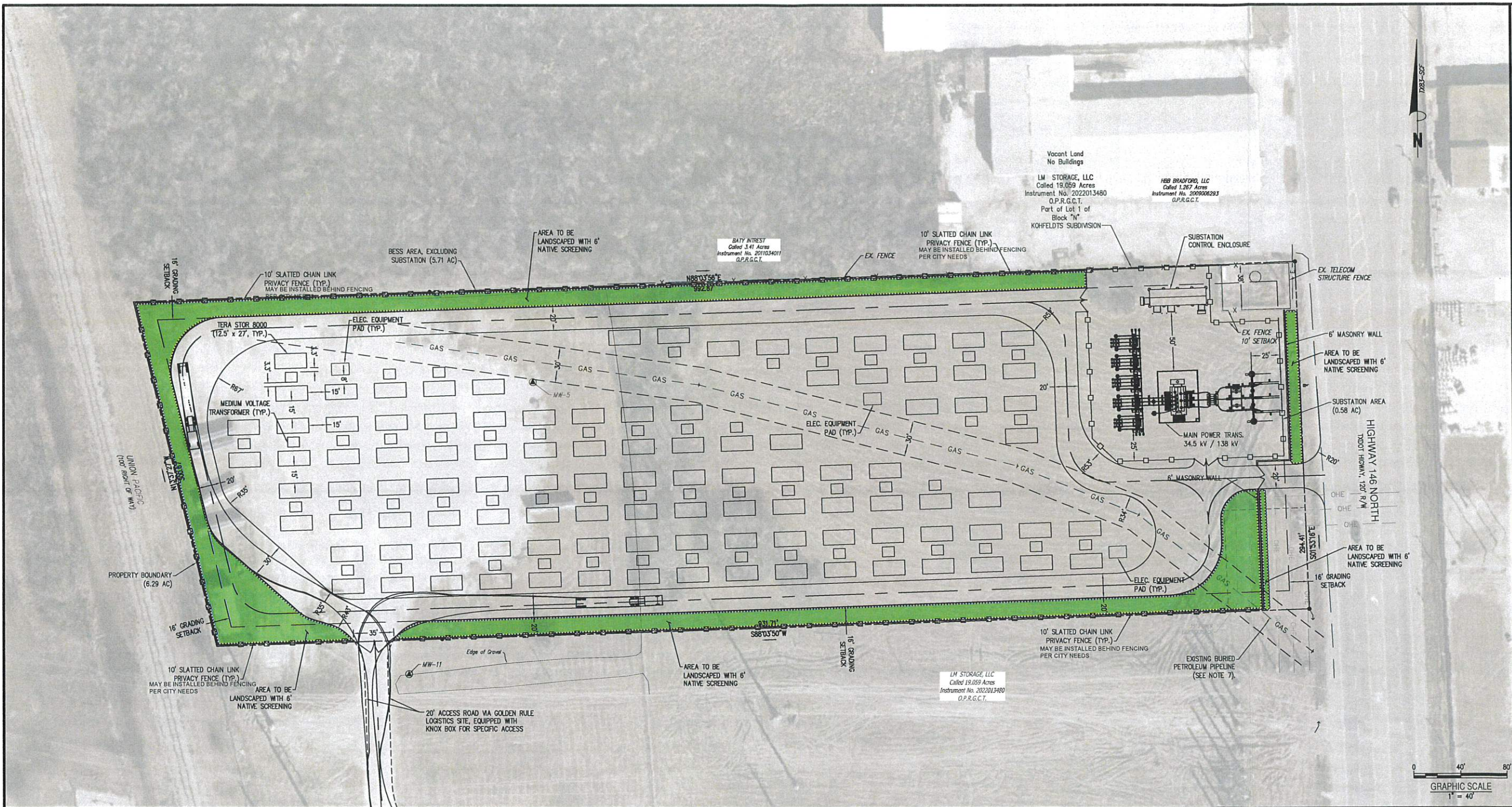
SECOND POINT OF ACCESS – ISSUE UNRESOLVED: The secondary access is proposed to be through adjacent property under lease to Golden Rule Logistics. Applicant provided a proposed access agreement with the adjoining property owner just before the Planning Board meeting. Staff have subsequently provided comments on the access easement and recommend the final location be dedicated by plat as a fire lane for secondary access to the site. Such platting is necessary to be sure the access can be maintained permanently through the adjacent property which is used for logistics and staging. Fire Marshal has indicated a requirement for lockbox access.

APPLICANT'S EXPERIENCE/COMPANY HISTORY – The applicant is AOP Holdings, LLC d/b/a Alpha Omega Power, was established in 2023. The company profile and resumes of the key personnel are provided with this memo.

Analysis and RECOMMENDATION: City staff have reviewed the submitted Site Plan and provided numerous comments regarding spacing, paving, screening and landscaping standards. All of the site plan specific comments have been resolved, with the exception of the issue regarding the second point of access. Staff cannot make a recommendation regarding the adequacy of the second point of access without more information regarding the specific agreement with the adjacent property owner and tenant. Staff maintains its recommendation that the final location of the second access be approved by the Fire Marshal and granted by plat.

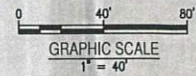
Applicant's information indicates it is a start-up company. Given the magnitude of the potential estimated cost of the decommissioning, the need for posting of a substantial bond should not be overlooked.

Staff makes no recommendation regarding this application for rezoning.



NOT FOR CONSTRUCTION

SPECIAL EXCEPTION SITE PLAN
SOUTHERN SELECT BATTERY SITE
ALPHA OMEGA POWER
 GALVESTON COUNTY, TEXAS
 CITY OF TEXAS CITY

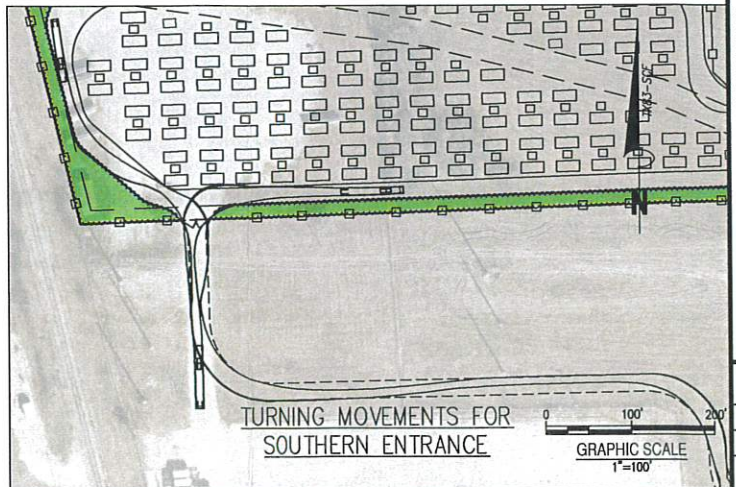
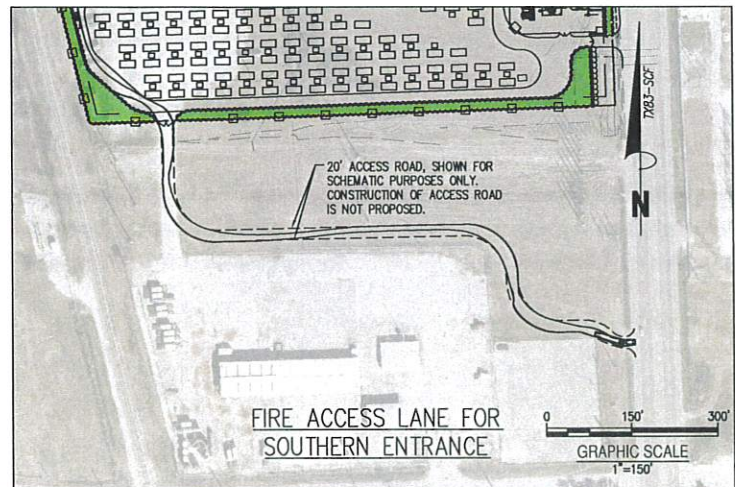


ENERGY STORAGE SYSTEM DESCRIPTION	
NAMEPLATE	205 MW / 410 MWH
PROPERTY AREA	6.29 ACRES
BESS AREA	5.71 ACRES
SUBSTATION AREA	0.58 ACRES

MAJOR EQUIPMENT LIST	
NUMBER OF TERA STOR 8000 SERIES, AC/CP 2 (205 MW / 410 MWH)	106
NUMBER OF EPC POWER 6M (INSIDE BESS UNITS)	106
NUMBER OF MEDIUM VOLTAGE TRANSFORMERS, RATED AT 7.5 MVA	53

- LEGEND:**
- PROPERTY LINE
 - 6" MASONRY WALL
 - FENCE
 - - - EXISTING SETBACK
 - - - CIVIL GRADING SETBACK
 - GAS PIPELINE
 - OVERHEAD POWER LINE GATE
 - MONITORING WELL
- ABBREVIATION LIST:**
- BESS - BATTERY ENERGY STORAGE SYSTEM
 - BOL - BEGINNING OF LIFE
 - EOL - END OF LIFE
 - POI - POINT OF INTERCONNECTION
 - TYP - TYPICAL

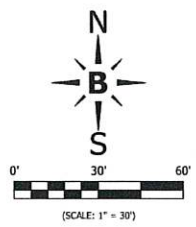
- NOTES:**
- THIS IS THE FINAL PERMITTING SITE PLAN, NOT FOR CONSTRUCTION. A SEPARATE DETAILED DESIGN PACKAGE SHALL INCLUDE ALL RELEVANT CIVIL, STRUCTURAL, SAFETY, AND ELECTRICAL DETAILS FOR CONSTRUCTION. EQUIPMENT QUANTITIES AND DIMENSIONS LISTED IN EQUIPMENT LIST ARE PROVIDED BY THE CLIENT AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE CONSULTANT.
 - THE SITE BOUNDARY ON THE EAST WILL HAVE A MASONRY WALL.
 - LANDSCAPING SHALL BE PROVIDED AT 15% OF THE SITE AREA, WHICH IS APPROXIMATELY 41,000 SF.
 - LAYOUT AS SHOWN WOULD BE CONSIDERED NEAR EXPOSURE UNDER THE GUIDELINES OF NFPA 855 AND IFC.
 - AUGMENTATION NOT INCLUDED ON LAYOUT.
 - ALL ACCESS AND DRIVING AREAS ARE PAVED WITH CONCRETE.
 - THE PIPELINE HAS BEEN ABANDONED AND THE GAS COMPANY IS IN THE PROCESS OF RELEASING THE EASEMENT.
 - BOTH ACCESS ROADS TO BE CONCRETE.
 - MONITORING WELLS HAVE BEEN DECOMMISSIONED.



CONSTRUCTION REVISION SUMMARY			
NO.	DATE	DESCRIPTION	ISSUED FOR
A	07/05/24	ISSUED FOR REVIEW	DESIGN
B	07/06/24	ISSUED FOR SITE ACCEPTANCE PLAN	CAS
C	05/31/24	ISSUED FOR SITE ACCEPTANCE PLAN	TNC

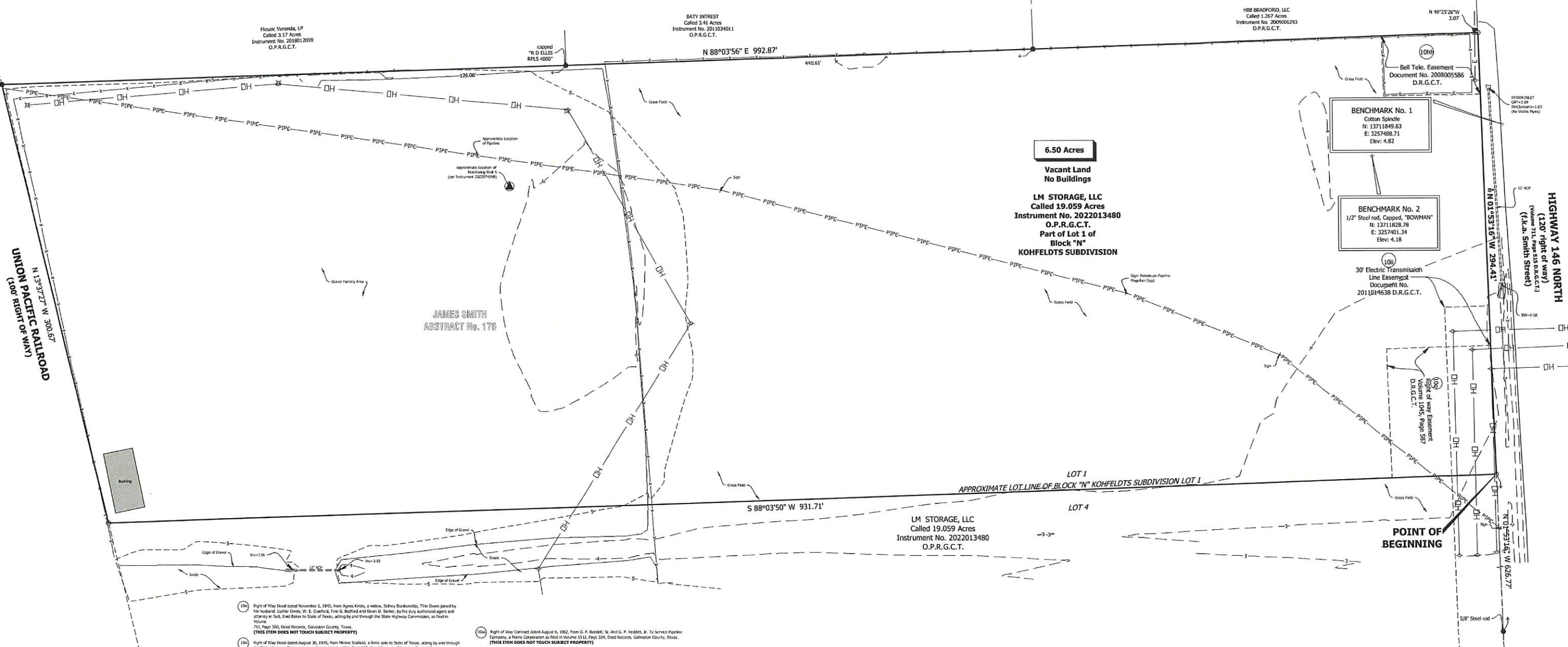
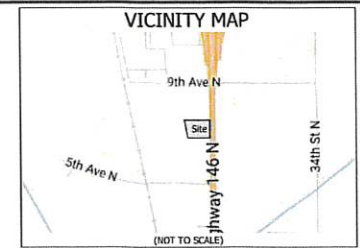
TNC DESIGN, CAS DRAWN, TNC CHKD
 JOB No. V:070747-01-0021
 DATE: Jul 11, 2024
 SHEET 1

ALTA/NSPS LAND TITLE SURVEY SOUTHERN SELECT SITE



LEGEND

- 1/2 Inch Steel Rod Capped "TRUE MERIDIAN" Found unless otherwise noted
- 1/2 Inch Steel Rod Capped "BOWMAN" Set
- X — Fence Line
- Aerial utility line
- ⚡ Power Pole
- ⊙ Monitoring Well
- O.P.R.G.C.T. — Official Public Records of Galveston County, Texas
- D.R.G.C.T. — Deed Records of Galveston County, Texas
- [] Record



6.50 Acres
Vacant Land
No Buildings
LM STORAGE, LLC
Called 19.059 Acres
Instrument No. 2022013480
O.P.R.G.C.T.
Part of Lot 1 of
Block "N"
KOHFELDT'S SUBDIVISION

BENCHMARK No. 1
Cotton Spindle
N: 13711849.63
E: 3257468.71
Elev: 4.82

BENCHMARK No. 2
1/2" Steel rod, Capped, "BOWMAN"
N: 13711828.78
E: 3257401.34
Elev: 4.18

UNION PACIFIC RAILROAD
(100' RIGHT OF WAY)
N 13°37'27" W 300.67'

HIGHWAY 146 NORTH
(120' RIGHT OF WAY)
(Volume 111, Page 515 D.R.G.C.T.)
(F.R.A. Smith Street)

EXCEPTIONS FROM COVERAGE

- Amtrust Title Insurance Company
Effective Date: October 4, 2023
Issued Date: October 20, 2023
File No. FH-6102-TX
- (10a) Oil and Gas Mineral Leases as filed in Volume 823, Page 121, Volume 828, Page 62, Volume 2090, Page 485, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT SURVEY RELATED)**
 - (10b) Right of Way Deed dated July 13, 1931, from Francis Graham and Mrs. Mera Graham, a widow to the Texas Pipeline Company, as filed in Volume 492, Page 498, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10c) Right of Way Contract dated July 26, 1933, from Mera Graham, a widow, and Francis Graham to Standard Pipeline Company, a Delaware corporation as filed in Volume 487, Page 7, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10d) Right of Way Contract from Mera Graham, a widow and Francis Graham, her son to Pan American Pipeline Company, a Delaware corporation as filed in Volume 547, Page 551, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10e) Pipeline Easement dated December 27, 1935, from Francis Graham and Mera, M. Graham, a widow, to Bennett Cude Oil Marketing Company as filed in Volume 562, Page 6, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10f) Right of Way Agreement dated February 26, 1941, from Mera Joanne Scovel, a widow, to Pan American Pipeline Company, as filed in Volume 627, Page 554, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10g) Right of Way Grant dated February 26, 1941, from Mera Joanne Scovel to Shell Pipeline Corporation as filed in Volume 633, Page 466, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10h) Right of Way Deed dated November 6, 1943, from Mera Joanne Scovel, a widow to DeLima Plant Corporation, a corporation controlled by the United States of America as filed in Volume 628, Page 519, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10i) Right of Way Deed dated November 6, 1943, from Mera Joanne Scovel, a widow to DeLima Plant Corporation, a corporation controlled by the United States of America as filed in Volume 628, Page 519, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**

Legal Description

19.059 ACRES, MORE OR LESS, BEING ALL THAT CERTAIN TRACT OR PARCEL OF LAND SITUATED IN GALVESTON COUNTY, TEXAS, BEING ALL OF LOT 1 AND PART OF LOT 4 IN SUBDIVISION "N" KOHFELDT'S SUBDIVISION OF THE JAMES SMITH SURVEY, ABSTRACT 176, GALVESTON COUNTY, TEXAS, AS DESCRIBED IN THAT CERTAIN SPECIAL WARRANTY DEED WITH VENDOR'S LIES FROM KAG LEASING, INC., A DELAWARE CORPORATION TO LM STORAGE, LLC, A TEXAS LIMITED LIABILITY COMPANY, FILED OF RECORD IN DOCUMENT NO. 2022013480 OF THE OFFICIAL DEED RECORDS OF GALVESTON COUNTY, TEXAS. (CAD 1 & 2)

As-Surveyed Description

BEING all that tract of land located in the James Smith Survey, Abstract No. 176 in Galveston County, Texas, being part of Lot 1 in Subdivision "N" Kohfeldt's Subdivision, recorded in Volume 9, Page 101 of the Deed Records Galveston County Texas (D.R.G.C.T.) and being part of that called 19.059 acres of land as described in a deed to LM Storage, LLC as recorded in Instrument 2022013480 of the Official Public Records of Galveston County Texas (O.P.R.G.C.T.), and further described as follows:

BEGINNING at a 1/2 inch steel rod, capped "BOWMAN" set in the common line of 19.059 acres and the west right of way line of Highway 146 North, also being at the approximate common corner of Lot 1 and Lot 4 of the Kohfeldt's Subdivision, from which a 5/8 inch steel rod found, bears South 01 degrees 53 minutes 16 seconds East, a distance of 234.41 feet for reference;

THENCE South 88 degrees 03 minutes 56 seconds East a distance of 931.71 feet with the approximate lot line of Lot 1 and Lot 4 and through said 19.059 acres to a 1/2 inch steel rod, capped "BOWMAN" set at the southwest corner of here described tract of land and being in the common line of said 19.059 acres and the northwest line of Union Pacific Railroad;

THENCE North 13 degrees 37 minutes 27 seconds West a distance of 300.67 feet with said common line of said 19.059 acres and Union Pacific Railroad to a 1/2 inch steel rod found at the northwest corner of said 19.059 acres and being the southwest corner of that called 1.157 acres of land as described in a deed to HBB Bradford, LLC, recorded in Instrument 2009005293 of said O.P.R.G.C.T.;

THENCE North 88 degrees 03 minutes 56 seconds East a distance of 992.87 feet with the common line of said 19.059 acres and said 1.157 acres passing the northeast line of said 3.17 acres and with that called 2.41 acres of land as described in a deed to Billy Interiors, recorded in Instrument No. 2011034811 of said O.P.R.G.C.T. and with that called 1.357 acres of land as described in a deed to HBB Bradford, LLC, recorded in Instrument 2009005293 of said O.P.R.G.C.T.;

THENCE South 01 degrees 53 minutes 16 seconds East a distance of 234.41 feet with the common line of said 19.059 acres and the west right of way line of Highway 146 North, from which a 1/2 inch steel rod, capped True Meridian, found, bears South 25 degrees 25 minutes 25 seconds West, a distance of 2.07 feet for reference;

ALTA/NSPS LAND TITLE SURVEY
5.00 ACRES OUT OF THE JAMES SMITH SURVEY,
ABSTRACT 176, GALVESTON COUNTY, TEXAS

BEING PART OF LOT 1, IN SUBDIVISION "N" KOHFELDT'S SUBDIVISION OF THE JAMES SMITH SURVEY, ABSTRACT 176, GALVESTON COUNTY, TEXAS, AS DESCRIBED IN THAT CERTAIN SPECIAL WARRANTY DEED WITH VENDOR'S LIES FROM KAG LEASING, INC., A DELAWARE CORPORATION TO LM STORAGE, LLC, A TEXAS LIMITED LIABILITY COMPANY, FILED OF RECORD IN DOCUMENT NO. 2022013480 OF THE OFFICIAL DEED RECORDS OF GALVESTON COUNTY, TEXAS

1519 Job No.: 07047-01-002	Drawn By: REP
Sheet 1 of 1	Reviewed By: DWC
Property Address: 3030 5th Avenue North La Marque, TX 77590	Prepared For: Alpha-Omega

To: Stewart Title Guaranty Company:
This is to certify that this map or plot and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 2, 3, 4, 5, 7, 8, 11, 13, 14 and 15 of Table A thereof.

The field work was completed on August 24, 2023.
Date of Plot or Map: September 15, 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.

Daniel Wayne Dugan
Registered Professional Land Surveyor
Texas Registration No. 6894

Purpose:

Date of Release: _____, 2021

The survey may only be used for the original transaction for which it was conducted. Digital or photostatic reproductions of this survey may not be used for subsequent transactions. This survey is only valid with the presence of a sealed impression seal.

Bowman
CENTRAL TEXAS | 3054 Franklin Ave., Ste. A, Waco, TX 76710
817.776.0529 | TDSPLA@BOWMAN.COM

BEING all that tract of land located in the James Smith Survey, Abstract No. 176 in Galveston County, Texas, being part of Lot 1 in Subdivision "N" Kohfeldt's Subdivision, recorded in Volume 9, Page 101 of the Deed Records Galveston County Texas (D.R.G.C.T.) and being part of that called 19.059 acres of land as described in a deed to L.M. Storage, LLC as recorded in Instrument 2022013480 of the Official Public Records of Galveston County Texas (O.P.R.G.C.T.), and further described as follows:

BEGINNING at a 1/2 inch steel rod, capped "BOWMAN" set in the common line of 19.059 acres and the west right of way line of Highway 146 North, also being at the approximate common corner of Lot 1 and Lot 4 of the Kohfeldt's Subdivision, from which a 5/8 inch steel rod found, bears South 01 degrees 53 minutes 16 seconds East, a distance of 626.77 feet for reference;

THENCE South 88 degrees 03 minutes 50 seconds West a distance of 931.71 feet with the approximate lot line of Lot 1 and Lot 4 and through said 19.059 acres to a 1/2 inch steel rod, capped "BOWMAN" set at the southwest corner of here described tract of land and being in the common line of said 19.059 acres and the northwest line of Union Pacific Railroad;

THENCE North 13 degrees 37 minutes 27 seconds West a distance of 300.67 feet with said common line of said 19.059 acres and Union Pacific Railroad to a 1/2 inch steel rod found at the northwest corner of said 19.059 acres and being the southwest corner of that called 3.17 acres of land as described in a deed to Mosaic Veranda, LP, recorded in Instrument No. 2018012099 of said O.P.R.G.C.T.

THENCE North 88 degrees 03 minutes 56 seconds East a distance of 992.87 feet with the common line of said 19.059 acres and said 3.17 acres passing the northeast line of said 3.17 acres and with that called 3.41 acres of land as described in a deed to Baty Interest, recorded in Instrument No. 2011034011 of said O.P.R.G.C.T. and with that called 1.267 acres of land as described in a deed to HBB Bradford, LLC recorded in Instrument 2009006293 of said O.P.R.G.C.T., to a 1/2 inch steel rod, capped "BOWMAN" set at the intersection former by the common line of said 19.059 and said 1.267 acres with the west right of way line of Highway 146 North, from which a 1/2 inch steel rod, capped True Meridian, found, bears North 46 degrees 25 minutes 26 seconds West, a distance of 2.07 feet for reference;

THENCE South 01 degrees 53 minutes 16 seconds East a distance of 294.41 feet with the common line of said 19.059 acres and the west right of way line of Highway 146 to the **POINT OF BEGINNING, CONTAINING 6.50 ACRES OF LAND**



Texas City

EST. 1911

ENGINEERING & PLANNING

STAFF REPORT

To: Planning Board – Regular Meeting – July 22, 2024

From: Kim Golden, P.E., City Engineer *KG*

CC: Doug Kneupper, P.E.

Date: July 19, 2024

Re: Southern Select Energy Storage Project (BESS) – 701 Hwy 146 N

Background: The applicant is Alpha Omega Power, LLC. The proposed project will encompass approximately 5.71 acres on 6.29 acres of vacant land. The location of the project is on the west side of S.H 146 N and north of the existing Golden Logistics. The property owner is LM Storage, LLC. The property is zoned District F. The project proposes to develop up to 106 lithium-ion containers for 205MW, 410MWh capacity at the site.

Requested Action: The applicant is requesting approval of a Detailed Site Plan for development of an electric power generating station utilizing lithium-ion battery energy storage system. The application is being processed as a District SP (Site Plan) rezoning consistent with Section 160.051(A)(1)(f) *provide for the development of specific uses which are not normally found in zoning districts, and (h) provide additional information and regulatory controls concerning the proposed use or uses for the protection of the public health, safety, morals and general welfare of the community.* Planning Board recommendation will be presented to the Zoning Commission and City Commission as required for the District SP rezoning.

Staff Review and Recommendation: The project will include up to 106 individual battery containers for 205MW, 410MWh two-hour capacity at the site. The two-hour designation is in reference to the time to fully charge and fully discharge under standardized conditions.

This proposed BESS installation is approximately 20times larger in battery capacity than the previously approved BESS installations. The site is also physically much larger than the previously approved. This site is 6.29 acres with 5.71 acres in use for batteries, as compared to the two previously approved projects which were 0.48 acres and 1.5 acres respectively.

PROPOSED SITE IMPROVEMENTS - The Site improvements will include a 20ft concrete perimeter fire lane with access to all containers and two access roads as required by the Fire Marshal, security fencing, and landscaping of at least 6ft in height to provide screening of the battery containers from S.H. 146. The fencing along SH 146 will be a 6ft masonry wall. Container spacing has been adjusted to the

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15ft minimum required by the Fire Marshal. In addition to the generating station, offsite improvements include electric transmission infrastructure that connects to Texas-New Mexico Power facilities in the vicinity. No water or sewer will be needed for this development. Site drainage will be accomplished using an on-site collection system that outfalls into the adjacent drainage systems.

EXISTING SITE - The project site is part of the former ETC Texas City Trucking Terminal. The site has been determined to have certain environmental concerns affecting the groundwater. Specifically, a barium plume. Monitoring wells have been established and were monitored for a required amount of time. Applicant has indicated and provided documentation that the monitoring has been concluded and the wells have been or will be removed. The location of the monitoring wells have been indicated on the site plan. As part of an approved Response Plan, the property is subject to a deed restriction which limits its use to commercial/industrial use. A Revised Response Action Plan dated June 9, 2021 and prepared for the previous owner, Enterprise Logistic Services, LLC, to provide to TCEQ, represented expected future use to remain a trucking facility. A copy of the Revised Action Plan will be included in the agenda packet with this staff report.

ADJACENT PROPERTIES - The adjacent property to the north is Baker Distributing Company at 801 SH 146. The adjacent property to the south is burdened with an easement to TNMP for the location of transmission poles and wires. No survey has been provided, but the width of the easement when scaled with the Google Maps tool indicates a width of approximately 200ft. However, the existence of overhead power lines in close proximity to the location should be noted. Immediately south and adjacent to the TNMP easement is the Golden Rule Logistics, another distribution entity. Golden Rule Logistics is a tenant on the property. Records show the property south of the proposed site to have common ownership, LM Storage, LLC, with the subject location. It is understood the project owner, Alpha Omega Power, LLC, will also be a tenant. The property is bounded on the west by the railroad. Gulf Coast Water Authority owns the vacant property which is immediately west of the railroad. The site is bounded on the east by S.H. 146. The TNMP substation is located immediately east of SH 146.

TNMP HEIGHTS SUBSTATION - The applicant's submission includes the following information regarding the location in proximity to the TNMP Heights Substation:

The project location near the TNHeights substation was chosen based on detailed power flow analysis of the transmission system within TNMP service area. This analysis identified the TNHeights substation as an ideal candidate for a utility-scale BESS, providing sufficient injection capacity while remaining close to TNMP critical load centers. Injection capacity is a metric used to show how much electrical power (in MW) can be transmitted into a point of interconnection, such as a substation.

The [attached map] shows the individual injection capacity for four of the largest substations within city limits. The TNHeights substation has the

highest injection capacity (over 800MW), making it the ideal point of interconnection for multiple BESS projects to support regional grid reliability and electricity demand. Currently, one BESS project is operational at the TNHeights substation (BRP Heights, 10MW project), while three others are in queue to interconnect (Zeya 256MW, IEP Blackhawk 100 MW, and Southern Select 100MW). The combined capacity of these four projects (466MW) is well below the available injection capacity of the substation, indicating the substation is capable of supporting multiple BESS projects.

BATTERY CHEMISTRY - The application indicates an intent to use LFP (lithium iron phosphate) battery cells which is the less cell chemistry which current available information indicates may be less prone to thermal runaway than the NMO (nickel manganese cobalt) battery cells. Applicant has not indicated the specific cell manufacturer nor the specific manufacturer that will be providing the assembled containers for installation.

FLOOD PLAIN/COASTAL ENVIRONMENT - The site is not located in a flood plain. It is located inside the area protected by the Texas City Hurricane Levee. Container foundations will be placed at elevation 7.0ft in accordance with Texas City ordinances.

Regarding protection from the saltwater/coastal environment, the applicant advises in an email received 7.19.2024 that the containers are fully integrated cabinets and shipped to the site as such, so there is no exposure to the elements during the installation process. The containers will meet the requirements of IP 67 at the Pack level and IP55 at the Battery Container level. IP67 means the individual battery packs do not allow for the ingress of dust particles. They are protected against the ingress of water from spraying/water jets and are rated to be submersed in up to 3' of water for up to 30 minutes without penetration. IP55 means the battery containers themselves provide protection from dust, low pressure water jets and damp and wet weather. The storage units also meet an anti-corrosion class of up to C5-H depending on the local environment. C5 is the highest class of anti-corrosion coating. Air filter maintenance is also a critical element of maintaining the units for optimal operating conditions and will be performed by a regular maintenance crew as often as needed, which may be weekly. Some of the indications in the email are different from the spec sheet provided with the application. The representations of the email are considered to supercede the spec sheet insofar as the conditions being presented to the Planning Board and others for approval at this time. **The codes and standards most appropriate for saltwater/coastal environment will be applied by the Fire Marshal and Chief Building Official during the permitting process.**

FIRE PROTECTION - Fire protection will be provided by on-site systems specifically designed for this application with Fire Marshal coordination. The project will be

subject to the 2024 fire codes and building codes. The Fire Marshal may require additional submittals at the time of permitting and has advised these requirements will include at minimum commissioning and decommissioning plans, site safety plan, all UL test results for the batteries to be installed, a bond or other security for decommissioning and some requirements for insurance. The Chief Building Official is likely to require annual certification and inspection of ventilation systems at minimum. The Applicant acknowledges these, and other requirements must be satisfied to obtain the necessary permits.

SECOND POINT OF ACCESS – ISSUE UNRESOLVED: The secondary access is proposed to be through adjacent property under lease to Golden Rule Logistics. Applicant has indicated we would be provided with a copy of the signed access agreement with the adjoining property owner prior to the Planning Board meeting, but at the time of preparation of this memo we have not received either a draft or a signed version of any agreement. In addition, the form of agreement must ensure the access will be open and available at all times. Fire Marshal has indicated a requirement for lockbox access. We have indicated a requirement for the access to be dedicated by plat or perpetual easement in favor of the public.

APPLICANT'S EXPERIENCE/COMPANY HISTORY – INFORMATION NOT YET RECEIVED. We have requested and not yet received information about applicant, Alpha Omega Power, LLC, regarding its formation and length of existence and regarding key staff's experience and qualifications with BESS installations. As of the time of preparation of this memo we have not yet received that information. In conversation staff have indicated some previous experience with other projects in Texas City.

RECOMMENDATION: City staff has reviewed the submitted Site Plan and provided numerous comments regarding spacing, paving, screening and landscaping standards. All of the site plan specific comments have been resolved, with the exception of the issue regarding the second point of access. Staff cannot make a recommendation regarding the adequacy of the second point of access without more information regarding the specific agreement with the adjacent property owner and tenant. Additionally, staff have not yet received the requested information regarding the Applicant's company history and experience with BESS projects. For that reason, staff are not able to make a recommendation at the time of writing of this staff report.

Staff will update this report as more information is received.

PLANNING BOARD MINUTES

JULY 22, 2024

The Planning Board of the City of Texas City met in a special-called meeting on Monday, July 22, 2024, at 5:00 p.m. Planning Board members present: Chairman Dickey Campbell, Co-Chairman Perry O'Brien, Commissioner Jami Clark, Alternate Member Aric Owens, and Alternate Member Jose Boix. Staff members present: Kimberly Golden (Secretary), Casey Bennett (Chief Building Official), David Kinchen (Deputy Building Official) and Veronica Carreon. Guests were: Joel Rodriguez (Air Products); CW Scheibe and Paula Drnevich (LAN Inc.); Sherri McElwee (Quiddity Engineering); Ricardo Cuellar (RDLR); Daniel Ortiz (RPCR); Carlos Sotelo (Kirksey); Felix Herrera (Awesome Auto Accessories); Andres Delgado; Deano Merrigan; Guillaume Dufay and Karl Harris (AOP Renewables); Jason Richards (Vaughn Construction); Moises Weber (Cannon Design); Stephanie Tabor (A&S Engineers); Carlos Pacas (Dally Associates); Bo Bacon (College of the Mainland); Jerry LeBlanc (Binnacle Development); and Julie Tovar (SHIP Intern).

Chairman Dickey Campbell indicated a quorum was present and called the meeting to order.

1) APPROVAL OF MINUTES

A motion to approve the minutes of July 1, 2024 with corrections noted below, was made by Jose Boix/Commissioner Jami Clark. All other members present voted aye.

- Page 1, paragraph 6 – corrected Chairman Dickey Clark to Chairman Dickey Campbell
- Page 1, paragraph 6 – corrected Mr. Bryan Clark to Mr. Bryan Carnes
- Page 2, paragraphs 1, 2, 3, and 5 - corrected Mr. Clark to Mr. Carnes

2) PUBLIC COMMENTS

There were no public comments.

3) REGULAR AGENDA

a. Consider and take action on the Development Plan Air Products Temporary Modular Construction Offices. Located at 14 4th Street South, Texas City.

Ms. Golden stated this project sits on a little more than a ½ acre site. The site was vacant and previously used for the lunch tents and emergency assembly area. Because Air Products is doing a second project at the facility in Texas City they will need the construction offices for a longer duration. Since the temporary construction facilities will be in place for more than six months, they will be required to meet all the code provisions and zoning requirements, so Air Products has brought a site plan forward. The temporary construction offices are already assembled at the site because Air Products was not aware that a permit was required. When notified of the requirement, Air Products acted immediately to correct the oversight.

Air Products will be paving the lot, adding landscaping, screening the dumpster, and providing an ADA compliant entrance.

The location of the temporary modular offices encroaches over an existing public alley that goes through that area. Rather than require the temporary modular offices be relocated to remove the encroachment, staff recommends Air Products apply for an abandonment of that alley.

The modular offices are currently installed at a 10 ft. setback. Although the IBD district does not have a specific setback stated in the ordinance, staff applies a policy standard of the setbacks which apply to similar uses in the basic districts. For this use, that would be the light industrial setback of 25 ft. for anything permanent. Air Products has indicated if they do something permanent, they will abide by the 25 ft. setback.

Chairman Dickey Campbell asked Joel Rodriguez (Air Products) if he could show them the location on the map, to which he did. He then asked Ms. Golden about the 25 ft. setback from streets and the 10' setback from the property line to which Ms. Golden replied there aren't any setbacks in the IBD ordinance, but staff are trying to adhere to its policy.

Mr. Jose Boix asked where the alley is that will need to be abandoned. Ms. Golden indicated it on the exhibit.

Chairman Campbell than asked if the property is leased or greenbelt, to which Mr. Rodriguez replied it is leased from Eastman Chemical till the end of 2026, fourth quarter.

Chairman Campbell asked if there were any additional questions. There were none.

A motion was made by Alternate Member Jose Boix/Commissioner Jami Clark to approve the Development Plan for Air Products Temporary Modular Construction Offices. All other members present voted aye.

b. Consider and take action on the Development Plan for College of the Mainland Site Projects. Located at 1200 N. Amburn Road, Texas City.

i. Overall Site Plan

Ms. Golden stated College of the Mainland (COM) has a 2023 bond program for which voters approved a property tax back in 2023. There are six projects, but three that will entail brand new buildings that will be constructed fairly close in time over the next three years. Due to this, staff have asked COM to submit an overall site plan so the overall impact could be considered on parking, traffic, landscaping and detention.

Ms. Golden stated that they wanted to do this so that they could accommodate COM's growth without chopping because the program included demolishing some buildings, renovating some existing buildings, extending some existing buildings and adding some new buildings. Staff thought the overall analysis would work better for COM as the effects of the net changes in detention, parking, landscaping and traffic were considered and addressed, rather than looking at each project as a standalone.

COM provided the requested overall site plan. A preliminary analysis of the impact on traffic showed that Monticello Drive is going to need to have some improvements and upgrades to accommodate the new construction south of Monticello and the other developments in the area, specifically the new elementary and junior high schools to the east. Staff is moving forward and scoping this project, but in the meantime, staff knows there is a possibility there will be some issues with vehicles stacking at the stop-controlled intersection with Amburn Street during the morning peak hour. Staff have discussed this with COM and recommended moving the driveways for the new parking lots at least 500 feet away from the intersection. COM declined the recommendation because the parking lots each have secondary means of ingress and egress.

The overall site plan has been tweaked a little per staff's comments. They have looked at landscaping campus wide for compliance with the landscaping ordinance to give COM the greatest flexibility to balance its landscaping throughout the campus for a uniform, beautiful experience.

Staff have no objections to approval of the site plan for COM.

Chairman Campbell stated that he had some questions about the staff memo and then asked the other board members if they had any questions.

Co-Chairman Perry O'Brien stated he had some questions about the timeline and stages of this project. Paula Dnevich (LAN Inc.) replied that there are three parking lot projects and one of the parking lots is currently under construction. This will be a 15-month project that will be done in three phases. Ms. Golden reminded everyone that the parking lot project had been approved by the Planning Board in May 2024 so they could expedite the start of the project this summer.

Mr. CW Scheibe (LAN Inc.) then gave an outline of the other projects, which includes the WELD/IE building renovation that was also approved by the Planning Board in May 2024. This project will start construction this week. There is very minimal impact to the footprint because it is a renovation.

Mr. Scheibe added that the Public Safety Career Center (PSCC) and the Corporate & Continuing Education Center (CCEC) are both new buildings and are being brought to the Planning Board as one development application. The building permits will be issued separately for each building, based upon the approved joint development plan. The timeline of construction on both projects is November 2024. Construction will be self-contained within that site. PSCC will take about 15 months to construct and the CCEC will take about 12 months.

Ms. Drnevich then reported that the Library/Classroom Building would be constructed on the site of the demolished Technical Vocational building, with construction scheduled to begin in April 2025 and would take about two years to complete. This new 4-story building will include a new library, auditorium and classrooms. There will also be a penthouse.

Mr. Boix then asked about a statement in the Staff Report regarding the driveway and entrances and that the design team decided not to accept staff recommendations.

Ms. Golden replied that the intersection at Amburn Road and Monticello Drive is stop-controlled with a 4-way stop. In the future, Monticello Drive will act as a thoroughfare. There has not been a TIA study done because the elementary school east of COM is not in session, so staff plans to do one in the fall. Their prediction is during morning peak there will be a lot of stacking at the stop sign that may interfere with the entrances into the COM parking lots indicated on the exhibit. Staff also anticipates that the morning peak will be when the CCEC building will most likely be starting its sessions. Staff brought this to COM's attention and recommended the driveways into the parking lots be spaced at least 500ft away from the intersection. COM feels that being aware of that information, they did not want to move their driveways further down. Ms. Drnevich replied this is because there is a second entrance between the buildings. Ms. Golden added that this intersection will eventually have to be enhanced with a road improvement project on Monticello Drive. COM is looking at having the issue for a few years until the improvements are made.

Ms. Golden then pointed out an incorrect draft of the site plan was included in the agenda packet. The correct site plan would show no additional parking next to Lot A, but that area is to be retained as additional green space. Additional parking is not required to satisfy the City's requirement and COM is satisfied the parking is adequate. Ms. Drnevich replied they plan to add landscaping there.

Chairman Campbell then asked about the Library Classroom Building. Ms. Golden replied that she was planning to discuss each item separately, but if Chairman Campbell preferred to discuss the items together, she was good with that. Chairman Campbell indicated he would like to consider all of the items together.

ii. Library/Classroom Building

Ms. Golden then stated that the Library Classroom Building is a 160,000 sq. ft. building, which will be four stories. This will be a multi-use building that will include 42 classrooms, a theatre with a capacity of 299, and offices. The schedule for construction of this building is further out and is expected to start in August 2025. There will be approximately a two-year construction period. It will be located where the previously located Technical Vocational building was. The new parking lot for this building will include 283 spaces with entrances from Monticello Drive. The building will have an approximate ground area of 38,715 sq. ft., and a finished floor elevation of 18.55 ft. The approximate building height is estimated to be 80 ft.

The site plan has been modified to provide full circle access by fire lane as requested by the Fire Marshal.

COM has responded to all of staff's comments and staff have no objection to approval of the development plan for the Library and Classroom Building.

Commissioner Jami Clark asked if they would be tearing down the other theatre or was this an addition. Ms. Drnevich replied there is an auditorium inside the existing Limited Resource Center and Library, and that building would be torn down. This building will be slightly larger than the current theatre.

Chairman Campbell asked if there were any additional questions about the Library Classroom Building. There were none and Ms. Golden moved on to the next item.

iii. Continuing & Corporate Education Center (CCEC) and Public Safety Careers Center (PSCC)

Ms. Golden stated that the CCEC and PSCC projects are presented together as a joint application, but there are two different design teams. A joint application was requested due to the shared parking and detention. But the projects will apply for building permits separately when they are ready to move on to construction.

The CCEC building will be 20,400 sq. ft and one-story. The PSCC is 33,681 sq. ft. and also one-store. With the shared parking and shared detention, they have basically offset their impact. Staff have discussed their landscaping requirements, both of which are being accommodated. Staff have also discussed with COM that the landscaping can be extended along Monticello Drive to the west to provide a more uniform effect along the corridor.

All review comments have been addressed. The only thing staff thought to mention to them that is not considered a problem is the location of those driveways. Staff also talked to them about the eventuality of when the city does street improvements to Monticello Drive that, if needed, any additional ROW will have to come from the south side because there are a bunch of pipelines and existing infrastructure north of Monticello Drive. This might be an opportunity for COM to consider pushing their buildings further back, but they were not inclined to do that.

Mr. Boix then asked about the setback and if it complies with the ordinance. Ms. Golden replied that it does and that a 100 ft. ROW is typically enough for a three-lane project. On paper everything they know says it's not a problem, but again it's what's on paper. When they get out there and start digging, they don't know what's actually out there. She just wants everyone to be alert, especially when there are existing pipelines and existing drainage structure so they absolutely know it cannot come from the north side, but COM is compliant with the ordinance.

Chairman Campbell then asked how far the ditch runs. Mr. Carlos Pacas (Dally Associates) indicated the ditch on the exhibit.

Mr. Boix asked if the detention pond is new and how it is managed. Ms. Drnevich replied yes, and it is being constructed because of the two new buildings. Mr. Daniel Ortiz (RPCR) replied that it is a restrictor pipe that would eventually gravity flow into the city's ditch, without pumping.

Ms. Golden also acknowledged that COM is giving a 75 ft. easement on an existing canal that is along the east boundary. Mr. Scheibe added that this was approved by the Board of Trustees earlier in the day. Ms. Golden thanked him for this news.

Chairman Campbell wanted to make sure he understood the recommendation in the staff memo and asked about the last sentence of the memo that read, "For that reason only staff offer no objection to approval of the site plan". He asked if someone did offer objection to which Ms. Golden stated staff is saying they are complying with the ordinance and there is no objection.

A motion was made by Co-Chairman Perry O'Brien/Commissioner Jami Clark to approve the Overall Site Plan and the Development Plans for the following College of the Mainland projects: Library Classroom Building, Continuing & Corporate Education Center and Public Safety Careers Center. All other members present voted aye.

- c. **Consider and take action on the Preliminary Plat for Brookwater Sections 1A and 1B. Located to the east of Park Place Subdivision on FM 2004 and northwest of Mainland City Centre (formerly Mall of the Mainland) in Texas City.**

Ms. Golden stated Brookwater Subdivision Sections 1A and 1B are part of a master planned residential development that will consist of 201 lots and a commercial area on FM 2004. The Master Plan was approved by City Commission in 2021 and it is still a valid master plan to consider this preliminary plat.

Sections 1A and 1B were previously submitted as a preliminary plat for all of it as just Section 1 and was previously approved by the Planning Board as Section 1. The Applicant is changing the Section into Phases 1A and 1B because they want to be able to buildout the smaller sections, record the final plat of the smaller area and sell the lots in Section 1A before then moving on to 1B.

Staff have received a complete set of construction plans for the full section that the Applicant will be presenting in phases. They have their approval for a combination of 50 ft., 60 ft., and 70 ft. wide lots.

Ms. Golden repeated that the only difference between this and what was previously approved is that it is now broken down into Sections 1A and 1B.

Chairman Campbell asked if there were any questions.

Co-Chairman O'Brien asked if the lot sizes changed. Ms. Golden replied they are exactly the same.

Chairman Campbell asked which ditch the rainfall would flow to. Ms. Stephanie Tabor replied that it would flow to the northwest corner. He then asked about an area to the south. Ms. Tabor replied that it is the sanitary sewer easement and also indicated a manhole that the sanitary line would tie in to.

Ms. Golden reminded everyone that the Applicant would have to get an easement, which is a little piece of property owned by the EDC. This is in the process of being worked out, but it will not hold up the preliminary plat. The easement will have to be in place before the final plat can be brought forward for consideration and approval.

Mr. Boix then asked about the mapping of sections. Ms. Tabor indicated on the master plan where Sections 1A and 1B would be located. She then indicated Sections 2 and 3.

Ms. Golden added that the park would be located in Section 1B. Staff do have a suggestion for a schedule as far as that park being built which is only 40% of the building permits would be issued and then construction would commence on the park. There is also a deadline for when the plans for the park will be submitted. Ms. Tabor replied that would happen before Section 2 plat is recorded.

Mr. Boix asked if there were any other amenities. Ms. Tabor stated there would only be the park, but it would include a picnic area, sidewalks and a splash pad.

Staff have no objections to approval.

A motion was made by Commissioner Jami Clark/Alternate Jose Boix to approve the Preliminary Plat for Brookwater Sections 1A and 1B. All other members present voted aye.

d. Consider and take action on the Preliminary Plat for Lago Mar Pod 9 Section 3. Located north of Pod 9 Sections 1, 2 and 4, and west of Pod 10 Section 3 on Hughes Road in Texas City.

Ms. Golden stated this is Lago Mar Pod 9 Section 3 and we are getting to the end of this project on the west side of I-45. This is Phase 3 of their development. This section will include 203 lots on 59.41 acres. Section 1 is almost built out with houses and in Section 2 the infrastructure is under construction. This is helping the Applicant to make progression in Pod 9.

The area being developed as a park in Pod 9 was originally going to be used for a school site, but DISD passed on the smaller scattered sites and instead chose the bigger site and so Pod 9 Section 4, which the board has not yet seen, will now have the community park. Staff have asked the Applicant to provide some construction plans, to which Ms. Sherri McElwee stated they are getting close to submitting those plans.

Chairman Campbell asked if the school was still going on the 30-acre site, to which Ms. McElwee replied it is. He then inquired about Hughes Road and where it meets Lago Mar and understands that Santa Fe has shut down any outlet to Bruce Hall Road, which is correct. He then added that Mr. Collin

Campbell told them they were looking for another outlet further east. Ms. McElwee replied that the city once had her look at Lago Front and maybe connecting to La Marque. She added that Mr. Doug Kneupper had her put together a cost estimate some time back. She did all of that, but she doesn't believe it went anywhere with La Marque, but she did indicate a turnaround and stated that it is ready for a connection to be made.

Ms. McElwee then stated they have four sections left to construct.

Staff have no objections to approval of the preliminary plat for Lago Mar Pod 9 Section 3 upon condition the plans for the park site be finalized before any more plats receive final approval and that construction of the park be commenced before any more plats are recorded.

A motion was made by Alternate Jose Boix/Commissioner Jami Clark to approve the Preliminary Plat for Lago Mar Pod 9 Section 3 upon condition the plans for the park site be finalized before any more plats receive final approval and that construction of the park be commenced before any more plats are recorded. All other members present voted aye.

e. Consider and take action on the Development Plan for Southern Select Energy, a Battery Energy Storage System (BESS). Located at 701 Hwy 146 N., Texas City.

Ms. Golden stated this site is across from the existing TNMP Substation and north of Golden Rule Logistics. This is a BESS project. The site is 6.29 acres, and the Applicant will be using 5.71 acres of the site for this project.

The Applicant has revised the site plan to have the 15 ft. spacing around the batteries that the Fire Marshal requires as part of the city's fire code. They have accommodated a pipeline that runs through the property. They have provided a paved ring road and paved access to all of the batteries. They are providing 15% landscaping, which is what staff is applying to the BESS projects. They are also providing masonry fencing along Hwy 146.

The Applicant is looking at providing a second access. The second access, however, is currently through property they will not own or will have control over, so staff have asked them for an easement plat showing that the second access will actually stay open and be available if the Fire Department ever needs it. These documents are in the works, but staff haven't seen anything signed and they actually haven't had time to review what has been submitted in terms of the first form of it and so there may be some comments staff may want to offer on those.

There has been a lot of progress on this, and the Applicant has provided some of their company information but that was not provided till today, which has been provided to the Planning Board for review. Staff have not had time to digest it or do any due diligence on background information. This is why this project is being brought to the Board without a recommendation.

Ms. Golden stated, in her opinion, that this is the right place to be looking for these types of projects to be placed because they are not interfering with residences, but there are still some concerns about the site that should be considered.

This is a larger project than what the Board has been asked to consider or approve before. The other two that have been approved were 10MG. These are for 200MG, so it is a much larger project. This is the first one that is of the utility size.

For context, Ms. Golden reminded the Board of the Red Egret project that was considered and recommended denial was also a large project. She believes that project was denied because of its location and size.

Ms. Golden then stated that the Developer and Property Owner were in attendance and would be glad to answer any questions the Board may have.

Co-Chairman O'Brien asked if he could hear more information on the secondary access.

Mr. Guillame Dufay introduced himself as one of the cofounders of this BESS project and stated he has built 25 of these BESS projects just in Texas. He added that they are one of the most experienced companies in Texas. Regarding the secondary access, they have worked together with the owner, Mr. Deano Merrigan, and have spec'd out an access easement that goes around the storage property to ensure that they do not disturb any operations of the logistics company and that the access stays open with no obstruction 100% of the time. They also obtained a signed agreement on the easement and will have that in place as needed. He indicated a lockbox for emergency-only access will be provided. Another requirement by the city was to have 15 ft. spacing between containers, which is not a standard requirement, but it allows first responders to go across the site as needed. This is an extra safety design that they have included.

Co-Chairman O'Brien asked what the surface between the batteries is. Mr. Dufay replied that it would be gravel. Chairman O'Brien asked if this would support a fire truck to which Mr. Dufay replied no Fire Marshal would bring a \$1M truck in between containers to get stuck, but they will stick to the concrete road. If they wanted to, they could bring in a smaller vehicle between the batteries.

Mr. Boix expressed his concern and the number of issues about the batteries everywhere. He is concerned about having these concentrated in one area as opposed to being everywhere with one or two little pods here and there. He doesn't know how power is bought and sold, but he's also concerned if there is a power failure, what is the potential of the BESS draining that substation and creating another issue for the city. He also read something about contamination of the ground. He doesn't understand how the monitoring wells will work. He also doesn't understand how the buying and selling of power work if there is a failure of the drainage of power. Is there a check valve? He does not have a full grip on what this will bring or not bring to the city.

Mr. Dufay replied that he was part of the project in 2019 that is currently on 34th Street North in Texas City. It was online during the winter storm of 2021 and this location pushed power when everyone needed it. He stated they are always super open about the way these batteries work. They work with the best insurance companies, lenders and banking companies. He likes to say they are prime developers. With these batteries, which are connected to the grid through that substation, if there is a ground failure, there is a breaker that will shut down the site. There are also some sub-breakers on the median voltage center that will isolate each of the subcircuits. If there is a ground failure that is happening anywhere on the site, they will isolate it. If for some reason they do not isolate it there is a second layer of breakers that will shut down the site. In the case they don't take it, which should never happen, but if it does, the power line that goes into the mid substation from TNMP (another utility breaker), has a protection plan to shut down any issue at their site. The sites are fully vetted and designed and used by TNMP in this case.

Mr. Felix Herrera asked if this is three layers of protection, to which Mr. Dufay stated yes – two by the BESS and one by the TNMP grid.

Chairman Campbell recalled the first BESS and how the power goes into the grid, but it's not really designated for Texas City – it goes wherever it is needed and asked if this is correct. It helps the company and the landowner, and he understands this.

Mr. Dufay replied that the reason they are developing physically in Texas City is because it is one of the largest industrial nodes in Texas - where there is the most power demand in Texas. A lot of the power for Texas PC comes from Fort Bend County, Brazoria and from West Texas. So, there is a rush of power coming to Texas City from all these power lines. The power lines are all congested and it is a major problem in Galveston County. The utilities cannot upgrade fast enough to get all the power needed for industrial use.

When there is a rush of power need (i.e., 5:00 PM) what happens is that the way the grid is set up there is a price signal for every node in the grid, so when's there's a rush of demand the price goes up for all the consumers and there is no way to get more power. These locations charge during the night or when there is plenty of power available and then at 5:00 PM they provide the power to the industries that need it in Texas City. This does two things – 1) it allows for the utility to need less

transmission upgrades in the future, and 2) it cuts millions of dollars, and they are straight across the rate of payers through everybody's power belt. Will this save millions for everybody? Probably not, but this thing probably will contribute to a few dollars of savings on your power bill every month.

Mr. Owens asked if they are doing this for tax credit or are they doing this out of their dollar only. He stated because if not then it's coming out of our pocket regardless, right? He added that if they could tell him that they are funding 100% of this project he can see that, but if they are getting something back in return then what Mr. Dufay is telling them is not accurate.

Mr. Dufay replied that renewable energy projects are qualified under the Inflation Reduction Act that was passed three years ago for a tax credit of 30%. Mr. Owen stated that this doesn't really do much for the local guy as they are suggesting making it cheaper, it makes it beneficial to them as an investor.

Mr. Dufay stated that what it does for the local guys is that you take federal money, and you make a local investment. Mr. Owen replied that he is making his point for him.

Mr. Dufay stated that power in the United States has always benefited from politics and policies, and everybody has their own political view. He added that the Biden administration and the Trump administration have maintained tax credit on renewable energy, and it is what it is. They are funding these projects and the rest of the 70% that does not come from tax credits is funded by a group of investors called Fengate which is also cofounded by the owners of the company, which he is a part of. They have a direct interest in making these projects intrinsically safe and it's going to come back to one of the previous questions.

They also don't really look at proliferation of these assets as a good thing for anybody because when you have twenty 10MW assets anywhere they have to be managed and they usually end up needing a little bit of tender loving care. These 200 MW assets are going to have a dedicated team on the project that will be located in an office that will be somewhere between here and La Marque. These guys are going to be dedicated to this project. Whenever there's something happening at the project it will usually send a message about a small thing like a fuse that is out or a piece of the transducer that needs to be changed. It will come to this location, and they will replace it. They also create more benefit for the local community because you've got 200MW of grid support here as opposed to smaller projects that have a limited impact.

Chairman Campbell asked Mr. Dufay if he stated a few minutes ago that this project would directly put electricity into the local industrial complex.

Mr. Dufay replied that this project provides power at the TNMP Heights substation and as such, all the electrons that come out of this project are not subject to all the congestion. It is going to the grid, but it's going to the grid at this location where it's needed.

Chairman Campbell asked Co-Chairman O'Brien to help the Board understand what is being said about the power going to local industry.

Co-Chairman O'Brien stated that TNMP is in the process of upgrading every station right now by removing 69K and putting up 138K. It has been 69K for a long time. TNMP's power goes all over their service area. Industry within Texas City takes a lot of TNMP's juice from Heights, from Cattail and from the ones that are close to the sites - they directly feed into it. At the same time, TNMP's electricity goes on to the big grid that services all our houses. So, to say that that power exclusively will go to industry is inaccurate. A portion of it may go to industry, especially during peak times. So, where these things are extremely helpful is storm situations and peak times during the extreme high temperature days or cold temperature days and that's where these are beneficial, in his opinion.

Co-Chairman O'Brien continued by saying the nice thing about this project is its size. Mr. Dufay stated it is 200MW, so that's a large one. It's not the little 10K that is on 34th Street North. Co-Chairman O'Brien continued that what he sees in West Texas where they have the large ones - Reeves County is just covered with these things. You see large developments like this, the 100MW and 200MW, and there are always people there in those stations. It seems like when he goes by them, there's some sort of truck with a team working on them. He doesn't know what they're doing there, but the fact is

that they are attended to. The other smaller ones, they're not really attended unless there's a light that goes off somewhere and then somebody has to go to it. From this standpoint he prefers the bigger stations and believes there is a need for this type of development all across our state.

Co-Chairman O'Brien stated TNMP cannot tell them [the BESS project] "no". If a company makes a request for a tie-in, they [TNMP] nor any other provider can't say no. If a developer is willing to make the tie in and pay what it cost to make the tie in, TNMP can't say no. So, if a company or a city or a development or whatever is going to object it is not coming from the power company because they can't say no.

Mr. Owens stated he had two other questions he would like to ask. [First], 10MW was a good thing in your investment a couple years ago and now 200MW is much better. But now 10MW is really not a good thing and we are stuck with it at this point. At what point does 200MW become too small? Do these things grow over time and become maybe less attended? [Second] The huge problem he has with this is the location which is right next to the regional Gulf Coast Water Facility, so this does not impact only Texas City. It impacts League City, Galveston, La Marque, Tiki Island, San Leon, and Dickinson. [The GCWA plant] supplies all the raw water to industry. Let's say there's a problem at the BESS site and that somehow reaches into our water system we've got a massive problem. He just doesn't believe the location is the right place. He doesn't know if anybody has talked to the folks at Gulf Coast Water Authority. If not, he would encourage them to do that. This is the water supply for the entire county.

He added that this might be a great investment for the Applicant, but he does not believe this is a great investment for our community.

Mr. Boix stated that he thinks the city should come up with an overall plan on how to manage these units because there are going to be problems. He asked about the other BESS projects that have been approved. Ms. Golden replied that there is one active site and another that has been approved. If those smaller sites are not manned, he is concerned that the load will be placed upon the city. He loves the technology, but he is concerned there is not a master plan for the Planning Board to either consistently approve or not approve something – and now we have two small BESS approved in the city. He asked what the objective was and how many others will be allowed. For this reason, he is staying away from an approval.

Mr. Dufay asked if he could reply to Mr. Owens' question earlier about contamination and explained that the battery containers that you see there are enclosures that look like a Conex typical shipping container. They are built with IP55 protection or higher at the container level. This means they are waterproof, and the opposite is true, they are leaking proof so if you have a spill inside, they will contain it. The battery container itself is not full, it's stacked with the modules inside. Each module is about the size of a typical suitcase and each of these modules get stacked side by side within the container. Each module is made of cells about the size of a laptop. The cells are made of the lithium-ion technology that everybody talks about mysteriously and they don't know what it is. Lithium-ion technology is kind of like a lead acid battery with a cathode and anode and a solution that flows in the middle. The difference is that the anode and cathode are actually flat. Think about foils and they are very close together and the solution is in the middle and there's 57 cathodes and 57 anodes in each module. It's kind of like a book with pages of cathode and anode. The electrolyte that carries the lithium-ions is in the middle and each cell has an IP67 rating, which is one of the highest IP ratings you can think of. It's not bulletproofed, but it won't take any dust, water, or anything from the outside.

So, what can happen in the case one of these units sets on fire is yes, you may have some spillage, but the fire should actually consume the electrolyte because it's a Hydrocarbon based electrolyte, so you won't have much spillage into the container and the container itself is made to contain the spillage.

All these things are actually tested in real life. They work with several suppliers, but the supplier for this project they expect to be Fluence, which is a US based company and listed on the New York Stock Exchange. The company that makes these enclosures, they're the second biggest after Tesla. He has also worked with Tesla, but they like Fluence better for different reasons. No, they're not cheap.

Affluence gives you a little bit more freedom than Tesla which is very strict, and you can re-cycle them differently, so it's just a matter of flexibility. But price wise, they talk to each other. These guys run these containers through a UL 9458 type of testing. Every container has to be approved for that UL type of testing. They set them on fire, and they see what happens. So, what happens when they set the module on fire is that they see if the next module sets on fire as well. They set a cell on fire to see if the next cell catches on fire and if the fire stays within the module or if it goes to the next module and to the next track, etc.

They also measure the gas coming out of it and they measure the spillage out of it. They have a criterion for passing or failing and they work with the biggest insurance companies in the country to validate all of these results. They are only going to use top-tier-one batteries from either Tesla or Fluence or one of the top five suppliers that makes the best product.

Because the big project has had a lot of scrutiny, it's going to be insured. There will be hundreds of people looking at your project, making sure you're doing things right. On the small project sometimes there are a little bit of shortcuts being made, so you want to be more careful as a jurisdiction. All of this is checked, and Mr. Dufay has never heard of any spillage issue on any of the top-tier battery containers.

Mr. Boix believes that if the city develops a master plan, he would rather see the BESS projects installed on the Greenbelt just by the industry.

Mr. Dufay replied that they aimed for this area because it is industrial.

Chairman Campbell asked Commissioner Clark if she had anything to ask about this project.

Chairman Clark asked what the Fire Marshal had to say about the site plan. Ms. Golden replied that the Fire Marshal asked for the 15 ft. spacing requirement and the Applicant has met that requirement. The Fire Marshal also asked for the two opposite accesses and that requirement has also been met.

When it gets to the actual permitting process, then there's going to be requirements for a decommissioning plan, a security plan, and posting a bond. This is when they will look into their insurance, so they'll get a lot more into the specifics about what exactly is going in there, but from a site plan standpoint, the Fire Marshal's requests have been accommodated in the site plan.

The property owner, Deano Merrigan, added that the property is already polluted and so are the neighboring properties. The property can't be anything but industrial or commercial. He stated that most of the properties along the refineries are polluted. TCEQ came out there and took samples on the monitoring wells he has out there. They came back and told them nobody could build any houses out there, but it could be used as industrial and got a notice of no further action required from the TCEQ. He stated that the water that is out there is in the canal is refinery water, it is not drinking water. Once it goes past the water authority the water is not drinkable.

Mr. Owens stated that this is not 100% accurate because this is north of the water plant.

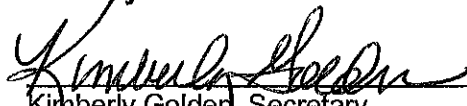
Co-Chairman O'Brien asked if this is coming with no recommendation from the city. Ms. Golden replied that it is coming with no recommendation from staff. She stated that what the Planning Board is doing is making a recommendation to move the site plan forward to the Zoning Commission.

A motion was made by Co-Chairman Perry O'Brien/Commissioner Jami Clark to approve the Site Plan for Southern Select Energy, a Battery Energy Storage System (BESS) rezoning from District F to District SP. Voting by show of hands was 3 – 2 in favor of the motion. Chairman Dickey Campbell, Co-Chairman Perry O'Brien, and Commissioner Jami Clark voted aye. Alternates Aric Owens and Jose Boix voted nay.

4) GENERAL UPDATES

5) OTHER BUSINESS (Any conceptual development proposal requesting to come before the Planning Board)

Chairman Dickey Campbell asked if there was any other business to which there was none. **A motion was made by Commissioner Jami Clark/Alternate Aric Owens to adjourn. All members present voted aye.**


Kimberly Golden, Secretary

8/19/2024
Date

Minutes approved by the Planning Board at its meeting on 8/19/2024.



Kim Golden, City Engineer
1801 9th Ave N
Texas City, TX 77592
kgolden@texascitytx.gov

2/22/2024

Dear Kim Golden,

Please accept this supplemental submission from Alpha Omega Power's Southern Select Energy Storage project, a 100MW Battery Energy Storage System (BESS) proposed for development on a 3.9-acre portion of the 6.44-acre parcel identified as parcel # ID 213837, located on HW 146, south of the intersection with 9th Ave N.

The purpose of this supplemental submission is to provide additional information on the following items:

1. BESS Safety
2. Per item [j] of Section 160.051 District S-P, Site Plan
 - a. An explanation of the compelling need for additional installation at Substation TNHeights
 - b. An explanation of the direct benefits to the City of Texas City, TX and its residents & citizens that would result from approval of this project.
3. Reasons that this is the Ideal site location for the proposed BESS project.
4. Manufacturer's Set-back Specifications

Alpha Omega Power Contact List:

- Simon Labrosse-Gelinas – Developer, slabrosse@aoprenewables.com, 979.476.4227
- Gemy Thomas – Director of EPC, gthomas@aoprenewables.com,
- Guillaume Dufay – SVP of Development & EPC, gdufay@aoprenewables.com, 346.561.4123
- Georgia Meisler – Director of Development, gmeisler@aoprenewables.com, 818.970.9592

We look forward to working with Texas City's Engineering and Planning department to develop this project in full compliance with City requirements. Please don't hesitate to contact AOP at any time during this project.

Kind Regards,

Simon Labrosse-Gelinas



A blue rectangular box containing the text "Energy Storage" in white, sans-serif font.

Energy Storage

A large white title on a dark blue background. The background image shows a power plant or substation at sunset with several high-voltage transmission towers and power lines stretching into the distance.

Energy Storage Enhances Grid Reliability & Resilience

Credit: AES

Energy storage is, at its core, a **resilience enabling** and **reliability enhancing** technology. Across the country, states are choosing energy storage as the best and most cost-effective way to improve grid resilience and reliability.

How do energy storage systems strengthen grid reliability?

- 1 Frequency Response and Regulation:** Energy storage ensures the moment-to-moment stability of the electric system at all times.
- 2 Peaking Capacity:** Energy storage meets short-term spikes in electric system demand that can otherwise require use of lower-efficiency, higher-cost generation resources.
- 3 Maximizing Renewable Energy Resource:** Energy storage reduces curtailment of renewable generation resources and maximizes their contribution to system reliability.
- 4 Grid Infrastructure Support:** Energy storage relieves transmission and distribution infrastructure congestion, prevents reliability violations on power lines, enhances the resilience of wires infrastructure, and creates a more flexible power system.
- 5 Increasing Operational Flexibility:** Energy storage facilitates efficient integration of a diversity of generation resources and improves the ability of the electric grid to adapt rapidly to changes in demand and generation.
- 6 Improving Grid Resilience:** Energy storage serves as back-up power for individual homes, businesses, communities, and the broader grid system to minimize and prevent power outages and service interruptions from extreme weather.

Energy Storage

Energy Storage Lowers Electricity Costs & Reduces Ratepayer Bills

Energy storage technologies are uniquely positioned to reduce energy system costs and, over the long-term, lower rates for consumers by:

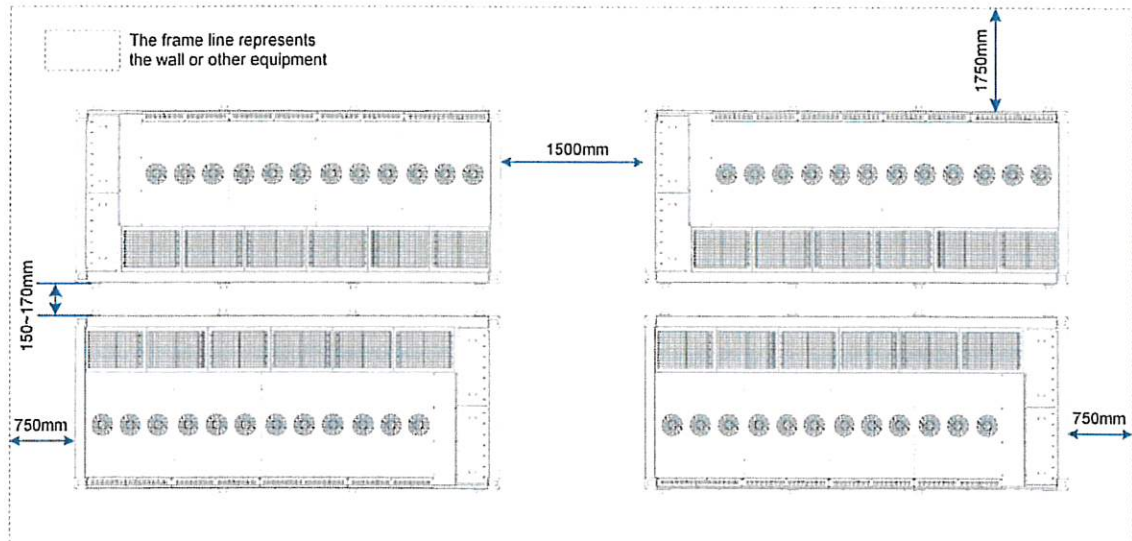
- **Optimizing the grid;**
- **Bolstering reliability; and**
- **Enabling a clean grid.**



How does storage reduce energy costs?

- 1 Supports the integration of more wind and solar generation:** Wind and solar are the cheapest sources of electricity. Energy storage supports the integration of higher and higher shares of renewables, enabling the expansion and incorporation of the most cost-effective sources of electricity generation.
- 2 Reduces energy waste:** Energy storage can help eliminate energy waste and maximize the benefits of renewable energy. Energy storage is the only grid technology that can both store and discharge energy. By storing energy when there is excess supply of renewable energy compared to demand, energy storage can reduce the need to curtail generation facilities and use that energy later when it is needed.
- 3 Improves grid efficiency:** Energy storage is instantly dispatchable to function both as generation and load, so it can help the grid adjust to fluctuations in demand and supply, which optimizes grid efficiency, alleviates transmission congestion, and increases grid flexibility. This reduces overall system costs.
- 4 Limits costly energy imports and increases energy security:** Energy storage improves energy security and maximizes the use of affordable electricity produced in the United States.
- 5 Prevents and minimizes power outages:** Energy storage can help prevent or reduce the risk of blackouts or brownouts by increasing peak power supply and by serving as backup power for homes, businesses, and communities. Disruptions to power supply can be extremely costly and hazardous to health and safety. Energy storage makes the grid more resilient and reliable.

4. Manufacturer's Set-back Specifications



Per the BESS ordinances adopted by the City of Texas City, TX on 2/21/24 –

"There shall be a minimum of 15ft spacing between containers"

Our current system design deviates from the ordinance for the following reasons;

BESS systems begin with individual battery cells, which are electrically connected and then packaged in a battery module. Battery modules are aggregated with controls and other equipment and housed within racks, which in turn are built into an enclosure. In the case of a 2-hour battery energy system such as the system proposed here, two enclosures connected to an inverter make up a string. The total system is made up of a series of strings, each comprised of two enclosures connected to an inverter.

According to manufacturer specification, the recommended distance between enclosures that make up a single string is 150mm (approx. 6in) and the minimum recommended distance between strings is 1500mm (approx. 5ft). NFPA 855, which sets standards for site planning, recommends spacing of 3ft-10ft between strings. Our proposed site plan shows 10ft between strings, which allows the project to achieve the proposed 100MW energy density.

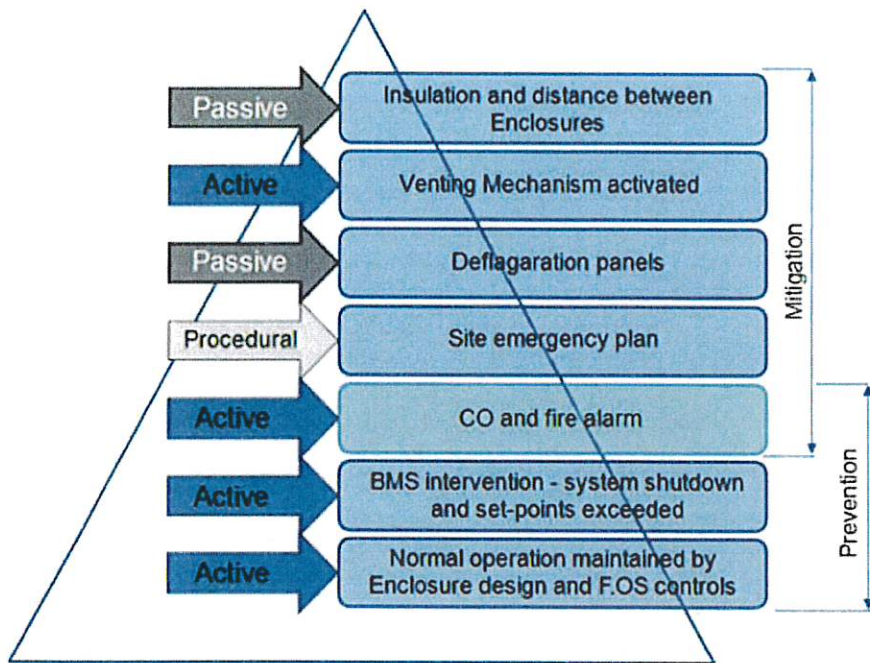
The reason for deviating from Texas City's BESS ordinance is to maintain economic feasibility for development of the project. The proposed 100MW energy density not only achieves project economic feasibility, it also maximizes the grid stabilizing and resiliency of BESS for The City and its residents.

3. Ideal Site for BESS



The zoning map above shows the proposed Southern Select Energy Storage site which is zoned F (light industrial). BESS development is consistent with the uses permitted in this zone. Further the site is separated from the nearest residences by F zoned parcels and a public street. This makes the site ideal for the site-specific review for District S-P, giving the Planning Board and Zoning Commission the opportunity to perform a thorough review to then make recommendations to the City Commission.

1. Battery Energy Storage System Safety



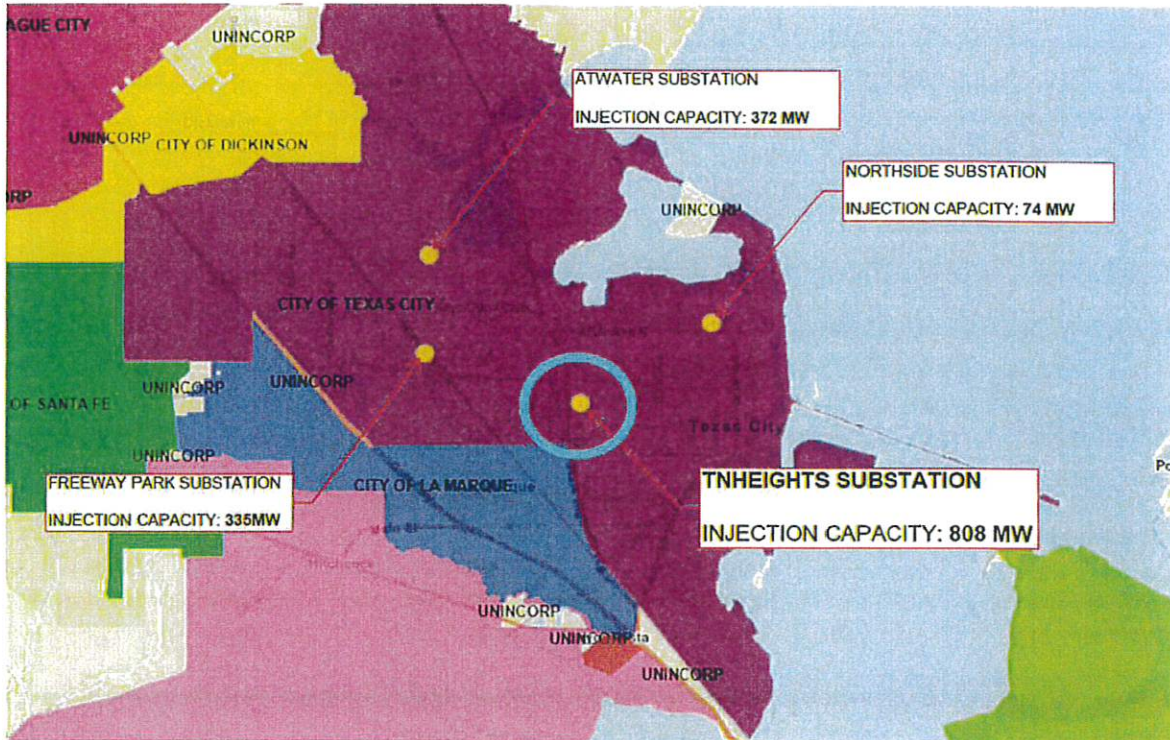
The battery safety system is designed with layered approach simply explained as follows:

- The first preventive layer of safety is the **system design**. The battery system is designed, built, and tested to prevent an event from happening in the first place.
 - The Enclosure is designed with enough cooling capacity to cover all foreseeable operating conditions.
 - Inverter and battery are matched to assure that power, current and voltage will be within the allowed operating range for the battery system.
- The **Battery Management System (BMS)** provides the second preventive safety layer by disconnecting the battery system in case of excessive cell temperature, over- and under-voltage, and excessive current during charge or discharge.
 - Safety functions as performed by the BMS have been designed and tested to comply with class 1 software as per UL1998.
- The fire **alarm system** is the third layer of safety in the Enclosure and provides both mitigation and prevention functions:
 - It provides mitigation by shutting down the HVAC and chiller units in the originating Enclosure in case of a smoke/fire alarm.
 - It provides mitigation through its local and remote alarm functions as described below.
 - The fire alarm system is designed, built, and tested to comply with NFPA 72, and its primary function is to make sure:
 - The incipient off-gassing and fire can be very quickly identified before any significant volume of gases are released;
 - That the location originating Enclosure can be easily identified;
 - That first responders are notified;

- That - given the sound and visible alarms, following the site-specific emergency plan, evacuation from the affected location can happen.
- In terms of risk reduction, the fire alarm system has been assessed by a third-party and determined to comply with a SIL 2 under IEC 61508. It is the most important safety function in terms of reducing overall exposure to the risk area in the proximity of the affected unit.
- In terms of Mitigation, the **Site Emergency Plan (SEP)** is key. It is the SEP together with the fire alarm system that makes sure employees, duly authorized visitors, first responders, and eventual service providers have been trained and informed how to quickly evacuate the site and how to further proceed in case of a fire or CO alarm, eliminating any undue exposure related to a potential event.
- The **deflagration panels** provide the fifth layer of safety to the Enclosure. If enough gas accumulates in the time between activation of the fire alarm and opening of the deflagration vents, the deflagration vents will swiftly release the pressure within the enclosure.
- The **venting mechanism** is the sixth layer of safety and has been designed and tested to make sure that combustible gases cannot accumulate in large quantities inside the Enclosure.

2. Per item [j] of Section 160.051 District S-P, Site Plan

a. An explanation of compelling need for additional installation at Substation TNHeights



Source – EE Horizon, EEPlus

The Project location near the TNHeights substation was chosen based on detailed power flow analysis of the transmission system within TNMP service area. This analysis identified the TNHeights substation as an ideal candidate for a utility-scale BESS, providing sufficient injection capacity while remaining close to TNMP critical load centers. Injection capacity is a metric used to show much electrical power (in MW) can be transmitted into a point of interconnection, like a substation.

The map above shows the individual injection capacity for four of the largest substations within city limits. The TNHeights substation has the highest injection capacity (over 800MW), making it the ideal point of interconnection for multiple BESS projects to support regional grid reliability and electricity demand. Currently, one BESS project is operational at the TNHeights substation (BRP Heights, a 10MW Project), while three others are in queue to interconnect (Zeya 256MW, IEP Blackhawk 100MW, and Southern Select 100MW). The combined capacity of these four projects (466MW) is well below the available injection capacity of the substation, indicating the substation is capable of supporting multiple BESS projects.

Given that Texas City is one of the largest power demand centers in Texas, having multiple BESS projects at the TNHeights substation will benefit the general health, safety and welfare of the City of Texas City, TX and its residents and citizens. These benefits are explained in 2b.

b. See attached "Energy Storage" pamphlet for BESS benefits



Southern Select Energy Storage *Company and team description*

July 22nd, 2024

Executive Summary

AOP Holding Company, LLC (“AOP”) is an Independent Power Producer founded in 2023 by industry veterans with experience deploying the largest fleet of the Battery Energy Storage Systems (“BESS”) in Texas and a cumulative 70 years of industry experience. AOP is a Fengate Asset Management (“Fengate”) portfolio company and will own the Project through a special-purpose vehicle, Southern Select Energy Storage LLC. Details about our team members’ experience, including a list of projects we have successfully completed, are provided later in this document.

Project history

Following several successful projects construction in the area: Texas City, League City, Dickinson, Alvin, La Marque, the AOP team has engaged with the utility TNMP and ERCOT to develop a transmission-connected Energy storage asset into the TNHeights substation in Texas City. The project was named Southern Select after the Texas City – brewed famous drink from the late Galveston-Houston Brewing company. This brewery was founded by the family of one of AOP’s executive, and intends to be an homage to the vibrant history of the community

Technical Information

Our technical solution closely aligns with Texas most critical needs for a reliable and efficient battery energy storage resource.

Engineered to endure temperatures ranging from -10°F to 125°F, the project control system maintains optimal performance levels throughout the year and will significantly improve power supply and quality stability in the region of Texas, City, along with reducing power price swings and peak charges that local Industrial customers may be subject to.

Based on a review of the leading BESS manufacturers, AOP has identified lithium-ion BESS manufactured by Fluence, Sungrow Solutions, Tesla, LG Energy and CATL Energy Storage Technology as the potential equipment suppliers for the Project. These manufacturers were shortlisted for their commitment to product quality, reliability, and compliance with all specified safety requirements. AOP requires the strictest safety and quality standards in their vendors and the list mentioned above is strictly limited to market leaders as AOP does not deploy solutions that have reputation or experience issues. To maintain timelines and competitiveness AOP is leading the due diligence in parallel for several vendors to have a backup plan available.

Suppliers list and description

1. Fluence

Fluence is a US based and NYSE publicly traded company that’s a leading provider of energy storage products and services, with a proven track record in delivering reliable and high-

performance lithium-ion BESS solutions. Their Gridstack product line offers modular and scalable BESS solutions that can be tailored to meet the specific requirements of the Project.

- BESS systems to be integrated with EPC Power M-series PCS which feature a modularized 500 kVA design that is customizable to the project needs.
- Utilizes advanced lithium-ion battery cells tailored for Fluence's specifications, ensuring exceptional performance and durability. The cells are supplied either by CATL, world largest Lithium ion cells manufacturer, or by AESC Envision, a Japanese suppliers for Nissan and other Electric Vehicle that manufactures cells in the US.
- Efficient liquid cooling systems and remotely monitored fire suppression systems ensure operational safety and reliability.

Fluence offers advanced thermal management systems and fire suppression solutions integrated into their products. Preventive maintenance will be performed by AOP, while Fluence backs capacity and performance warranties. Support for corrective maintenance is also provided.

2. Sungrow Solutions

Sungrow Solutions (“Sungrow”) is an alternative to the proposed Fluence BESS supplier for the Project. Their solution is scalable based on the Power Titan 2.0 building block.

Sungrow Solutions offers some of the best thermal management and lowest maintenance needs on the market and are the #1 supplier of power equipment for renewable energy in the US, usually ranking as the most or among the most bankable suppliers in the industry. Some preventive inspection and maintenance will be performed by AOP, while Sungrow will back capacity and performance warranties. Sungrow will also offer warranty support in the event that some corrective maintenance is needed. Sungrow’s main operation center are in Phoenix, AZ and Houston, TX. While certain equipment requires periodic service and replacement, Sungrow systems are rated for over 9,000 cycles, offering 25 years of operations under normal conditions.

3. CATL

CATL (Contemporary Amperex Technology Co., Limited) is a global leader in lithium-ion battery manufacturing; known for its innovation and commitment to performance and safety. With extensive experience in supplying batteries for electric vehicles and large-scale energy storage systems, CATL brings significant production capacity and potential cost-effectiveness to the project.

CATL's focus on research and development could translate into high-performance BESS solutions tailored for the project's requirements. Their emphasis on safety aligns well with the critical safety demands of grid-scale energy storage.

4. TESLA

Tesla is the world largest Electric Vehicle manufacturer and also the largest producer of

Energy Storage systems for grid applications in the USA. Their reputations, financial robustness and technological advancements have sealed their position as one of the Energy Storage equipment supplier of choice for large scale projects across the nation.

5. LG

Formerly the world's largest lithium ion cells manufacturer until 2021 and CATL's rapid rise, LG remains #2 cells maker and are now offering extremely advanced integrated Energy Solution equipment. They recently deployed over 1 GWh of their solutions in the world's largest energy storage project Edward Sandborn in California, along with BYD and Samsung.

Financial Capability

AOP began operations on March 10, 2023, and has a capital commitment from Fengate, which will provide sufficient equity for the Project.

AOP intends to finance the Project through a combination of sponsor equity, debt, and tax equity. We anticipate securing a construction facility prior to start of construction, along with a tax equity bridge loan. Both the AOP and Fengate teams have significant financing experience across both debt and equity capital markets, including experience specific to financing BESS assets in Texas and other markets. Timing of financing strategy varies by proposal. The Project is expected to raise senior debt at construction start close, with tax equity to close prior to energization.

Owner's Capabilities and Experience

AOP is led by industry veterans with 70 years of cumulative experience in the power and renewables sectors. The leadership team brings extensive battery storage experience to AOP, with its four founding members holding senior management positions at Broad Reach Power from 2020-2023.

In their tenure, the leadership team has actively overseen, built, financed and managed the development and deployment of almost 1.5 GWhs of battery storage technology, including the management of assets and availability during winter storm Uri in Houston, Texas. The full AOP team brings experience from GlidePath Power Solutions, Broad Reach Power/Engie, Akuo, Plus Power, and Cypress Creek Renewables.

Fengate Infrastructure Partners, AOP's corporate sponsor, is a leading alternative investment manager focused on infrastructure, private equity, and real estate strategies. Founded in 1974 in Ontario, Canada, Fengate is a Canadian-based alternative investment management firm with mandates in infrastructure, real estate, and private equity. Fengate currently manages over C\$7 billion in equity commitments on behalf of Fengate Funds, representing investments from over 40 North American, European, and Asian multi-employer pension plans, university pension plans, university endowment funds, corporate pension plans, and global financial institutions. As of December 31, 2022, Fengate had invested in more than 45 infrastructure assets located in Canada and the U.S, with a total

enterprise value of over C\$35 billion.

Key Team Member Qualifications & experience with proposed resource

- AOP is led by industry veterans with 70 years of cumulative experience in the power and renewables sectors. The leadership team brings extensive battery storage experience to AOP, with its four founding members holding senior management positions at Broad Reach Power from 2020-2023.
- Leadership team has actively overseen, built, financed and managed the development and deployment of almost 1.5 GWs of battery storage technology, including the management of assets and availability during winter storm Uri in Houston, Texas. The full AOP team brings experience from GlidePath Power Solutions, Broad Reach Power/Engie, Akuo, Plus Power, and Cypress Creek Renewables.

Simon Gelin-Labrosse, Lead developer for the project, joined the company early in its history and has since grown the Texas project development portfolio to rank in the top 5 of the best development portfolios in Texas. Simon previously owned a Commercial and Industrial solar PV company and several positions in various petro-chemical companies. Simon is an Engineer as well as a former elite hockey player.

Georgia Meisler, Director of Development, joined the founders of AOP in the role of Director of Development as the company's first employee in early 2023. Ms. Meisler brings six years' experience managing the development of solar and standalone storage projects working with companies including Cypress Creek Renewables, sPower (now AES) and Plus Power. Ms. Meisler has supported and led the permitting, project management, and interconnection of more than 400 MW of solar and storage projects in multiple states across the country.

Gemy Thomas, Director of Engineering, Procurement and Construction (EPC), Lead EPC Manager for the Project joined AOP in the role of Director of Engineering, Procurement, and Construction in early 2024. Mr. Thomas brings over 15 years of experience in energy ranging from early conceptual design through project execution and COD. Mr. Thomas joins AOP from Broad Reach Power/Engie where he initially served as Pre-Construction Manager and Project Manager and ultimately transitioned into an Engineering Manager role. During his time in energy storage, Mr. Thomas has been responsible for the engineering and technical aspects of a variety of battery energy storage projects and challenges. He has a proven track record of leading and supporting teams of engineers and technicians to successfully execute projects.

Guillaume Dufay, PMP, Senior Vice President Engineering, Procurement and Construction (EPC) and Development is one of the four founding members of AOP. Mr. Dufay is a multi-disciplinary engineer with 14 years of experience in energy. He is also a certified Project Management Professional. Mr. Dufay joins AOP from Broad Reach Power where he served in project management, procurement, and construction management. His expertise includes EPC, project engineering, and project management. Guillaume has managed the development of more than 30

projects totaling over 1,500 MW from site selection to commercial operation and has led phenomenally successful teams of engineering and development professionals.

Michael Henson, Senior Vice President Finance, Lead Finance Manager for the Project is another of the four founding members of AOP. Mr. Henson brings over 12 years of experience in energy finance. His experience includes investment banking, private equity, and clean energy finance. His most recent experience includes work at Broad Reach Power and NGP Energy Capital Management where he served in roles ranging from Director to Vice President. He leads project financial modeling to establish financially viable project contracts & structures, and, at later stages in the project development cycle, leads construction and project financing.

Kara King, Senior Vice President, Finance, is the final founder of AOP. She brings more than 14 years of experience across multiple industries with a focus on financial planning, capital raising, structuring, tax and compliance. She has specialized in the utility-scale battery storage space for the past seven years, with experience at Broad Reach Power and GlidePath Power Solutions, with roles ranging from Director to Vice President. She leads company operations.

Key team projects in operation or under development

Alpha Omega Power corporate and team member experience. Excluding Fengate Asset Management portfolio of several GW of power generations.

Vertus Energy Storage, La Marque, Texas

- Simon Labrosse-Gelinas, Leading project development
- 200 MW/400 MWh battery storage project
- Awarded CUP in Q1 2024
- Short-listed for off-take contract Q1 2024
- Target COD Q1 2026

Southern Select Energy Storage, Texas City, Texas

- Simon Labrosse-Gelinas, Leading project development
- 200 MW/400 MWh battery storage project
- Target Q2 2024 for Special Permit award
- Short-listed for off-take contract Q1 2024
- Target COD Q3 2026

Cross Town Energy Storage, Gorham, Maine

- Georgia Meisler, Led project development process through NTP
- 175 MW / 350 MWh battery storage project
- Awarded an ISO New England Capacity Supply Contract in FCA15
- Under construction, COD expected Q2 2025

Cranberry Point Energy Storage, Carver, Massachusetts Georgia Meisler, Supported project development process through NTP

- 150 MW / 300 MWh battery storage project
- Awarded an ISO New England Capacity Supply Contract in FCA15
- Under construction, COD expected Q2 2025

Pavo BESS, Pecos County, Texas

- Gemy Thomas, Engineering Manager, Managed engineering design and construction
- 175 MW / 175 MWh
- COD April 1, 2024

Noosa Energy Storage, Rippon, California

- Gemy Thomas, Engineering Manager, Managed engineering design and procurement
- 100 MW / 400 MW
- COD December 1, 2024

BRP Zeya BESS, Texas City, Texas

- Gemy Thomas, Project Manager, Managed pre-construction and engineering design
- 200 MW / 400 MWh
- COD June 1, 2025

200MWh North Fork & Bat Cave Energy Storage, Hill Country area, Texas

- Guillaume Dufay, Lead developer, managed all development and design process through COD
- Operations executive: managed in-house Operations teams through commissioning and day-to-day O&M
- 100 MW / 100 MWh each project
- COD Q4 2021

825MWh Dickens, Paleo, Pavo, Tortolas, Hydra, Crockett Energy Storage, Northwest and Houston region, Texas

- Guillaume Dufay, Lead developer and design manager, then Procurement and Construction Director
- Total 825MW / 825MWh
- COD March 1, 2024

150MWh ERCOT DGR TX15 portfolio:

- Guillaume Dufay, Lead developer from initial land search through COD, design manager

- Operations executive: managed in-house Operations teams through commissioning and day-to-day site O&M
- 15 projects of 10MW / 10MWh each
- COD staggered from April 2020 to August 2021

5GWh Other projects

- Guillaume Dufay, Early development to design management for over 3GW ERCOT BESS projects
- Technical support and design for 1.8GWh CAISO projects
- Managed 2 CAISO project from mid stage development through construction end 150MWh
- Target COD 2025

360MW standalone BESS portfolio across ERCOT and CAISO

- Michael Henson, led project modeling for investment underwriting and revenue contracting
- Revenue contracts include revenue put and ancillary service swaps
- Led financial modeling and commercial diligence for \$160 million project financing
- Eighteen projects, ranging from 10 to 100 MW
- Currently operating; CODs range from 2020 to 2021

880MW standalone BESS portfolio across ERCOT and CAISO

- Michael Henson, Led project modeling for investment underwriting
- Seven projects, ranging from 10 to 200 MW
- Currently under construction; CODs in 2024

Libra BESS, Guadalupe County, Texas

- Michael Henson, Led negotiations and execution definitive documents for sale of project
- 200 MW / 200 MWh
- Currently under construction; COD in 2024

360MW standalone BESS portfolio across ERCOT and CAISO

- Kara King, Managed capital allocation and contract compliance for deployment of over \$500mm in equity and debt commitments across 18 projects
- Led insurance and compliance efforts on \$160 million project financing
- Eighteen projects, ranging from 10 to 100 MW
- Currently operating; CODs range from 2020 to 2022
- 25MW Solar Project, Guam
- Led \$100m re-financing effort on distressed asset purchase
- Oversaw ongoing compliance for Section 1603 grant
- Managed day-to-day remote operations and PPA compliance

250 MW Wind Portfolio, PJM, SPP and CAISO

- **Kara King, Led debt compliance efforts for re-financed portfolio of seven wind farms across four states**
- **Managed landowner relations and payments for 20+ vendors**
- **Maintained PPA and FERC compliance for project operations**
- **Monitored merchant revenues and marketed RECs post-PPA period**

After recording return to:

Simon Labrosse
Alpha Omega Power Holding LLC
4201 Main St, Suite 200-145
Houston, Texas 77002

ACCESS EASEMENT AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF GALVESTON §

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is made, dated and effective as of July 22nd, 2024 (the "Effective Date"), between LM Storage LLC, a Texas limited liability company (together with its successors, assigns and heirs, "Owner"), and Alpha Omega Power, LLC, a Delaware limited liability company (together with its transferees, successors and assigns, "Grantee"), and in connection herewith, Owner and Grantee agree, covenant and contract as set forth in this Agreement. Owner and Grantee are sometimes referred to in this Agreement as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, Owner owns certain real property located in Galveston County, Texas, described or depicted on Exhibit A, attached hereto and incorporated herein (the "Property"),

WHEREAS, Grantee is developing and intends to construct and operate a battery energy storage development project or projects (the "Project") in the vicinity of or adjacent to the Property, as more particularly described or depicted on Exhibit C, attached hereto and incorporated herein (the "Project Property");

WHEREAS, Grantee desires to obtain an access easements and related rights over that certain portion of the Property more particularly described or depicted on Exhibit B ("Easement Area") in order to access the Project Property across the Easement Area and facilitate the development, construction, operation of the Project, and Owner desires to grant such easement and rights on the terms and conditions set forth herein;

NOW, THEREFORE, for Ten Dollars (\$10.00) and in consideration of the mutual promises of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENTS

1. Grant of Easement. Owner hereby grants to Grantee a permanent easement on, above, along, under, and across, the surface of the Easement Area ("Easement") as more specifically set forth and defined as follows:

A. Conveyance.

i. Access Easement. Owner hereby conveys, transfers and warrants to Grantee, and its employees, contractors, subcontractors, agents, successors and assigns (and for the benefit of and useable by the local fire department and emergency services, and their vehicles, employees, contractors, subcontractors, agents, successor and assigns) a non-exclusive easement ("Access Easement") for the purpose of: (i) vehicular and pedestrian access, including but not limited to a secondary fire access lane, to and from, and ingress to and egress from, the Property Project and Highway 146; (ii) an exclusive right to construct a roadway and driveways, as needed, over and along the Easement Area; (iii) install and maintain knock box for the use of the local fire department to be unlocked as needed; and (iv) the right to undertake any such purposes or other activities that Grantee determines are necessary, useful or appropriate to accomplish any of the purposes or uses set forth in this Agreement or that are compatible with such purposes or uses. Owner acknowledges and agrees that the exact location of the Access Easement may not be determined until final development and construction, and that Grantee may relocate the location and route of the Access Easement. In the event Grantee desires to change the location and route of the Access Easement, Grantee shall consult with Owner before making final siting decisions; provided that, Owner agrees that Grantee shall have sole discretion over final siting decisions so long as the nature and extent of any such relocated or rerouted Access Easement is not materially different and imposes no greater burden on the Property than the original proposed locations or routes.

ii. Clearance Easement. Owner hereby grants, conveys, transfers and warrants to Grantee an exclusive easement and right (the "Clearance Easement") to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation, and other hazards now or hereafter existing in the Easement Area and to trim, cut down and remove any trees, brush, vegetation or fire or other hazards located outside of the Easement Area now or hereafter, which might interfere with Grantee's rights hereunder, as determined by Grantee. Owner will not, nor will cause Owner's lessees on the Property to, materially interfere the Access Easement Area.

iii. Easement In Gross. The Easement and other rights granted by Owner in this Agreement are EASEMENTS IN GROSS for the benefit of Grantee, its successors and assigns, there being no real property benefiting from the easements and other rights granted in this Agreement, such easements and other rights being independent of any other lands or estates or interests in lands. The Easement and this Agreement shall further run with the land for the Easement Area and Grantor does hereby bind itself and its successors and assigns to the terms of this Agreement.

2. Term.

A. Term. The term of this Agreement shall be perpetual (the "Term"), subject to rights of termination set forth in this Paragraph 2.

B. Grantee Termination. Grantee may, at Grantee's sole discretion and at any time, terminate and release all or any portion of its right, title, and interest in the Easement Area, by executing and causing to be acknowledged and recorded in the real property records, a release describing with particularity the portion of such right, title, or interest so released and the part of the Easement Area to which it applies. Such release shall become effective and shall be deemed delivered to and accepted by Owner upon such recordation. Upon any such release by Grantee, the Parties' respective rights and obligations hereunder shall cease as to the portion of the Easement Area or the right, title, or interest therein to which such release applies, but the Parties' respective rights and obligations hereunder shall remain in full force and effect as to any other portions of the Easement Area and any right, title, and interest of Grantee not so released. Notwithstanding anything to the contrary, from the construction commencement date of the Project until the removal of the Project's facilities, Grantee will not terminate this Agreement without the prior written consent of Texas City (which consent

shall be granted as long as the fire safety purposes are no longer applicable). Grantee may, without needing any consent from Texas City, terminate this Agreement at any time before Project facilities are located on the Property or at any time after Project facilities are removed from the Property.

3. Owner's Representations, Warranties and Covenants. Owner hereby represents, warrants and covenants as follows:

A. Owner's Authority. Owner is the sole owner of the Easement Area, has good and indefeasible title to the Easement Area, and has the unrestricted right and authority to execute this Agreement and to grant to Grantee the rights granted under this Agreement. Each person signing this Agreement on behalf of Owner is authorized to do so, and all persons having any ownership interest in the Easement Area are signing this Agreement as Owner. Grantee shall have the right to quietly and peaceably hold, possess, and enjoy the Easement, without hindrance, and Owner shall defend Grantee's right of use and occupancy to the same against the claims of all persons. When executed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

B. No Interference. Owner shall not, nor allow any other party to, interfere with Grantee's use of the Easement Area for the purposes described in this Agreement or Grantee's rights under this Agreement. Without limiting the foregoing, Owner shall not, within the Easement Area erect or install any buildings, structures, tanks, antennas, or other improvements; place or store flammable materials; plant trees; place water, sewer, or drainage facilities; or alter the elevation of the existing ground surface.

C. Cooperation. From time to time, Grantee may request that, and Owner shall not unreasonably delay or withhold agreement to, assist and cooperate with Grantee, so long as Owner is reimbursed for its out-of-pocket expenses therefor, in reasonably amending this Agreement as required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Project. Owner shall reasonably cooperate with Grantee or any potential lender or mortgagee, title insurance company, hedge provider, power purchaser, tax equity investor, assignee or any other similar entity (collectively "Requestor") in the execution and delivery of such consents, stoppage certificates and other documents as Grantee or any Requestor may reasonably request, including, without limitation, any instruments reasonably required to evidence such Requestor's rights under this Agreement.

D. Liens. Except as disclosed in the official land title records office of the county in which the Easement Area is located (the "Records Office"), or as disclosed in writing by Owner to Grantee prior to the Effective Date, Owner's fee simple title to the Easement Area is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, mineral, oil or gas rights, rights of first refusal, options to purchase, contracts, energy development rights, claims and disputes (collectively, "Liens"). Grantee shall be entitled to obtain, and Owner shall fully cooperate with and assist Grantee in obtaining, a subordination agreement, non-disturbance agreement or other appropriate agreement from each party holding a Lien that might interfere with Grantee's rights under this Agreement, at no out of pocket expense to Owner.

E. Hazardous Materials. To the best of Owner's knowledge, as of the Effective Date, there are no Hazardous Materials located on the Property or Easement Area and the Property has not been used for the generation, treatment, storage or disposal of Hazardous Materials, no underground storage tanks have ever been located on the Property nor are any underground storage tanks presently located on the Property. So long as this Agreement is in place Owner shall not violate, and shall indemnify Grantee against any violation by Owner or any Owner Party of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials, in, on, under or about the Property or Easement Area, including without limitation any such violation which may have occurred by Owner or any other person prior to the Effective Date. Owner's violation of the foregoing prohibition shall constitute a material breach and default under this Agreement and Owner shall indemnify and hold harmless and defend Grantee from and against any claims, damages, penalties, liabilities or costs caused by or arising out of said violation. In

conformance with the requirements of applicable law, Owner shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials by Owner or any Owner Party in, on, under, or about the Property or Easement Area.

F. Confidentiality. Owner shall maintain in the strictest confidence, for the benefit of Grantee, all information pertaining to the financial terms of or payments under this Agreement, Grantee's site or product design, methods of operation, methods of construction, availability of the Project Facilities, and the like, whether disclosed by Grantee, or discovered by Owner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or any Owner Party, or (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity. Owner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Grantee. Notwithstanding the foregoing, Owner may disclose such information to Owner's lenders, attorneys, accountants and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena or court order; provided Owner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

4. Reservation of Rights. Owner reserves for Owner and Owner's heirs, successors, and assigns the right to continue to use and enjoy the Easement Area for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Easement by Grantee for the Easement Purpose.

5. Default; Remedies. If a Party (the "Defaulting Party") fails to perform an obligation under this Agreement (an "Event of Default") such Defaulting Party shall not be in default of the terms of this Agreement if, (a) in the case of the failure to pay when due any amounts payable under this Agreement (a "Monetary Default") the Defaulting Party pays the past due amount within forty-five (45) days after receiving written notice of the Event of Default (a "Notice of Default") from the other Party (the "Non-Defaulting Party"), and (b) in the case of an Event of Default other than a Monetary Default (a "Non-Monetary Default"), the Event of Default is cured within ninety (90) days after receiving the Notice of Default; provided, that if the nature of the Non-Monetary Default requires, in the exercise of commercially reasonable diligence, more than ninety (90) days to cure then the Defaulting Party shall not be in default as long as it commences performance of the cure within ninety (90) days and thereafter pursues such cure with commercially reasonable diligence. Should an Event of Default remain uncured by the Defaulting Party the Non-Defaulting Party shall have and shall be entitled to at its option and without further notice, but subject to the limitations set forth in the last sentence of this paragraph, to exercise any remedy available at law or equity, including, without limitation, a suit for specific performance of any obligations set forth in this Agreement or any appropriate injunctive or other equitable relief, or for damages resulting from such default (including, without limitation, the cost of obtaining alternative easements). Both Parties agree that remedies at law may be inadequate to protect against any actual or threatened breach of this Agreement. In the event of any breach or threatened breach, either Party shall have the right to apply for the entry of an immediate order to restrain or enjoin the breach and otherwise specifically to enforce the provisions of this Agreement. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, or any rights at law or in equity, in no event shall any default or breach of this Agreement, or any failure to perform any obligations under this Agreement, terminate, or entitle any Party to terminate, this Agreement or any Easement or right granted hereunder. Without limiting the foregoing, no Party may terminate this Agreement, except as expressly described in Paragraphs 2(B) of this Agreement.

6. Assignment. Grantee shall have the right, without Owner's consent, to: (i) encumber, hypothecate, mortgage, pledge, or otherwise finance the Easement (including by mortgage, deed of trust or personal property security instrument) all or any portion of its right, title, or interest under this Agreement, the Easement, and/or the Project to any mortgagee as security for the repayment of any indebtedness and/or the performance of any mortgage (each an "Easement Mortgage"); (ii) grant co-easements, separate easements, sub-easements, licenses, leases, or similar rights (however denominated) to one or more persons

or entities (each an "Assignee"); and (iii) sell, convey, lease, assign, mortgage, encumber, hypothecate or transfer to one or more Assignees or Easement Mortgagees any or all right or interest of Grantee in all or any portion of this Agreement, the Easement Area, or the Easement. Owner shall be provided with a copy of each assignment. No Owner consent shall be required for any change in ownership of Grantee; no Owner consent shall be required for any grant, sale, lease, conveyance or assignment by any lender or mortgagee following foreclosure of such lender or mortgagee of its rights in this Agreement and/or the Easement. All assignees will be subject to all of the obligations, covenants and conditions applicable to the Grantee under this Agreement. Upon Grantee's assignment of its entire interest under this Agreement as to all or any portion of the Easement, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Owner shall recognize the assignee as Grantee's proper successor, the assignee shall have all of the assigned rights, benefits and obligations of Grantee under and pursuant to this Agreement, and Grantee shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment.

7. Cure; Rights of Easement Mortgagee. If Grantee has provided notice to Owner of an Easement Mortgagee, then:

A. Owner and Grantee will not modify, cancel, or terminate this Agreement without the prior written consent of the Easement Mortgagee;

B. Upon any default by Grantee under this Agreement, Owner shall concurrently deliver a copy of the applicable Notice of Default to Grantee and any Easement Mortgagee;

C. The Easement Mortgagee shall have the right, but not the obligation: (i) to do any act or thing required to be performed by Grantee under this Agreement, and any such act or thing performed by an Easement Mortgagee shall be as effective to prevent a default under this Agreement as if done by Grantee, and (ii) to cure any default under this Agreement; and

D. Prior to exercising any right under this Agreement resulting from a default by Grantee, Owner shall give any Easement Mortgagee the same time period as Grantee after receipt of Notice of Default to remedy the default, or cause the same to be remedied, plus, in each instance, the Easement Mortgagee shall have an additional time period of forty-five (45) days to complete such cure.

8. Indemnity. Grantee, to the extent allowed by law, hereby binds itself, its successors and assigns, to indemnify and hold Owner, and Owner's heirs, personal representatives and assigns, harmless from any and all claims, demands and causes of action of any kind or character ("Owner Claims") asserted against Owner, and Owner's heirs, personal representatives, and assigns to the extent that any such Claim is caused by or is the result of (i) the negligent acts and/or omissions of Grantee and its agents and employees, in connection with the exercise of any right or privilege hereunder; and (ii) any condition created, maintained or suffered to exist on or about the Easement Area to the extent same is due to the negligent acts or omissions of Grantee and its agents and employees. This indemnity shall survive termination of this Agreement. In no event shall Grantee be responsible for defending, indemnifying or holding harmless Owner to the extent of any Claim caused by, arising from the negligence or willful misconduct of Owner or Owner's employees, contractors, subcontractors, agents or representatives. Owner, to the extent allowed by law, hereby binds itself, its successors and assigns, to indemnify and hold Grantee, and Grantee's heirs, personal representatives and assigns, harmless from any and all claims, demands and causes of action of any kind or character ("Grantee Claims") asserted against Grantee, and Grantee's heirs, personal representatives, and assigns to the extent that any such Claim is caused by or is the result of (i) the negligent acts and/or omissions of Owner and its agents and employees, in connection with the exercise of any right or privilege hereunder; (ii) any breach by Owner of the terms and conditions of this Agreement; and (iii) any condition created, maintained or suffered to exist on or about the Easement Area to the extent same is due to the negligent acts or omissions of Owner and its agents and employees. This indemnity shall survive termination of this Agreement. In no

event shall Owner be responsible for defending, indemnifying or holding harmless Grantee to the extent of any Claim caused by, arising from the negligence or willful misconduct of Grantee or Grantee's employees, contractors, subcontractors, agents or representatives.

9. Recording of Agreement. Grantee shall cause the recordation of a duplicate original of this Agreement in the Official Public Records where the Easement Area is located promptly after execution of this Agreement.

10. Legal Description. In the event that it is determined that there are any inaccuracies in or changes required to the legal descriptions in Exhibit A, Exhibit B or Exhibit C of this Agreement, the validity of this Agreement shall not be affected, and, upon the request of Grantee, Owner and Grantee shall change the legal descriptions for such Exhibit(s) to reflect the final, as-built legal description of the Property contained in a survey, title commitment or other title report obtained by Grantee for the Easement Area (including without limitation recording an amendment of this Agreement) and/or to reflect updated more precise descriptions of the applicable land areas.

11. Notices. Any notice required or permitted under this agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any Party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph. The names and addresses for the service of notices, requests, deliveries, or consents referred to in this Paragraph 11 are:

If to Owner:

Deano Merrigan
LM Storage LLC
5309 Gulf Freeway
La Marque, TX 77002

If to Grantee:

Simon Labrosse
Alpha Omega Power Holding LLC
4201 Main St, Suite 200-145
Houston, Texas 77002

12. Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding.

13. Estoppel Certificates. Owner shall execute such estoppel certificates certifying as to such matters as Grantee or any Requestor may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case. The failure of Owner to deliver any signed estoppel certificate, whether such estoppel certificate indicates agreement or disagreement with the accurateness of the certificate, within ten (10) days after Grantee's or any Requestor's written request therefor shall be conclusive evidence that (i) this Agreement is in full force and effect and has not been modified; (ii) any amounts payable by Grantee to Owner have been paid through the date of such written request; (iii) there are no uncured events of default by Grantee; and (iv) the other certifications requested by Grantee or any Requestor in its estoppel, are in fact, true and correct.

14. Binding Effect. This Agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns.

15. Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the state in which the Easement Area is located. If the Parties are unable to resolve amicably any

dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state district courts with jurisdiction over the county in which any portion of the Easement Area is located. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is hereby waived. The prevailing party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing party.

16. Headings. The headings of the paragraphs of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part thereof.


17. Counterparts. This Agreement may be executed in any number of counterparts and evidenced by facsimile and/or electronic scanned signature with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

OWNER:

LM Storage LLC,
a TEXAS limited liability company

By: 
Name: DEANO MERRIGAN
Title: PARTNER

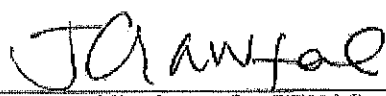
ACKNOWLEDGMENT

THE STATE OF TEXAS
COUNTY OF GALVESTON

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This instrument was acknowledged before me on this 22nd day of JULY, 2024, by DEANO MERRIGAN, PARTNER of LM Storage LLC, a TEXAS limited liability company, on behalf of such limited liability company.




Notary Public, State of TEXAS

My commission expires:
03/17/2026

GRANTEE:

Alpha Omega Power, LLC,
a Delaware limited liability company

By: [Signature]
Name: Paul Choi
Title: CEO

ACKNOWLEDGMENT

STATE OF Texas
COUNTY OF Harris

This instrument was acknowledged before me on the 30 day of JULY, 2024 by Paul Choi, CEO of Alpha Omega Power, LLC, a Delaware limited liability company, on behalf of such limited liability company.

[SEAL]

[Signature]
Notary Public in and for the State of TEXAS
My commission expires: 07/14/2026

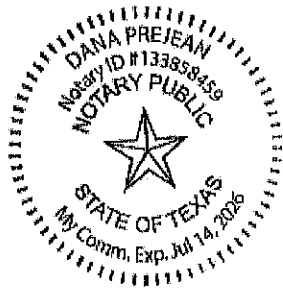


EXHIBIT A
Description and Depiction of the Property

[Pursuant to the terms of the Agreement, the description of the Property contained on this Exhibit A shall, upon request by Grantee, be replaced with a more detailed description approved by Grantee and its Title Company or surveyor]

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF GALVESTON, STATE OF TEXAS:

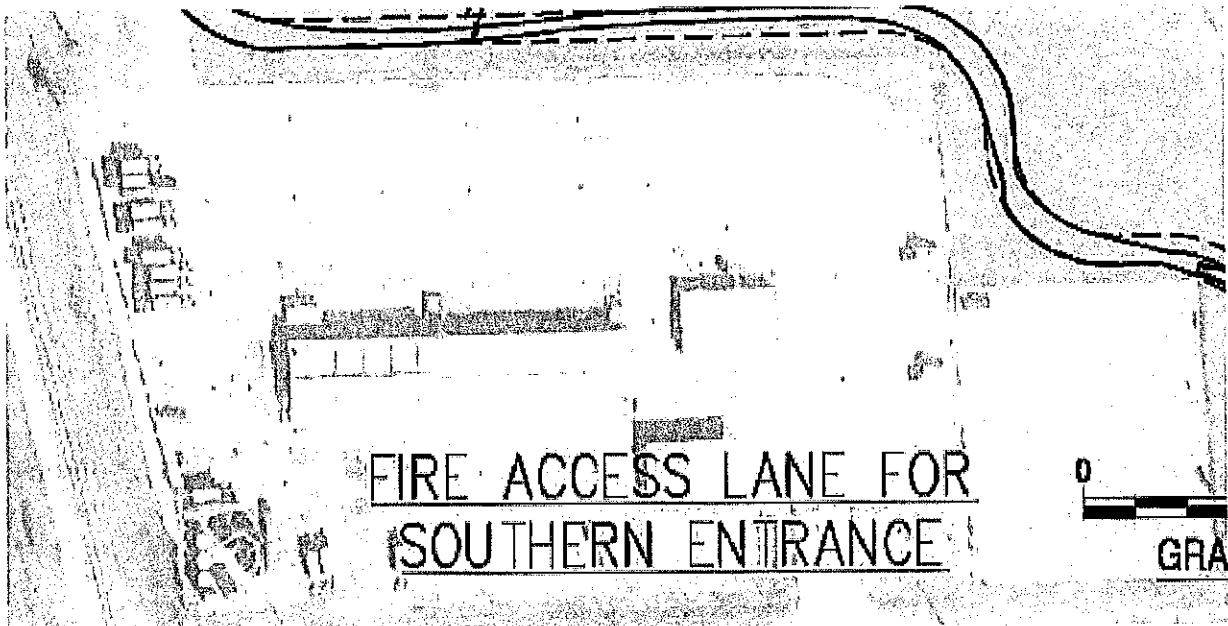


EXHIBIT B
Description and Depiction of the Easement Area

[Pursuant to the terms of the Agreement, the description of the Easement Area contained on this Exhibit B shall, upon request by Grantee, be replaced with a more detailed description approved by Grantee and its Title Company or surveyor.]

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF GALVESTON, STATE OF TEXAS:

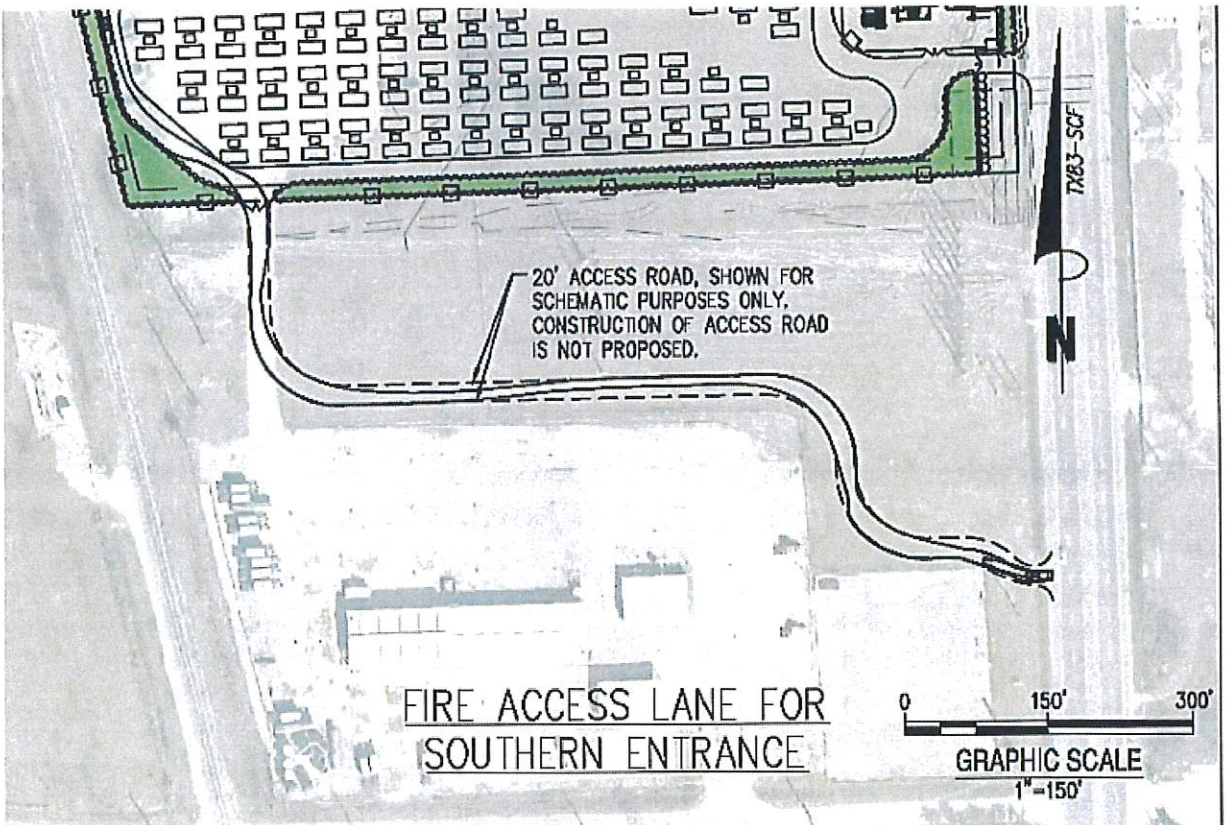


EXHIBIT C

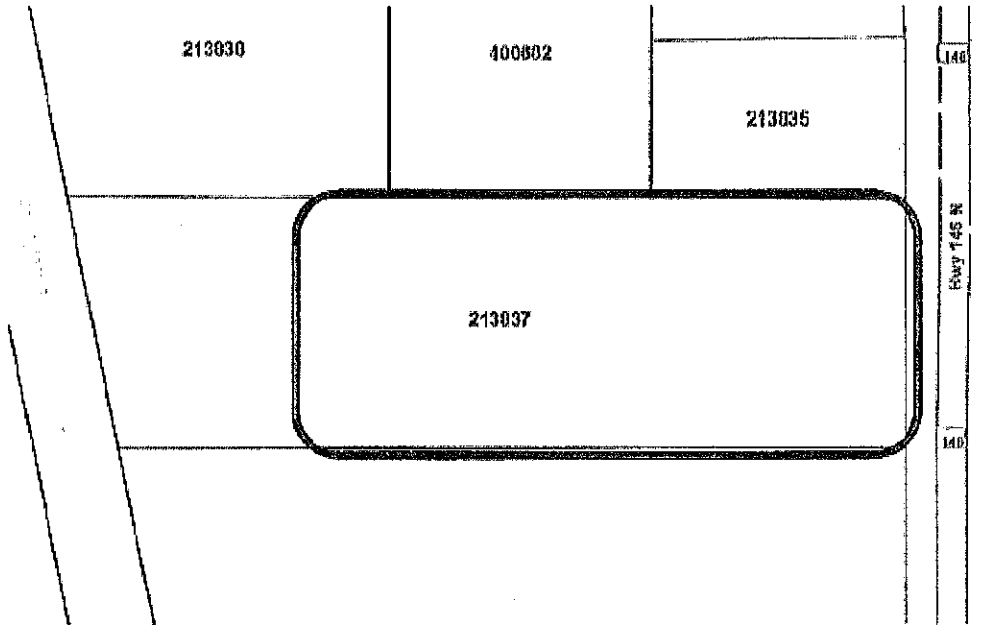
[Pursuant to the terms of the Agreement, the description of the Project Property contained on this Exhibit C shall, upon request by Grantee, be replaced with a more detailed description approved by Grantee and its Title Company or surveyor]

Description and Depletion of the Project Property

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF GALVESTON, STATE OF TEXAS:

Overall Premises: A certain tract with County Appraisal District Tract ID#213837 of approximately 6.5 acres.

Property: A certain tract with approximately 5 acres, including approximately 4 Unencumbered Constructible Acres adjacent to the Highway 146 on the Eastern side of the property. Property is approximately delineated in the red rectangle below



ZONING COMMISSION AUGUST 6, 2024

The Zoning Commission of the City of Texas City met in a regular meeting on Tuesday, August 6, 2024, at 5:00 p.m. Zoning Commission members present: Chairman Perry O'Brien, Aric Owens, Bruce Clawson, Fernando Tello and Alternate Member Lisa Salinas. Staff members present were: Kimberly Golden, Casey Bennett (CBO), David Kinchen (DBO) and Veronica Carreon. Guests were: Ben Baty, Chris Johnson, Felix Herrera, Deano Merrigan, Anthony Neva, Stavan Vora, Guillaume Dufay (AOP Renewables), Simon Labrosse Gelin, Jack Hernandez (Interfield) Jill Crawford, Bob Wittmeyer, and Georgia Meisler.

Chairman O'Brien indicated a quorum was present and called the meeting to order.

1) APPROVAL OF MINUTES

A motion to approve the minutes of July 2, 2024 was made by Bruce Clawson/Aric Owens. All other members present voted aye.

2) PUBLIC COMMENTS

There were no Public Comments.

3) ELECTION OF OFFICERS

Ms. Golden stated that at the last Zoning Commission meeting it was mentioned that Mr. Gary Potter had resigned his position on the board. He was previously one of the co-chairs and so there is now a vacancy in the board's office of co-chairs. Ms. Golden asked those in attendance if they would like to hold an election of a new co-chair and it was agreed to have it on the next meeting agenda.

It is now being brought forward for purposes of members to consider the election of another co-chair. Since this was last discussed, Mr. Bruce Clawson has been appointed back to the Zoning Commission and Ms. Thelma Bowie is not in attendance because she is not feeling well.

Chairman Perry O'Brien asked the Zoning Commission if they would like to nominate anyone.

Mr. Aric Owens asked if it was required that they have a co-chair, to which Chairman O'Brien replied it is nice to have a co-chair to lead a meeting if at any time he is not available to attend a meeting.

Mr. Bruce Clawson made a motion to nominate Mr. Aric Owens as co-chair of the Zoning Commission. Mr. Fernando Tello seconded the motion. All other members present voted aye.

Mr. Owens stated he would be glad to serve as co-chair.

4) Zoning Change Request from The Interfield Group to rezone from District "O" (Open Space to District "E" (General Business) for a proposed Convenience Store and Retail Development. Located at 1414 FM 646 on the east side of Vicksburg Lane and west of Hwy 146 N.

a. STAFF REPORT

Ms. Golden stated the location is a 9.56-acre site located on the east side of Vicksburg Lane at FM 646. The Applicant is requesting a rezoning to be able to build a new 4,700 sq ft convenience store with fuel pumps and a new 12,000 sq ft retail strip.

The property is currently zoned District "O" (Open Space) and that is the zoning in place when you have land that is not developed or subdivided. It is intended that District "O" be rezoned as the city grows into that direction.

For the particular use that they're contemplating, District "E" (General Business) would be the appropriate district for them to be rezoned into. The surrounding property that is not vacant is still zoned District "O". Property that is vacant on the other side of Vicksburg Is zoned District "A" (Single Family Residential).

The District "E" zoning would be appropriate and staff have worked with them on our site plan. The main issue they had was getting some developed drainage because the drainage is pretty poor in the area. What they've done is they're going to subdivide into three lots and one of the lots will actually have a detention pond on it and then there'll be a Property Owners Association that will own and operate their detention pond for the benefit of the other two lots of which one will be the convenience store and the other will be the retail strip.

This project is in the Gateway Overlay District so they will have to comply with the requirements of the Gateway Overlay District which again are masonry construction, some setback requirements, landscaping requirements and some screening requirement. The Applicant has indicated they are compliant with all of this.

If the Zoning Commission does recommend to rezone, staff just suggests it be subject to the subdividing going in place and the creation of the Property Owners Association to own and operate that.

Mr. Bruce Clawson then stated traffic along FM 646 is a heck of a deal. He went through there recently and there was a bad wreck on the road. He couldn't tell if there is a turn lane and asked if there is one at the property.

Ms. Golden doesn't believe there is, but indicated this is the next section of FM 646 to be widened. In fact part of their platting is going to go ahead and be dedicating that additional right of way. TxDOT is also in the process of acquiring that right of way.

Chairman Perry O'Brien asked if the retention pond would constructed at the same time, to which Ms. Golden replied construction of the detention pond will be required when they do the project because that's what is allowing them to have the drainage that they need.

Mr. Clawson then asked what the building is on the property, to which the owner, Mr. Stavan Vora, replied it is just a storage building that the previous owner had used.

Mr. Clawson then asked if there were any wells on the property. [The representative "no" by shake of the head.] Ms. Golden advised the site does not have Texas city water and sewer service available to it, so they're going to have to annex into the Bacliff MUD for purposes of getting their water and sewer service. This does not mean they are going to de-annex from Texas City. The MUDS and the city are on top of each other. The mayor has given them a "comfort letter" indicating that at the appropriate time we will take a request to City Commission to give the necessary consent for the annexation.

Chairman O'Brien then asked if this site plan still needed to be presented to the Planning Board, to which Ms. Golden replied it has been through that process. He then asked what the construction timeline would be. Mr. Vora replied if given the green light he will start tomorrow.

Co-Chairman Aric Owens then asked if there would be fire hydrants installed because he recalled a couple years ago they looked at a storage facility further down the road and they weren't there and would have to install on-site water storage. Ms. Golden replied when this happens, it's not going to be on-site water storage but when they start their process of annexing into Bacliff, that is what will have to be worked out – is the capacity to provide the Fire Protection that's necessary for Texas City Fire Marshall to sign off on.

Chairman O'Brien asked if there any additional questions? There were none.

b. PUBLIC HEARING

A motion was made by Fernando Tello/Co-Chairman Aric Owens to open the Public Hearing. All other members voted aye.

Chairman O'Brien stated if anyone in attendance was for or against the zoning change now would be the time to make a comment.

Ms. Golden stated there were eight Public Hearing Notices mailed to neighboring property owners and no comments were received in favor or against the zoning change request.

There were no questions or further discussion, to which a motion was made by Bruce Clawson/Fernando Tello to close the Public Hearing. All other members voted aye.

c. PRELIMINARY ZONING APPROVAL – Consider and take action on the zoning change request from The Interfield Group.

A motion was made by Bruce Clawson/Fernando Tello to approve the zoning change request from The Interfield Group to rezone from District “O” (Open Space) to District “E” (General Business) for a proposed Convenience Store and Retail Development provided it is subject to the establishment of a Property Owners Association and the recording of a subdivision in proper form. All other members present voted aye.

5) Zoning Change Request from Alpha Omega Power, LLC to rezone from District “F” (Light Industrial) to District “S-P” (Site Plan) for development of an electric power generating station utilizing lithium-ion battery energy storage system (BESS). Located at 701 Hwy 146 N., west of Hwy 146 N., and north of the existing Golden Rule Logistics.

a. STAFF REPORT

Ms. Golden stated Alpha Omega Power LLC is looking at a site that is 6.29 acres of vacant land but will use 5.71 acres to install a Battery Energy Storage System (BESS). This is a large installation. Previously approved BESS' have been 10 MW. This project will include up to 106 individual battery containers for 205 MW or 410 MWh at a two-hour capacity, meaning it takes two hours to charge and two hours to discharge. This is approximately twenty times larger than any of the previously approved BESS projects in Texas City.

They have provided in their site plan for the 15 ft spacing all the way around the battery units as required by the city's updated fire code. They're also providing a paved 20 ft perimeter road with two points of access.

The second access is actually through adjacent property which the applicant does not own or control. The owner has provided an easement. Ms. Golden pointed out the recommendation is

for that secondary access to have some sort of platting to it. Staff's concern is that it remained completely open and accessible over time.

The Applicant is also providing a nice masonry fence and landscaping at least 6 ft in height, which again is the standard that the city is applying to these BESS projects which was also applied to the other two that have been approved.

The project site is part of the former ETC Texas City Trucking Terminal. It had some environmental issues and has been through a process with TCEQ and now has no further action required, but it can never be used for anything but industrial or commercial.

The adjacent property to the north is Baker Distributing. There is common ownership of the property to the South which is a logistics company. The property across Hwy 146 N is the TNMP Substation.

Information was provided to Ms. Golden about why the TNMP Heights Substation is a prime location for these types of projects to tie into, which is basically has to do with the size of the substation and the fact that it's set up to take this kind of interconnect.

Also provide was some information about the type of battery chemistry and the manufacturer that they're proposing to use. The battery chemistry is the Lithium Ion Phosphate, which is considered stable and less prone to the thermal runaway concerns.

The manufacturers of both the battery cells and the battery assembly are considered Tier 1. Ms. Golden believes that means that they work really hard to comply with all the codes. They do the extra testing and things to show that their products are safe and then they maintain good quality control as they're being built.

This location is not in the floodplain, and it is inside the Texas City Hurricane Levee.

The specification they are going to have for the containers are the type that you would have for a corrosive environment, such as coastal area. It's the highest level of corrosion protection and the highest level for both the batteries and containers. She stressed that these are the standards that both the Building Official and Fire Marshall will apply at the time of applying for building permits.

Their fire protection will be an on-site system that is specifically designed for this application. There's also a robust monitoring system that is monitored remotely 24/7, but indicated that for a project this size the operator would have a crew stationed within the nearby area [LaMarque] to make proper response in the event that remote monitoring shows there is something going on.

Information about decommissioning was provided for the Zoning Commission. Staff do anticipate that at the time of permitting some sort of decommissioning bond or security will be required through the permitting and plan review process. This process is still in development by the building official and fire marshals.

Ms. Golden stated that the item that might need consideration is the second point of access. Again, the Applicant has provided a signed easement agreement, but staff would prefer to see it as a plat because those things are usually just easier to keep track of.

This company was formed in 2023, so it would be considered a startup.

The Planning Board has looked at this because the zoning changes to District "S-P" (Site Plan) requires review by the Planning Board first to look at the site plan. The Planning Board approved the site plan conditioned upon the Zoning Commission approving the zoning change. If the zoning change is approved the Applicant would have to be subject to the site plan as approved by the

Planning Board. There could not be any changes to the site plan without approval from the Planning Board.

The Zoning Commission's action is to make a recommendation to the City Commission. The City Commission is the one that approves or disapproves the actual zoning change. The Planning Board approved the site plan on a 3-2 vote.

Ms. Golden completed her report and stated she can answer any questions and that the Applicant was also in attendance to answer any questions.

Chairman O'Brien asked if this project fits the Land Use Plan. Ms. Golden replied she was not sure if there is anything specific in the Land Use Plan about these kinds of uses, but it does fit a light industrial use.

Mr. Clawson then stated he had a question for the developer and one for the landowner. He then asked if this is a brown field. Mr. Deano Merrigan [landowner] replied that it had a leaking tank out there and they had monitoring wells out there. TCEQ monitored the wells for some time, and they said, per TCEQ, whatever is there is there and it's not migrating. The trucking facility that was there was responsible for it the cleanup and the monitoring. They had them [the monitoring wells] pulled out and fill them back in and there's no further action.

Mr. Clawson stated that nothing can be built out there, to which Mr. Merrigan stated that was correct. Only commercial or industrial can be built out there.

Mr. Clawson then added that he is not quite clear on the fire suppression system.

Mr. Guillaume Dufay (AOP Renewables) replied batteries are known for being pretty good devices and are everywhere, but large batteries have always had Fire Protection systems. As Ms. Golden mentioned, the way these things are operated is they comply with every fire rule that you can think of and that exists. There have been dozens of thousands of these containers deployed across the nation and they have A National Fire Protection Agency (NFPA) protocol that's called NFPA 855 and each of these have to meet the requirements. One of the requirements is that they have to have several layers of protection. layer No. 1 is monitoring, and No. 2 is to remove the activation, layer #3 is active suppression of fire in the case of a fire, and then the final element of the NFPA 855 is that every battery that gets installed and that complies with NFPA 55 has to go through a burn test.

The way this works is that you set one battery on fire by putting some fire in it and you see what happens. You see how it propagates; you see how the fire gets extinguished by the system. There are several levels of a burn test that can be done on a cell, on a module, on the full rack or on a full container.

Power suppliers are Tier 1 suppliers and Tier 1 suppliers tend to go the extra mile where they do full container/full unit test, and they test what a fire looks like. They then have a passing or failing criteria that come into play into how much you pay for insurance. All the batteries that they choose from show that fires never propagate to the next unit over and there is never an explosion, so the worst case of fire that you can see that is being tested is when you burn a cell and module, and it doesn't go to the next one. You will then have some smoke and then you're going to have to let it burn because the extinguishing system is going to take care of it.

You do not throw water on it, and they train their fire departments on this all the time. Two months ago, they just went through a full fire department training in the City of La Marque where they have another project. They are very actively engaged with fire departments.

Again, you do not throw water on a fire, you let it burn. Once the reaction stops, which will take a couple of hours, you will then take the container and send it to a recycling area. You check the ones around, making sure that integrity is not compromised, and you replace it or you do whatever needs to be done post-removal.

Mr. Clawson then asked what the fire suppression system would be. Mr. Dufay replied there are two types of fire suppression system and added before going into a thermal runaway, a battery cell just like the one in your phone is going to show some early signs of failures. The voltage is going to be off, the balancing with the other modules is going to be off. Mr. Dufay claims they have the best control system in the world. They use a company called Individuation Austin. They monitor every cell, voltage, charge, temperature, etc. You're talking about several hundreds of thousands of cells in this installation. Every one of them has a temperature and voltage sensor that is being monitored. If one of them is off, they deactivate the module, remove it, and replace it with a new one. The early signs are showing what is going to happen and, if for whatever reason, that fails, the second level is you have an early detection system on the battery. If you feel that there is off-gassing of the cells or if you feel there's a higher temperature in the container itself, the container is going to auto shut down. That should stop any discharging that would cause some further fires. If for whatever reason that fails, they are talking about very low probability events here, then there is a fire suppression system at the battery inside each of the battery container.

Depending on the technology, sometimes it uses a FM 200 or state X aerosol and the modern one that they are using are most likely going to be an aerosol-based extinguisher. They are going to spray into the container on the area that was detected and is going to fill the container with the aerosol and that supposedly is going to stop whatever reaction is causing the problem. 9-1-1 will then be called and like Ms. Golden stated their guys will be nearby to respond to the emergency.

Co-Chairman Owens asked Mr. Dufay if he stated earlier that these batteries never explode because he's seen some videos where they have. He added that another thing Mr. Dufay stated, that he thinks is kind of crazy, is that Mr. Dufay stated "supposedly they put them out". He asked if this was just a choice of words because this is a huge concern to him.

Mr. Dufay replied that he came four years ago in front of these Zoning Commission and it was a pretty long meeting to build a 10MW site, which he indicated on the map. He stated this site has never had any problem and it works well. They are involved in and will be around for a long time. They are investing \$150 million in this project. If this explodes, they are going bankrupt – and there is a lot of their personal money in this too. They are strongly incentivized for these to be safe.

Have there been batteries that have exploded, yes absolutely. That was before the times of NFPA 855. That was before the time when they had clean and clear codes where they were smart people from fire departments across the world and particularly here in the United States that had worked on it. There was a site in Arizona that was known for catching fire and had an explosion when a first responder came into the battery system. It caused several injuries to the first responders and there's been massive changes to the design of the system since then. He believes this happened back in 2017.

There are many changes since then and the chemistry of the batteries has changed. These batteries, lithium iron phosphate, have a lower flammable limit, meaning that they exhaust less gas and they basically catch on fire with less strength and what they are seeing when they do the testing is that when they ignite the cell because they put a resistor in there and overheat it until they ignite the cell.

What you're seeing is that the next cell over ignites too but with less power, and then it just dies out within the module. This is because these batteries are not as reactive as the previous

technologies being used. So that's a major change that makes these batteries much safer. The other thing that was changed was the enclosures, the container of the battery, was rethought and redesigned.

They were talking to the president of Fluence, their main supplier, who is also the #2 US manufacturer for batteries, and he said they have had some failures and they learned from them. That's actually better than having no failures and not learning. Everybody had to redesign and rethink the process because it's possible that a cell is going to have a thermal runaway. What you want to make sure is that it doesn't trigger a catastrophic reaction. The whole mindset of avoiding an accident completely to avoiding catastrophic occurrence has changed in a way that now if a cell goes into a thermal runaway, which again is unlikely because they have 3 levels of suppression, but if cell does go into thermal runaway, there's a deflagration vent at the top of the container according to NFPA 68. There's a deflagration vent at the top, so in the likely event where you have a chain reaction of everything going wrong that possibly could go wrong, and again, it's been tested and showing that it doesn't happen, but, if it happens the deflagration is going to happen overhead, not causing any damages to the first responder or anything. The other main cause of catastrophic consequences to these batteries accidents was if you have first responders getting into the enclosure. It use to be that they would put these batteries into buildings or into enclosures that would allow somebody to walk in there and that's the problem because that puts somebody at risk if there's a thermal runaway.

So yes, there have been batteries that have exploded. Mr. Dufay is not aware of any LFP battery that has exploded. He is aware of some LNO batteries that have had some trouble runaway, but every single time they have self ignited and they have not propagated to the next unit over and they have never caused any accidents.

Co-Chairman Owens then asked in an event they have this gas coming out, are there any studies that show what the carry of that is? For instance, they have approved some generators out here on Humble Camp Road and Attwater Drive and they talked about the decibel noise for like so many feet but if you have a fire what does that plume look like? Is it a quarter mile? Half a mile? A couple 100 feet? Who's in harm's way at that point? And do you have protection for that?

Mr. Dufay replied they work with a company called ESRG. They are a fire consultant everywhere and they are the main fire consultant for battery energy storage. They were actually created by 9-1-1 heroes, so they know about fires. They do the HMA (Hazard Mitigation Analysis), fair mode, and affect analytics which will be part of this project. As they go into the design there will be an HMA down to meet the NFPA 855 requirements and that HMA is going to consider the risk of gas dissipation and any danger for any public or for any walker. All of that is going to be studied in detail from quantitatively and qualitatively.

The qualitative answer is that when one of these thermal runways does happen the common kind of point of comparison, it doesn't create more toxic gas exhaust than a typical office building catching on fire.

Mr. Owens stated that could be put out in a couple hours. How many hours would this project take to burn out?

Mr. Dufay replied that is the whole benefit of the new testing that they do because they show that the fire does not propagate any further than one container. There's a limited quantity that can burn and so the exhaust is going to be limited. He believes the time concept is about a couple of hours, maximum six hours for a fire to be completely out and then you can open the container and start to disassemble the pieces and there will be weeks of investigation. He reiterated that it is not weeks, it's not days, it's hours.

Co-Chairman Owens stated that just seems different than what we we've heard on the other projects.

Chairman O'Brien added that the one in Arizona that Mr. Dufay spoke of was a totally different battery design.

Ms. Georgia Meisler (AOP Renewables) replied that was a different battery chemistry as well. It was a LMC battery instead of LFP, which is part of why this standard has moved to the LFP, because it is less volatile, it's more stable, so the end result of thermal runaway is a lesser outcome. She wanted to make sure one question that was asked was clearly answered was how far all the smoke travels. So obviously that depends on winds, but the important factor to consider is that testing would indicate that it's always within EPA standards. And again, the smoke itself, it's typical. Think about what it is that's going to be burning. What is a battery? It's going to have plastics; it's going to have some metals, the same kind as building materials. And it's relevant, not really unique, in that perspective as far as what will actually catch fire.

Alternate Lisa Salinas stated the concern she has is that this place is going to be upwind of the apartment complex nearby. Here the winds are always out of the South, so anything that's coming out of there is going directly toward those apartment complexes. She asked if there is anything that is going to protect those people or notify them that something is blowing their way.

Mr. Dufay replied there are two things to consider. First, this is a light industrial zoning land and of all the light industrial application you can think of, a battery does not create any pollution at all. So, they don't burn anything. They don't have diesel generators. This is just purely charging and discharging energy. There is a very minimal footprint and exhaust of anything. He believes in this respect, it's beneficial for the community around because those apartment complexes will not have any impact.

As part of the emergency response plan, yes, there will be a concerted response plan with the first responder and the first responder, perhaps the Police Department, will oversee flagging any issue or any concern to the public safety. He thinks that it is going to be their top priority is going to be to protect the citizens in a large apartment complex close by. And again, that they will be in the case of an emergency situation, one of the first measures will be when they are on the site is making sure that it does not exceed the EPA standard. If it does, there will be some steps to be taken that will be all part of this emergency response.

Mr. Fernando Tello asked if there would be a leak detection. Will there be hydrocarbon detectors around the units to catch a leak? If a leak is there what will they use to catch that besides them telling the Zoning Commission that somebody offsite will come by and look.

Mr. Dufay replied they will have an operation and maintenance crew that will be spending time at the site mostly during business hours, but because we have the other site in La Marque that's actually fairly close by, they will be spending their time between the two sites.

As far as leaks, they have never heard of a leak on a operating battery, so the only time when a leak may happen is in the case of a deflagration of the battery, which is thermal runaway. In that case there is really two elements that you need to think of. The first element is that every cell is contained in two modules and these modules are IP67 meaning that they are fully water tight and dust proof. So there is nothing that goes in or out of these of these modules and then the container is a 20 ft Conex container. There is a drip pan at the bottom, so anything that leaks is going to fall in the drip pan. The reason for the drip pan is not really for the toxic elements of it, but there is a cooling system that keeps the batteries cold. The cooling system is water and glycol, so if that gets in the drip pan there is going to be a warning that the Operator is going to take care of.

The final other important element is that our site is going to have a ring road, so if there was a massive leak of something bad, but there is no reason for anything of that magnitude to leak, but the surge of leakage would not go past the ring rug, and certainly not into the higher elevation elements like the canal half a mile away. They have got a lot of layers of protection on that, and this is not an element that has not been seen.

Explosion of batteries is a really important element and Mr. Dufay is glad they are talking about this because they want everybody to be aware of this because it is an important element. Leaking is not something that has been seen as a risk associated to the batteries.

Mr. Chris Johnson (Attorney for Alpha Omega) stated he wanted to address the easement for the second access. One of the things that the Fire Marshal wanted to see for this project was two points of access into the site and they went about doing is obtaining a perpetual and uninterrupted ingress and egress easement from the neighboring landowner.

One of the things that Ms. Golden mentioned is that you'd like to see a plat, but legally speaking, there is no difference between having a permanent ingress and egress easement that cannot be obstructed or a plat and the reason being is he actually thinks this is the better way to go because it is something that what they call "runs with the land" is a superior right of the neighboring property meaning this site will have a superior right for that second point of access to come through that neighbor's land forever.

It is not dependent on owners. It is not dependent on any changes to the site. It exists, so no replat can change the fact that that easement is there, meaning it's a contractual superior right that runs with the land. So regardless of who owns the neighboring property going forward, that right of ingress and egress will exist. Also, it is very difficult to try to get a neighbor to replat their property for the benefit of the neighboring property. He has never seen that happen, but he thinks it is important for the Commission to know that legally speaking, there is no difference as far as the rights that are conveyed via this easement. This easement gives a perpetual right for ingress/egress that cannot be interrupted by any subsequent owner of that property. He thinks it is important to know that that second point of entry is a guaranteed point of entry, and that Alpha Omega has already gone and done the work to obtain that right.

Mr. Clawson asked where this is at. Mr. Johnson indicated it on the site plan. Ms. Golden added that it is on the far west side of the site and then it crosses and follows the northern line of the land.

Mr. Ben Baty stated he has 2.1 acres near this project, and no one has talked to him about an easement. Mr. Johnson replied that he does not believe the property Mr. Baty indicated is his property.

Mr. Johnson then conclude the reason for having a perpetual easement is for that concern that it's not a maybe, it is a recorded document. When you talk about recording it in the real property records, it puts the public on notice that right is going to be there forever.

Chairman O'Brien then asked if there were any other questions?

A motion was made by Fernando Tello/Co-Chairman Aric Owens to open the Public Hearing. All other members voted aye.

Chairman O'Brien explained that the Public Hearing was open, and this is where those in the room, hearing everything that's already been said, has an opportunity to voice whether they are for or against this request. The Zoning Commission would first take any comments from anyone

that is against the zoning change request first and then they would listen to those who are in favor of the request after.

Mr. Baty spoke first and stated he owns the nearby Baker Building and the land immediately west of the Baker building. He recalled that Chernobyl also have all fail safe in place and they had little problem too. As a matter of fact, a week ago today, the Fire Chief of Texas City addressed his Rotary Club and he was asked about the lithium batteries and what do you do if you have a fire with a lithium battery? He said we get everybody away from it because we can't put it out.

Mr. Baty stated that he knows nothing about lithium batteries. He is not a chemist and can only go by what the professionals have told them. Another question during the Rotary Club was what happened if you have a Lexus vehicle - do they have lithium batteries? What if it is on fire on the freeway? What do you do? He said we get away from it to keep people from inhaling the toxins from it.

So again, immediately to the west of his property is the apartment complexes and he has never seen many fires that didn't have smoke. He is sure the southeast winds are going to blow the smoke toward the apartments if there were a fire or chemical reaction. He is just concerned of what will happen in the event of a fire.

He added that this will also kill the value of his property if he tries to sell it and a potential buyer see a lithium battery storage next to it – there goes the tax value.

Chairman O'Brien asked Mr. Baty to indicate his property on the map. He did so and then stated this may just keep the vagrants out.

Chairman O'Brien asked if there were any more comments against the zoning change request. There were none.

Chairman O'Brien then asked if anyone had any comments that are for this request they would take them now. He then introduced Mr. Bob Wittmeyer, who was in attendance, to speak about the benefits of battery energy storage.

Mr. Bob Wittmeyer stated he is a professional engineer and has spent his early life at Ercot and has been doing this for a long time. He then asked if Ms. Veronica Carreon could go to Ercot.com. and then began his presentation.

He then presented why batteries are particularly important to the grid today. He indicated on the website a chart that showed a solar chart in orange, a wind chart in blue, and an aggregate chart in purple. He indicated real time on the site and stated shortly after 8:00 PM, things get really, really tight in the grid, which he also indicated. Five years ago, this was not a problem. He indicated where the grid would peak, and that the generation would be fine the rest of the day.

The problem we have now is we have a ton of wind and solar, and we know every day the solar is going to do that. He indicated in the summertime, the target window for these batteries and stated this is why we need the batteries. We need the batteries because of our demand line; this is our supply line. He promised that they will never serve more load in Ercot than they have generation do so.

What he did not recognize when he got in the power business is every time we turn on appliance at our house, somewhere on the system a generator's fuel valve opens and makes more power. It really is that tight. They measure that with frequency and when it is at 60 Hertz, everything is good. We run out of generation that frequency will fall off 60 Hertz. It doesn't have to fall very far off 60 Hertz and we are all sitting in the dark.

The batteries are particularly helpful now because of all the wind and solar they have on the system, and that's why the batteries are really critical to them. Now, where they weren't so important before, can they raise prices in Texas City by having a battery there? No, they cannot.

The way the ERCOT electric grid works is ERCOT procures services from the least cost resource. Anytime somebody tries to jack with the price a little bit, they'll just move it to someplace else. If the system gets inherently tight, there is an independent market monitor that overlooks the grid and makes sure these guys are playing about it.

Mr. Wittmeyer then asked if there were any Ercot related any questions.

He then added that the other thing batteries are really good for are when there is a load shed event, the operator has to fix the wires first and before they can take the load up, they have to make sure they have enough generation to pick up the load. The problem is the load that was on the system when that load went off causes all of your air conditioners to immediately fire up. If they break that link at 60 Hertz, the load comes back out.

Batteries are a giant shock absorber around the system. They can move from a generator to a load in 1/4 of a second. So they're very important for bringing load back up on the system.

Chairman O'Brien asked if it was appropriate to say that the batteries stabilize this system, to which Mr. Wittmeyer stated that is appropriate and we don't normally need that stabilization, but when we do, we really do.

Chairman O'Brien asked if there were any other comments in favor of?

Mr. Dufay replied that he would like to recommend on the apartment building and the air quality. As part of the emergency response plan in the hazard mitigation analysis, there will be a very quantitative study of all the gassing that's possible from the batteries. There will be a quantitative analysis of how much pollutant can get in the air and may impact the residents. If the studies show that these levels exceed EPA standards that would be a failure and they will not be able to build finance to ensure the assets. So, there are many, many levels of controls on these assets that are here to protect the citizens, to the investors, to thank the first responders and everybody involved in the project.

These HMA documents will be provided to the city as needed and they have to be provided and reviewed by the fire department in order for the project to comply with NFPA 855. They have to comply with NFPA 855, otherwise they do not get insurance on their project.

There are checks and balances control systems in place for these large investments and it's \$150,000,000+ that is being invested. There are a lot of highs and a lot of very expensive lawyers who look at this stuff. There are a lot of eyes on it and very important, like are they going to kill their neighbor is going to be looked at very attentively because no investor wants to be involved with the project that has killed a neighbor. That is how you get a lot of people running away and going bankrupt, so with this being said, this project is going to be intrinsically safe.

Staff will have access to all the documentation they need at the fire department level. The Applicant will also be very happy to discuss any questions. They love batteries so they can talk batteries all day.

Deano Merrigan (Property Owner) then stated that the Zoning Commission approved a battery site exactly across the street and exactly South of the apartments behind Kroger and none of this was brought up. Planning and Zoning voted for it across the street.

Now this project is coming up on his side of the street and it's a little different and it just makes him wonder. He stated that he would like to be treated fair and be shown the same respect. He

stated that he has run into some challenges here and understands the concerns, but he pointed out that across the street is another battery storage facility. He only wants the same questions to be asked when this is presented to City Commission.

He added that this is a \$160,000,000 project. The city makes a lot of money on property taxes and this could make about \$2,000,000 a year for the city and property taxes. It's a light industrial site. This is what it is designed for - light industrial use.

Wind direction has been discussed. He reminded everyone that we live in Texas city, it's not The Woodlands and we everyone in here knows someone who has cancer. This is a safe product and if this building burns down, you got toxic glue and all kinds of stuff that's going to burn in here. And if you put your head over this fire right here on the building to get you some, you probably get sick. And so, it's the same output as a battery.

If they don't do a battery facility and they build a building and it burns down and it is south of the apartments, all that smokes goes towards them. He asked that everyone look at this with an open mind.

There were no questions or further discussion, to which a motion was made by Bruce Clawson/Fernando Tello to close the Public Hearing. All other members voted aye.

c. PRELIMINARY ZONING APPROVAL – Consider and take action on the zoning change request from Alpha Omega Power, LLC.

Co-Chairman Owens asked Ms. Golden about the mitigation study and then they are asked to approve something or not and then say we're going to have this study afterwards to determine if it's good or bad.

Ms. Golden replied what he's talking about the hazard mitigation analysis and a lot of other things will be made available during the building permitting process. That's when the building official will review it, and the Fire Marshall will also review it. We actually are going to contract with a third-party reviewer that specializes in BESS projects to review all of those projects when they come through as building permits.

She believes the reason that it comes later is it's very costly to do it and the Applicant needs to know if they're going to be able to do this site or not. She believes that's the way it comes out. They kind of have to know they can do it here, if they're going to do it anywhere, before they go to the expense of showing models of the factories.

She asked Mr. Dufay if this was correct, to which he replied they are absolutely doing all this level of analysis that they talked about costs them between \$1,000,000 to \$2,000,000. As of today, they are still in a position where if the Zoning Commission denies the project, they have nothing, and the project dies.

They have already invested about \$1,000,000 in the project, but they can't invest another \$2,000,000 for the design and \$2,000,000 for the lawyer fees. They can't invest a lot of money in a project that may die tomorrow.

As much as he would like to come in front of the Zoning Commission with a full package that's fully detailed and fully defined where you can make a strong decision based on very clear criteria, that is impossible to do at that stage. That's where the city staff comes in and they are mandated, and they see this in every jurisdiction that they work with. It is always that process where there's

an initial discretionary approval from the Board of Zoning or Planning and City Council to give an indicative idea of whether the city likes this business, but then the city administration is in charge of enforcing that this project is done well.

Ms. Meisler added that the hazards are known and quantified already. What is unique and what is addressed in the HMA is the site-specific information which is proximity to sensitive receptors and direction some of those other specific things and those drill down and provide detail that may cause some changes in design. The hazards are known and from what has been seen, even in the rare instance of a thermal event, is that the effluent smoke from a thermal event is within EPA standards. That is not something you don't know and that level of detail we absolutely could provide today. It's just what's unique about this specific application in this location that will be addressed, and we'll fine tune the design upon admission of the building permits.

Co-Chairman understand that a vote would be a lot easier to make if you have all this information and wished there was a better way to do this.

Mr. Dufay stated the consultant that Ms. Golden was referring to, he doesn't know if staff will be using this one specifically, but he is a very well-known consultant in this industry. They are in the middle of construction of a project in California right now. That project came through the county of San Luis Obispo, which is very nice wine country. That city was using the same consultant and they went after every single detail. They looked at thousands of pages of studies and documents and into every single line item. That's the kind of scrutiny you get from these guys. They probably charge a lot of money for that, but hopefully permitting fees are going to cover that, but they are good at it, and they are in for the city's best interest.

Chairman O'Brien asked if there were any other questions or comments.

A motion was made by Bruce Clawson/Alternate Lisa Salinas to approve the zoning change request from Alpha Omega Power, LLC to rezone from District "F" (Light Industrial) to District "S-P" (Site Plan) for the development of an electric power generating station utilizing lithium-ion battery energy storage system (BESS). There was a 4 – 1 vote in favor of the zoning change request. Co-Chairman Aric Owens voted against the request.

Chairman O'Brien reminded everyone that the Zoning Commission is seated by volunteers/citizens of the City of Texas City and that City Commission will have the final vote on the zoning change request. He also encouraged those in attendance to be at the City Commission meeting to answer any questions the Commissioners may have.

4. GENERAL UPDATES

There were no updates.

5. OTHER BUSINESS (Any conceptual development proposal requesting to come before the Zoning Commission)

A motion was made by Co-Chairman Aric Owens/Alternate Lisa Salinas to adjourn. All members present voted aye.

Kimberly Golden, Secretary

Date

Minutes approved by the Planning Board at its meeting on _____.

CITY COMMISSION REGULAR MTG

(6) (a)

Meeting Date: 09/04/2024

Consider and take action on the zoning change request from The Interfield Group to rezone from District "O" (Open Space) to District "E" (General Business) for a proposed Convenience Store and Retail Development. Located at 1414 FM 646 on the east side of Vicksburg Lane and west of Hwy 146 N.

Submitted For: Kim Golden, Transportation and Planning

Submitted By: Veronica Carreon, Transportation and Planning

Department: Transportation and Planning

Information

ACTION REQUEST

Consider and take action on the zoning change request from The Interfield Group to rezone 9.46 acres from District "O" (Open Space) to District "E" (General Business) for a proposed Convenience Store and Retail Development. Located at 1414 FM 646 on the east side of Vicksburg Lane and west of Hwy 146 N.

BACKGROUND (Brief Summary)

The applicant, Jack Hernandez, The Interfield Group, for owner, Palmer TC Investment LLC, proposes to subdivide 9.56 acres located on the east side of Vicksburg Lane at FM 646 to construct a new 4,700sft convenience store with fuel pumps and a new 12,000sft retail strip centers. The property is currently zoned District O – Open Space and requires rezoning for the proposed uses. An application for an amending plat to subdivide the property into three lots is pending. The location is also within the Gateway Overlay District and requires masonry building facades, enhanced landscaping, and underground utilities among other things.

The site is existing vacant acreage. The property across Vicksburg Lane to the west is zoned District A - Single Family Residential and mostly vacant except for an existing business (Curran International). The adjacent properties to the north and east are zoned District O and have occupied commercial establishments. The property to the south across FM 646 is also zoned District O and has an occupied commercial establishment.

The subject location is currently zoned District O (Open Space) which purpose is to provide for land inside the city limits which is not subdivided and/or relatively undeveloped. It is anticipated that all O districts will be rezoned to other zoning classifications as the city proceeds toward full development. District E (General Business) is intended to provide for an extensive variety of enclosed retail and commercial services to serve the overall needs of the community. Due to the variety and potential intensity of these uses, they should be located along major transportation corridors and be appropriately buffered from residential areas. The enumerated allowed principal uses includes 160.035(B)(12) "any retail sales, commercial business or service which is not included in the O-P, D, or D-1 Zoning Districts, provided that all such uses shall be completely within an enclosed building and are not noxious or offensive by reason of the emission of odor, dust, gas fumes, noise or vibration. The proposed convenience store and retail strip are consistent with the District E General Business zoning classification.

The site DOES NOT have access to Texas City municipal water and sewer. The applicant will need to annex into the Bacliff MUD to obtain access to water and sewer service. The property is required to have access to public water and sewer service before a building permit can be issued.

The site drains in part to FM 646, but in large part to a detention pond to be constructed in future Lot 3 which will discharge into the right of way of Vicksburg Lane and flow north into an improved drainage canal in the League City jurisdiction. The detention pond will be donated to a property owners association to be created by the Applicant and burdened with a drainage easement in favor of Lots A &

B. Future Lots A & B will share a driveway from FM 646. Lot A will also have a driveway from Vicksburg Lane. Elevation plans provided for the C-Store and Retail strip indicate construction materials will consist of CMU block with stone veneer and stucco, and some pre-finished metal coping and aluminum canopy. The buildings are shown to have standing seam metal roofs. These materials satisfy the requirements of the GWY. Applicant also provided landscaping plans which show landscaping in excess of 15%, which includes the placement of 88 trees of 3-inch caliper and 520 shrubs. The dumpsters are shown to have the necessary enclosures.

RECOMMENDATION

The proposed site improvements include a 4700sft convenience store with 24 striped parking spaces, which includes one designated as accessible. The proposed site improvements also include a 12,000sft retail strip with 60 striped parking spaces, which includes four designated as accessible.

Texas City water and sewer are NOT available to the site. Applicant will be required to annex into the Bacliff MUD to obtain the new water and sewer connections. Mayor Johnson has provided a letter of no objection to the Bacliff MUD. Formal consent to annexation by the City Commission will be required when applicant submits its petition to the MUD.

At its regular meeting on July 1, 2024, the Planning Board voted without opposition (5-0) to approve the proposed site plan, subject to the applicant obtaining the necessary zoning change, the property owners association being created, and the subdivision being recorded in proper form.

At its regular meeting on August 6, 2024, the Zoning Commission held a public hearing. Eight (8) letters with Notice of the Public Hearing were mailed to adjacent property owners. No one appeared at the hearing to give comments in favor or in opposition to the zoning change. The Zoning Commission then deliberated and voted unanimously (5-0) to recommend approval of the zoning change from District "O" Open Space to District "E" General Business for the 9.56 acres at 1414 FM 646.

Staff have no objection to the proposed re-zoning provided it is subject to the establishment of a property owners association and the recording of a subdivision in proper form. The applicant will also be required to obtain water and sewer service as a condition to obtain a building permit.

Fiscal Impact

Attachments

Plat of area to rezone

Legal Description of area to rezone

1414 FM 646 - Exhibits

1414 FM 646 - ZC Staff Report

1414 FM 646 - PB Staff Report

07-01-2024 PB Meeting Minutes



7500 San Felipe, Suite 1020
Houston, TX 77063
713.589.9000 (OFFICE)
713.231.5028 (FAX)

CITY PLANNING LETTER

GF Number: 7910-23-1011
Date: March 15, 2023
To: City of Texas City

Title Houston Holdings (Title Company) certifies that a diligent search of the real property records of Title Houston Holdings title plant has been made, as to the herein described property, and as of 8:00 AM on the 9th day of March 2023, we find the following:

Property Description:

BEING a 9.5595 acre (416,413 Sq. Ft.) tract of land out of and a part of Blocks Eleven (11) and Twelve (12) of Clifton Land Production Company Subdivision of League City Semi-Tropical Gardens, a subdivision in Galveston County, Texas, according to the map or plat thereof recorded in Volume 11, Page 4, of the Map Records of Galveston County, Texas, said 9.5595 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at the southwest corner of said Block 12, same being the point of intersection of the north right of way line of F.M. 646 (100' R.O.W.) with the east right of way line of Vicksburg Lane (40' R.O.W.) and from which a 5/8" iron rod was found at;

THENCE N29°11'06"W along and with east right of way line of said Vicksburg Lane, a distance of 646.12' (called 645') to a point for the northwest corner of the tract herein described, same being the southwest corner of a tract of land conveyed to Katie Mathews, as described in Instrument No. 2005007015, of the Deed Records of Galveston County, Texas and from which a 5/8" iron rod was found at S58°55'31"W 0.28';

THENCE N58°55'31"E along and with the south line of said Mathews Tract, a distance of 645.00' to a point for the northeast corner of the tract herein described and being in the west line of a tract of land conveyed to SS Dickinson LP, as described in Instrument No. 2021083617, of the Deed Records of Galveston County, Texas and from which a 2" iron pipe was found at S58°55'31"W 0.46';

THENCE S29°09'49"E along and with west line of said SS Dickinson LP tract, a distance of 646.04' (called 645') to a capped iron rod "RD ELLIS 4006" set for the southeast corner of the tract herein described and being in the north right of way line of said FM 646;

THENCE S58°55'03"W along the north right of way line of said FM 646, a distance of 644.76' to the POINT OF BEGINNING of the tract herein described.

Owner(s) of Record: Palmer PC Investment LLC

By virtue of General Warranty Deed dated May 3, 2022, recorded in Clerk's File No. 2022030654.

Deed Restrictions:

None of Record

Easements and other encumbrances:

Right of Way granted to Gulf Refining Company, as set out in Volume 1029, Page 489 and Volume 1247, Page 296 of the Deed Records of Galveston County, Texas.

Easement granted to Reliant Energy HL&P, a division of Reliant Energy, Incorporated, as set out in Clerk's File No. 2001005683.

Affidavit to the Public as to a surface application on-site wastewater treatment system, as set out in Clerk's File Nos. 2005055479 and 2005055481.

Lien Holder(s):

Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated May 3, 2022, recorded in Clerk's File No. 2022030655, executed by Palmer TX Investment, LLC, a Texas Limited Liability Company, payable to PTAK HOLDING LLC, a Texas Limited Liability Company, in the principal amount of \$2,100,000.00.

No examination has been made as to abstracts of judgments, state or federal tax liens, the status of taxes, tax suits or paving assessments.

This letter is used for the use of, and shall inure to the benefit of PLATTING. The liability of the Title Company, Title Houston Holdings, for mistakes or errors in this letter is hereby limited to the cost of said letter.

This letter is issued with the express understanding, evidenced by the acceptance thereof, that the Title Company does not intend to give or express any opinion as to the validity or effect of the instruments listed, and this letter is neither a guaranty nor a warranty of title.

Liability hereunder is limited to the amount paid for same. This report is furnished solely as an accommodation to the party requesting same and should not be relied upon, as a warranty or representation as to the title to the property described herein, and may not be given to or used by any third party. Title Houston Holdings assumes no liability whatsoever for the accuracy of this report or for any omissions or errors with respect hereto. You agree to release, indemnify, and hold harmless Title Houston Holdings of any negligence by them (whether sole, joint or otherwise) for any claim, loss, liability or damages arising out of this report.

This report is not title insurance. If a policy of title insurance is purchased, any liability thereunder shall be determined solely by the terms of such policy.

Caution: Title Houston Holdings assumes no liability for errors or omissions in this report or for verbal statements. This is a copy of a preliminary report made for use of Title Houston Holdings only, to determine whether a title insurance policy can be issued. If a copy is furnished to the parties involved in the transaction, it is to facilitate preparation of the necessary instruments, to point out curative requirements (if any) and to show the results of the company's title search (upon which on the company may rely).

None of the information contained herein, or the absence of other information, constitutes a representation to any party, other than the company, as to the status of title. If a title defect or encumbrance should exist which is not disclosed herein, the company shall not be liable by reason of furnishing the report or for any verbal statements related thereto. The company shall not be liable for any title defect unless a title insurance policy is issued insuring against such defect. The applicable premium paid and the company's liability shall exist only under the terms of its policy (as prescribed by the state board of insurance) and is measured and limited thereby.

Notice: Title Houston Holdings disclaims any warranties, expressed or implied, concerning the information. This information is solely for the use of the party requesting it and no one else. Title Houston Holdings liability for errors and/or omissions in this information is limited to the amount paid for this report. By accepting this form, the party requesting the information agrees that the disclaimer of warranties and liability

limitation contained in this paragraph is a part of its contract with Title Houston Holdings and will cover all actions arising by statutes, in contract, or in tort.

Title Houston Holdings



Katie Greene
Title Examiner

TITLE HOUSTON HOLDINGS



Country Liquor
Liquor store

The Force Fitness

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Fast Food · \$

Grand Ave

Jack in the Bo
2 for \$6

646

Hull St

Simply Self Storage
Rent Online &
First Month Free

Genesis All Upholstery
Upholstery shop

645

Gary's Anything Auto

Industrial Specialists

P. and Energy and
Infrastructure Services

645

Faith For Life Church

Acie's Outboards

Vicksburg St

Curran International

Vicksburg St

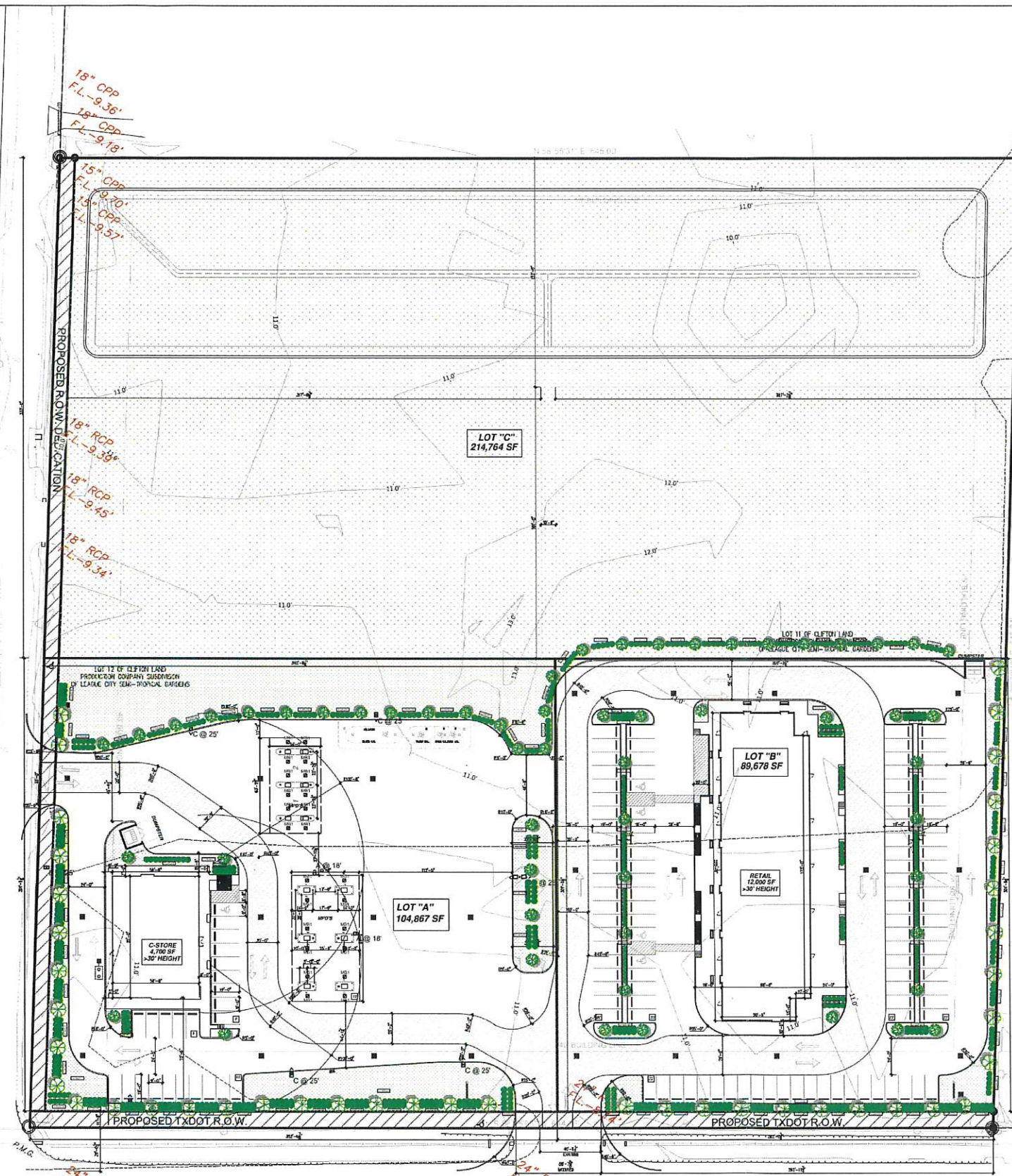
R O Water Resources

Vicksburg St

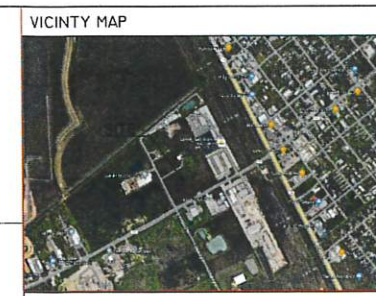
646

VICKSBURG LANE
40' R.O.W.

30" RCP
F.L.-6.76'
30" RCP
F.L.-7.02'
30" RCP
F.L.-6.93'
30" RCP
F.L.-7.53'
30" RCP
F.L.-7.25'
30" RCP
F.L.-7.20'
30" RCP
F.L.-7.12'
30" RCP
F.L.-7.23'
18" RCP
F.L.-8.76'
24" CPP
F.L.-7.35'
30" RCP
F.L.-7.49'
30" RCP
F.L.-7.70'
30" RCP
F.L.-7.27'
30" RCP
F.L.-7.09'
24" RCP
F.L.-8.58'
30" RCP
F.L.-7.44'
30" RCP
F.L.-7.66'
30" RCP
F.L.-7.53'



FM 646
(100' R.O.W.)



OVERALL ACREAGE IS 9.56 ACRES (416,413 SQF) FOR LOTS 11 AND 12, OF CLIFTON LAND PRODUCTION COMPANY SUBDIVISION OF LEAGUE CITY SEMITROPICAL GARDENS

ZONING DISTRICT - CURRENT ZONE "O"
PROPOSED ZONE "P-1"
ADJACENT ZONES "O"

LOT "A" 104,867 SF
LOT "B" 89,678 SF
LOT "C" 214,764 SF

MIN F.F.E. - 14.00'

PARKING SYNOPSIS

OCCUPANCY TYPE	PARKING COUNT	REQUIRED	PROPOSED
SHELL BUILDING "A" C-STORE	6,700/1,000 X 5	23.5 (24)	
SHELL BUILDING "B" RETAIL	4,000/1,000 X 5	50	
VACANT LAND "C"			
TOTAL		74	74

LANDSCAPING ANALYSIS

STREET R.O.W. - TYPE/CATEGORY	CALIPER SIZE	REQUIRED	PROPOSED
VICKSBURG STIGUERUS VIRGINIANA (D&K)	2"	571/571	10
FM ALBUQUERQUE VIRGINIANA (D&K)	2"	555/129 - 21.5	22
LIGUSTRUM JAPONICUM (MAXLEAF LIGUSTRUM) (SHEL)	5 GAL	32K/3 - 320	320
PARKING - TYPE/CATEGORY			
QUERCUS TEXANA RED (RED OAK)	3"		56
LIGUSTRUM JAPONICUM (MAXLEAF LIGUSTRUM) (SHEL)	5 GAL		200

TOTAL SQF	15% OF TOTAL ACREAGE	PROPOSED
708,449 SF	30,247 SF	37,825 SF
	REQUIRED # OF TREES	
	10,267 / 500 = 60	61

REVISIONS

DATE	ISSUED FOR	CLIENT REVIEW	PERMIT	BIDDING	CONSTRUCTION	FINAL REVIEW
03.06.23						

INTERFIELD
engineering | architecture
401 STUDEWOOD, SUITE 300 TEL (713) 780-0909
HOUSTON, TEXAS 77007 TX. REG. NO. F-5611
WWW.INTERFIELD.NET

PROPERTY OWNER
SBA ALLIANCE
STAVAN VORA PH: 832-338-8688
17928 HWY 3, SUITE 104B,
WEBSTER, TX, 77598



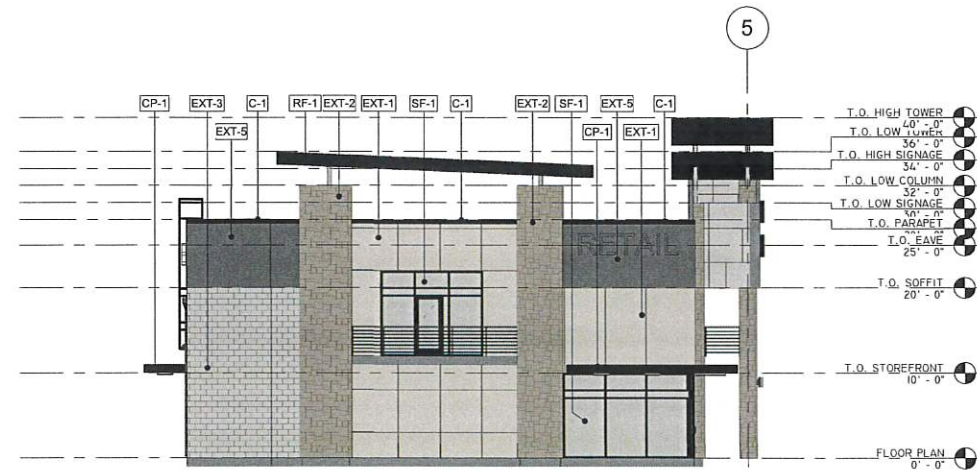
06.28.24
40' 20' 0 40'
SCALE: 1 INCH = 40 FEET

SBA ALLIANCE
PROPOSED C-STORE &
SHELL RETAIL BLDGS
1414 FM 646
DICKINSON, TX

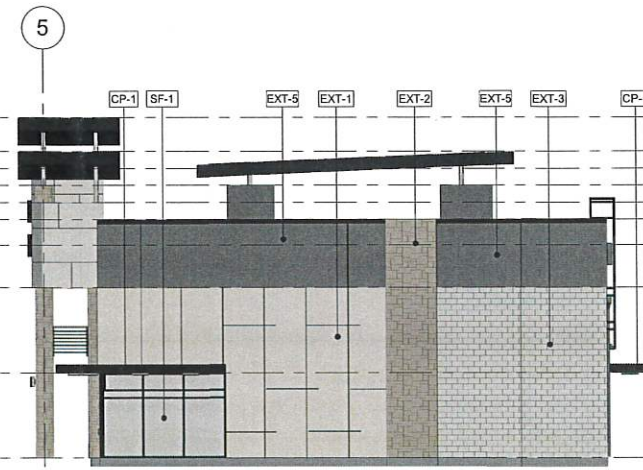
DETAILED SITE PLAN
GROSS ACREAGE: 9.56 ACRES
TEXAS CITY, GALVESTON COUNTY, TEXAS
PROJECT # 22125.00

DATE: 09.19.23
DRAWN BY: JJH
CHECKED BY: MFO





4 RETAIL NORTH ELEVATION
1" = 10'-0"



3 RETAIL SOUTH ELEVATION
1" = 10'-0"



2 RETAIL EAST ELEVATION
1" = 10'-0"

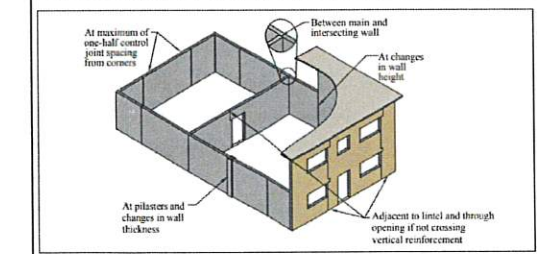


1 RETAIL WEST ELEVATION
1" = 10'-0"

EXTERIOR MATERIAL LEGEND

MARK	DESCRIPTION	MANUFACTURER	TYPE / COLOR
EXT-1	STUCCO SYSTEM	SHERWIN WILLIAMS	PAINTED: SW 7008 - ALABASTER
EXT-2	THIN STONE VENEER	CORONADO	COUNTRY CASTLE - CHABLIS
EXT-3	SPLIT FACE CMU - 8" X 8" X 16"	REVELS BLOCK	SPLIT FACE/355 LIMESTONE
EXT-4	STUCCO SYSTEM	SHERWIN WILLIAMS	PAINTED: SW 7656 - RHINESTONE
EXT-5	STUCCO SYSTEM	SHERWIN WILLIAMS	PAINTED: SW 7067 - CITYSCAPE
C-1	PRE-FINISHED METAL COPING	TO BE SELECTED BY CONTRACTOR	DARK BRONZE
CP-1	ALUMINUM CANOPY	AVADEX OR APPROVED EQUAL	DARK BRONZE
RF-1	STANDING SEAM METAL ROOF	MBCI OR APPROVED EQUAL	DARK BRONZE
SF-1	STOREFRONT SYSTEM	OLDCASTLE	GLAZING: TEMPERED, LOW-E; FRAME: DARK BRONZE

CMU CONTROL JOINT DIAGRAM:



- REFER TO SHEET A6.10 FOR DOOR TYPES AND A6.20 FOR WINDOW TYPES.
- PROVIDE SILICONE SEALANT OVER BACKER RODS AROUND ALL WINDOWS, DOORS, AND CONTROL JOINTS.
- PRE-FINISHED METAL DOWNSPOUT TO CONNECT TO STORM SEWER.
- DISTANCES BETWEEN CONTROL JOINT FOR MASONRY WALLS SHOULD NOT EXCEED THE LESSER OF:
A. LENGTH TO HEIGHT RATIO OF 1-1/2:1
B. 25' IN LENGTH
- STUCCO JOINT SPACING SHOULD NOT BE GREATER THAN 18'.
- NO STUCCO PANEL SHOULD EXCEED 144 S.F. ON VERTICAL APPLICATIONS OR 100 S.F. ON CURVED OR ANGULAR APPLICATIONS.
- NO STUCCO PANEL SHOULD EXCEED THE LENGTH-TO-WIDTH RATIO OF 2-1/2:1.
- USE PLYWOOD AT SIGNAGE LOCATIONS FOR PROPER ANCHORAGE AS NOTATED IN THE ZONES ON THE ELEVATION TO THE LEFT. IN THE SITUATION WHERE THE CONSTRUCTION TYPE IS II-B, THE PLYWOOD IS TO BE FIRE-RETARDANT-TREATED WOOD PER IBC 2012 SECTION 603.

ISSUE HISTORY		REVISIONS	
DATE	ISSUED FOR	REV#	REVISION DESCRIPTION
	CLIENT REVIEW		
	PERMIT		
	BIDDING		
	CONSTRUCTION		

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CONSTRUCTION

01.18.24

1" = 10'-0"

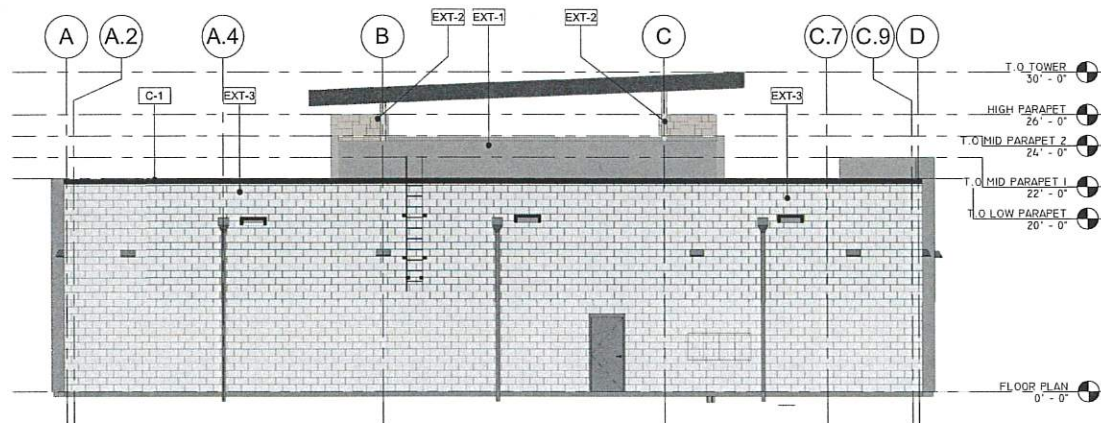
PALMER TC INVESTMENT, LLC
646 RETAIL
1414 FM 646,
DICKINSON, TX 77539

EXTERIOR
ELEVATIONS - RETAIL

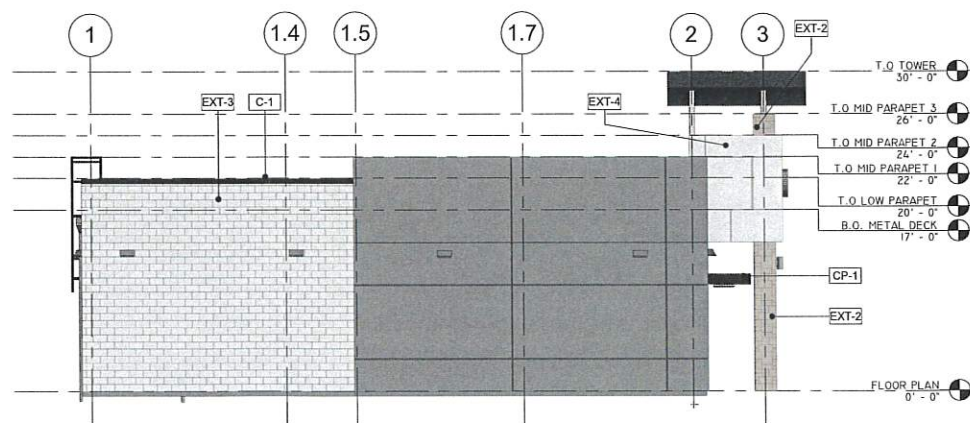
22125.20

DATE: 07/11/23
DRAWN BY: NB
CHECKED BY: JJH/SCB

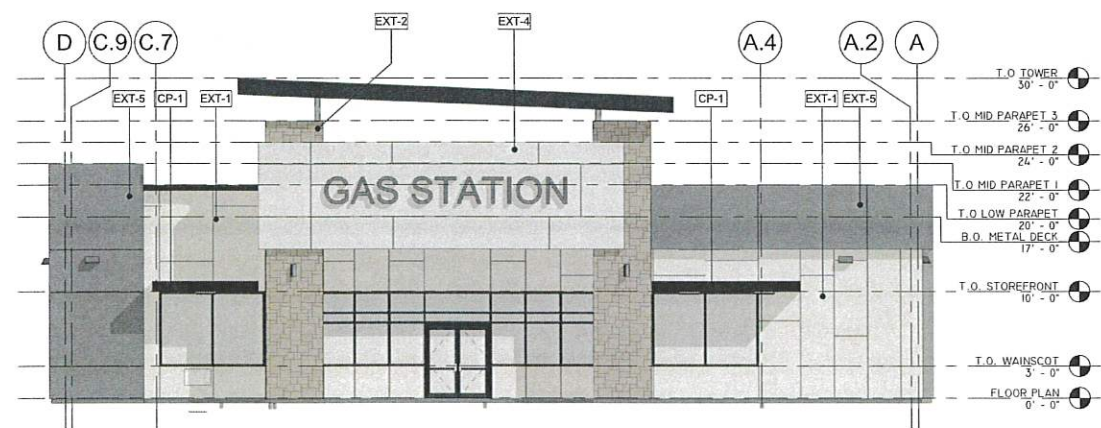
SHEET: A2.10



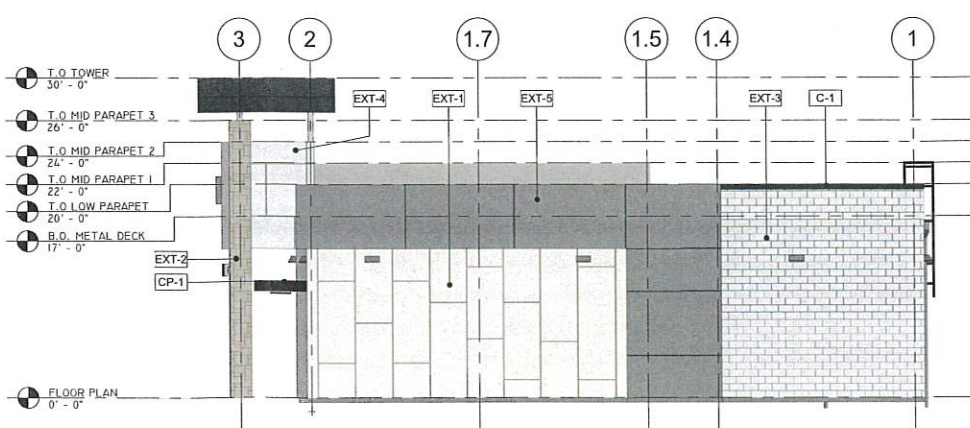
4 EXTERIOR WEST ELEVATION
1/8" = 1'-0"



3 EXTERIOR SOUTH ELEVATION
1/8" = 1'-0"



1 EXTERIOR EAST ELEVATION
1/8" = 1'-0"

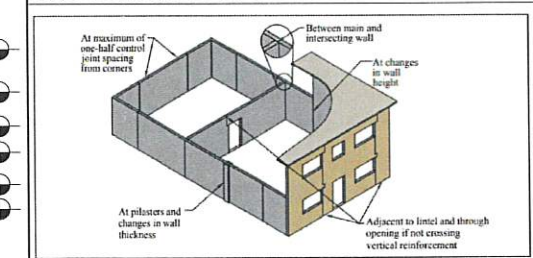


2 EXTERIOR NORTH ELEVATION
1/8" = 1'-0"

EXTERIOR MATERIAL LEGEND

MARK	DESCRIPTION	MANUFACTURER	TYPE / COLOR
EXT-1	STUCCO SYSTEM	SHERWIN WILLIAMS	PAINTED: SW 7008 - ALABASTER
EXT-2	THIN STONE VENEER	CORONADO	COUNTRY CASTLE - CHARLIS
EXT-3	SPLIT FACE CMU - 8"D X 8"H X 16"L	REVELS BLOCK	SPLIT FACE/355
EXT-4	STUCCO SYSTEM	SHERWIN WILLIAMS	PAINTED: SW 7656 - RHINESTONE
EXT-5	STUCCO SYSTEM	SHERWIN WILLIAMS	PAINTED: SW 7067 - CITYSCAPE
C-1	PRE-FINISHED METAL COPING	TO BE SELECTED BY CONTRACTOR	DARK BRONZE
CP-1	ALUMINUM CANOPY	AVADEK OR APPROVED EQUAL	DARK BRONZE
RF-1	STANDING SEAM METAL ROOF	MBCI OR APPROVED EQUAL	BATTENLOK; COLOR: BURNISHED SLATE
SF-1	STOREFRONT SYSTEM	OLDCASTLE	GLAZING: TEMPERED, LOW-E; FRAME: DARK BRONZE

CMU CONTROL JOINT DIAGRAM:



GENERAL NOTES:

- REFER TO SHEET A6.10 FOR DOOR TYPES AND A6.20 FOR WINDOW TYPES.
- PROVIDE SILICONE SEALANT OVER BACKER RODS AROUND ALL WINDOWS, DOORS, AND CONTROL JOINTS.
- PRE-FINISHED METAL DOWNSPOUT TO CONNECT TO STORM SEWER.
- DISTANCES BETWEEN CONTROL JOINT FOR MASONRY WALLS SHOULD NOT EXCEED THE LESSER OF:
A. LENGTH TO HEIGHT RATIO OF 1-1/2:1
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ISSUE HISTORY		REVISIONS	
DATE	ISSUED FOR	REV#	REVISION DESCRIPTION
	CLIENT REVIEW		
	PERMIT		
	BIDDING		
	CONSTRUCTION		

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CONSTRUCTION

01.17.24

1/8" = 1'-0"

PALMER TC INVESTMENT, LLC
646 RETAIL
1414 FM 646,
BACLIFF, TX 77539


EXTERIOR
ELEVATIONS -
C-STORF
22125.10

DATE: 06.21.23
DRAWN BY: NB
CHECKED BY: J.JH/SCB

SHEET: A2.10



STAFF REPORT

TO: Zoning Commission – regular meeting August 6, 2024
FROM: Kim Golden, P.E., City Engineer 
CC: Doug Kneupper, P.E.
DATE: June 27, 2024
RE: 1414 FM 646 – Zoning change request from District O (Open Space) to District E (General Business) - Proposed C-Store and Retail

Background: The applicant, Jack Hernandez, The Interfield Group, for owner, Palmer TC Investment LLC, proposes to subdivide 9.56 acres located on the east side of Vicksburg Lane at FM 646 to construct a new 4,700sft convenience store with fuel pumps and a new 12,000sft retail strip. The property is currently zoned District O – Open Space and requires rezoning for the proposed uses. An application for rezoning is pending, as well as an amending plat to subdivide the property into three lots. The location is also within the Gateway Overlay District and requires masonry building facades, enhanced landscaping, and underground utilities among other things.

The site is existing vacant acreage. The property across Vicksburg Lane to the west is zoned District A - Single Family Residential and mostly vacant except for an existing business (Curran International). The adjacent properties to the north and east are zoned District O and have occupied commercial establishments. The property to the south across FM 646 is also zoned District O and has an occupied commercial establishment.

At its regular meeting on July 1, 2024, the Planning Board voted without opposition to approve the proposed site plan, subject to the applicant obtaining the necessary zoning change, the property owners association being created, and the subdivision being recorded in proper form.

Requested Action: The applicant is requesting a zoning change from District O (Open Space) to District E (General Business) to allow for the construction and operation of a new convenience store with fuel pumps and retail strip, subject to approval of rezoning to an appropriate district.

Staff Review and Recommendation: The subject location is currently zoned District O (Open Space) which purpose is to provide for land inside the city limits which is not subdivided and/or relatively undeveloped. It is anticipated that all O districts will be rezoned to other zoning classifications as the city proceeds toward full development.

District E (General Business) is intended to provide for an extensive variety of enclosed retail and commercial services to serve the overall needs of the community. Due to the variety and potential intensity of these uses, they should be located along major transportation corridors and be appropriately buffered from residential areas. The enumerated allowed principal uses



Texas City

EST. 1911

ENGINEERING & PLANNING

includes 160.035(B)(12) "any retail sales, commercial business or service which is not included in the O-P, D, or D-1 Zoning Districts, provided that all such uses shall be completely within an enclosed building and are not noxious or offensive by reason of the emission of odor, dust, gas fumes, noise or vibration. The proposed convenience store and retail strip are consistent with the District E General Business zoning classification.

The proposed site improvements include a 4700sft convenience store with 24 striped parking spaces, which includes one designated as accessible. The proposed site improvements also include a 12,000sft retail strip with 60 striped parking spaces, which includes four designated as accessible.

Texas City water and sewer are NOT available to the site. Applicant will be required to annex into the Bacliff MUD to obtain the new water and sewer connections. Mayor Johnson has provided a letter of no objection to the Bacliff MUD. Formal consent to annexation by the City Commission will be required when applicant submits its petition to the MUD.

The site drains in part to FM 646, but in large part to a detention pond to be constructed in future Lot 3 which will discharge into the right of way of Vicksburg Lane and flow north into an improved drainage canal in the League City jurisdiction. The detention pond will be donated to a property owners association to be created by the Applicant and burdened with a drainage easement in favor of Lots A & B.

Future Lots A & B will share a driveway from FM 646. Lot A will also have a driveway from Vicksburg Lane.

Elevation plans provided for the C-Store and Retail strip indicate construction materials will consist of CMU block with stone veneer and stucco, and some pre-finished metal coping and aluminum canopy. The buildings are shown to have standing seam metal roofs. These materials satisfy the requirements of the GWY.

Applicant also provided landscaping plans which show landscaping in excess of 15% which includes the placement of 88 trees of 3-inch caliper and 520 shrubs. The dumpsters are shown to have the necessary enclosures.

Staff have no objection to the proposed re-zoning provided it is subject to the establishment of a property owners association and the recording of a subdivision in proper form.

"the place where COMMUNITY MATTERS"

1801 9th Avenue North * P.O. Drawer 2608 * Texas City, TX 77592-2608

(409) 948-3111 * www.texascitytx.gov

STAFF REPORT

TO: Planning Board – regular meeting July 1, 2024
FROM: Kim Golden, P.E., City Engineer *KG*
CC: Doug Kneupper, P.E.
DATE: June 27, 2024
RE: 1414 FM 646 – Proposed C-Store and Retail

Background: The applicant, Jack Hernandez, The Interfield Group, for owner, Palmer TC Investment LLC, proposes to subdivide 9.56 acres located on the east side of Vicksburg Lane at FM 646 to construct a new 4,700sft convenience store with fuel pumps and a new 12,000sft retail strip. The property is currently zoned District O – Open Space and requires rezoning for the proposed uses. An application for rezoning is pending, as well as an amending plat to subdivide the property into three lots. The location is also within the Gateway Overlay District and requires masonry building facades, enhanced landscaping, and underground utilities among other things.

The site is existing vacant acreage. The property across Vicksburg Lane to the west is zoned District A Single Family Residential and mostly vacant except for an existing business (Curran International). The adjacent properties to the north and east are zoned District O and have occupied commercial establishments. The property to the south across FM 646 is also zoned District O and has an occupied commercial establishment.

Requested Action: The applicant is requesting approval of a Development Plan for the construction of a new convenience store with fuel pumps and retail strip, subject to approval of rezoning to an appropriate district.

Staff Review and Recommendation: The proposed site improvements include a 4700 sft convenience store with 24 striped parking spaces, which includes one designated as accessible. The proposed site improvements also include a 12,000 sft retail strip with 60 striped parking spaces, which includes four designated as accessible.

Texas City water and sewer are NOT available to the site. Applicant will be required to annex into the Bacliff MUD to obtain the new water and sewer connections. Mayor Johnson has provided a letter of no objection to the Bacliff MUD. Formal consent to annexation by the City Commission will be required when applicant submits its petition to the MUD.

The site drains in part to FM 646, but in large part to a detention pond to be constructed in future Lot 3 which will discharge into the right of way of Vicksburg Lane and flow north into an improved drainage canal in the League City jurisdiction. The detention pond will be donated to a property owners association to be created by the Applicant and burdened with a drainage easement in favor of Lots A & B.

Future Lots A & B will share a driveway from FM 646. Lot A will also have a driveway from Vicksburg Lane.

Elevation plans provided for the C-Store and Retail strip indicate construction materials will consist of CMU block with stone veneer and stucco, and some pre-finished metal coping and aluminum canopy. The buildings are shown to have standing seam metal roofs. These materials satisfy the requirements of the GWY.

Applicant also provided landscaping plans which show landscaping in excess of 15% which includes the placement of 88 trees of 3-inch caliper and 520 shrubs. The dumpsters are shown to have the necessary enclosures.

The submitted site plan satisfies the applicable ordinance requirements; staff have no objection to **approval conditioned upon the rezoning being approved, the property owners association being created, and the subdivision being recorded in proper form.**

PLANNING BOARD MINUTES JULY 1, 2024

The Planning Board of the City of Texas City met in a regular meeting on Monday, July 1, 2024, at 5:00 p.m. Planning Board members present: Chairman Dickey Campbell, Commissioner Thelma Bowie, Commissioner Jami Clark, Jayla Weatherspoon, Alternate Member Aric Owens, and Alternate Member Jose Boix. Staff members present: Kimberly Golden (Secretary), David Kinchen (Deputy Building Official) and Veronica Carreon. Guests were: Enrique Munoz and Bryan Carnes (Carnes Builders), Mary Villareal and Jack Hernandez (The Interfield Group), Steven Vora, and Julie Tovar (S.H.I.P. Intern).

Chairman Dickey Campbell indicated a quorum was present and called the meeting to order.

1) APPROVAL OF MINUTES

A motion to approve the minutes of June 3, 2024, was made by Jayla Weatherspoon/Commissioner Jami Clark. All other members present voted aye.

2) PUBLIC COMMENTS

There were no public comments.

3) REGULAR AGENDA

- a. Consider and take action on the Development Plan for 6th Street North Parking Lot for Brazos Urethane Building. Located at the northeast corner of 6th Street North and 11th Avenue North.**

Ms. Golden stated Brazos Urethane is building an office building to the south of this location that was previously approved by the Planning Board as a separate project and it is currently ongoing.

This is currently a vacant lot that will contain 39 new parking spaces with 2 of them designated accessible. This location has 3 zoning districts that apply to it. The basic zoning district is District "E-1" (Central Business). The other two zoning districts are the 6th Street Revitalization District and the Gateway Overlay District.

The property fits all of those zoning requirements and they will be adding some landscaping and a 6' stacked stone wall along the east property line to provide separation for the adjacent residential use. The site plan did not receive details of this wall, but it will be required on the plans when submitting for permitting as well as the location and placement of the street sign and street light pole(s).

Staff recommend approval of the Development Plan subject to confirming the stacked stone wall system will be at least 6' in height.

Ms. Golden then indicated on Google maps where the parking lot would be located and also indicated where the new office building is being constructed.

Chairman Dickey Clark asked if there was an intent to keep the old office building across the street. Mr. Bryan Clark wanted to be clear and replied that these properties are not owned by Brazos Urethane. They are owned by Scoggins Holdings. They are leased to Brazos Urethane on a long-term basis right now and the intent is once the employees are moved to the new office building, they will redo the exterior of the current Brazos Urethane building to make it look like the new building.

Mr. Clark added that the stacked stone fencing along the parking lot will match what they have constructed behind the new building.

Chairman Campbell noted the parking lot entrances being placed on 11th Avenue North and not 6th Street North. Mr. Clark replied that is correct and they have agreed with staff that they will keep the gates open for city events as needed.

Alternate Member Jose Boix asked if the parking lot would be gated and would it be paved concrete. Mr. Clark replied yes.

Alternate Member Aric Owens asked whether the Development Plan meets the 15% landscaping requirement, to which Ms. Golden replied yes. He then asked if the new office building meets this requirement as well. Ms. Golden replied that it did when the plans were originally approved. The Applicant then found a discrepancy between the survey and what was actually there and so the lot ended up being smaller. The building had already been built and there was an accommodation to remedy this.

Mr. Clark added that the survey was actually 10' shorter and they figured out quickly that they did not have room on each side and had to make those accommodations. Ms. Golden added that the project lost 2 parking spaces, but they were able to keep all the landscaping.

Chairman Campbell asked if there were any additional questions. There were none.

A motion was made by Alternate Member Jose Boix/Commissioner Thelma Bowie to approve the Development Plan for 6th Street North Parking Lot, subject to confirming the stacked stone wall will be at least 6' in height. All other members present voted aye.

b. Consider and take action on the Development Plan for a Proposed C-Store and Retail from The Interfield Group. Located at 1414 FM 646 on the east side of Vicksburg Lane.

Ms. Golden stated this a vacant piece of property on 9.56 acres located on the east of Vicksburg Lane at FM 646, which is in the Gateway Overlay District. It is currently zoned District "O" (Open Space) and there is also an application for rezoning that is coming through the process at the same time.

The Applicant is also subdividing the land into three lots – two that will front on FM 646, one that will front on Vicksburg Lane. The property that will front on Vicksburg Lane will have a detention pond on it and will serve the other two lots. There will be easements in favor of those lots and dedicated to the Property Owner's Association to maintain the detention pond.

The convenience store is 4,700 sq. ft and will include 24 striped parking spaces with one designated as accessible. There will also be a 12,000 sq. ft. retail strip with 60 striped parking spaces with four designated as accessible.

This site is not served by Texas City water and sewer, so the Applicant will be required to annex into the Bacliff MUD to obtain the new water and sewer connections. Mayor Johnson has provided a letter of no objection to the Bacliff MUD. The Applicant will have to go through an annexation process that the City Commission will actually have to formally consent to.

The site drains in part to FM 646, but in large part to a detention pond to be constructed in future Lot 3, which will discharge into the right-of-way of Vicksburg Lane and flow north into an improved drainage canal in the League City jurisdiction.

The property is located in the Gateway Overlay District so it will have masonry construction along with an excess of the required 15% landscaping which will include 88 trees of 3" caliper and 520 shrubs. Dumpsters will be screened.

Ms. Golden indicated that there was a representative to answer any questions from the Board.

Commissioner Jami Clark asked if there are any retail tenants identified at this time. The owner, Stavan Vora, replied they do not have any tenants at this time, and they are just constructing the buildout of the shopping center and will go from there.

Ms. Golden recommended that the Board's approval be conditioned on the rezoning being approved and on the property owner's association being created and the subdivision being recorded in proper form.

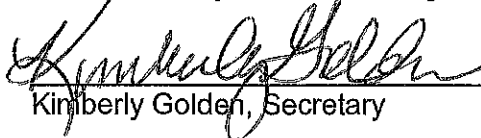
A motion was made by Commissioner Thelma Bowie/Jayla Weatherspoon to approve the Development Plan conditioned upon the rezoning being approved, the property owner's association being created, and the subdivision being recorded in property form.

4) GENERAL UPDATES

Ms. Golden introduced Julie Tovar, the department's S.H.I.P. intern. She comes from a family of construction and is learning about permitting and has completed some projects and working on more. Engineering & Planning and Inspections are happy to have her working with them.

5) OTHER BUSINESS (Any conceptual development proposal requesting to come before the Planning Board)

Chairman Dickey Campbell asked if there was any other business to which there was none. **A motion was made by Commissioner Jami Clark/Commissioner Thelma Bowie to adjourn. All members present voted aye.**

 7-22-2024
Kimberly Golden, Secretary Date

Minutes approved by the Planning Board at its meeting on 7-22-2024.

CITY COMMISSION REGULAR MTG

(6) (b)

Meeting Date: 09/04/2024

Consider and take action on the zoning change request from Alpha Omega Power, LLC to rezone from District "F" (Light Industrial) to District "S-P" (Site Plan) for development of an electric power generating station utilizing lithium-ion battery energy storage system (BESS). Located at 701 Hwy 146 N., and north of the existing Golden Rule Logistics.

Submitted For: Kim Golden, Transportation and Planning

Submitted By: Veronica Carreon, Transportation and Planning

Department: Transportation and Planning

Information

ACTION REQUEST

Alpha Omega Power LLC is requesting a zoning change for 6.29 acres from District "F" (Light Industrial) to District "SP" Site Plan for the development of a proposed electric power generating station utilizing lithium ion battery energy storage system (BESS). The site is located at 701 S.H. 146 which is on the west side of SH 146, north of Golden Logistics, LLC and south of Baker Distributing.

As a BESS installation the application is being processed as a District SP (Site Plan) rezoning consistent with Section 160.051(A)(1)(f) *provide for the development of specific uses which are not normally found in zoning districts*, and (h) *provide additional information and regulatory controls concerning the proposed use or uses for the protection of the public health, safety, morals and general welfare of the community*.

BACKGROUND (Brief Summary)

The applicant is AOP Holdings, LLC d/b/a Alpha Omega Power, which was established in 2023. The proposed project, Southern Select Energy, will encompass approximately 5.71 acres on 6.29 acres of vacant land. The location of the project is on the west side of S.H 146 N and north of the existing Golden Logistics. The property owner is LM Storage, LLC. The property is zoned District F. The project proposes to develop up to 106 lithium-ion battery containers for 205MW, 410MWh capacity at the site.

PROPOSED SITE IMPROVEMENTS - The Site improvements will include a 20ft concrete perimeter fire lane with access to all containers and two access roads as required by the Fire Marshal, security fencing, and landscaping of at least 6ft in height to provide screening of the battery containers from S.H. 146. The fencing along SH 146 will be a 6ft masonry wall. Container spacing has been adjusted to the 15ft minimum required by the Fire Marshal. In addition to the generating station, offsite improvements include electric transmission infrastructure that connects to Texas-New Mexico Power facilities in the vicinity. No water or sewer will be needed for this development. Site drainage will be accomplished using an on-site collection system that outfalls into the adjacent drainage systems.

EXISTING SITE - The project site is part of the former ETC Texas City Trucking Terminal. The site has been determined to have certain environmental concerns affecting the groundwater. Specifically, a barium plume. Monitoring wells have been established and were monitored for a required amount of time. Applicant has indicated and provided documentation that the monitoring has been concluded and the wells have been or will be removed. The location of the monitoring wells have been indicated on the site plan. As part of an approved Response Plan, the property is subject to a deed restriction which limits its use to commercial/industrial use. A Revised Response Action Plan dated June 9, 2021, and prepared for the previous owner, Enterprise Logistic Services, LLC, to provide to TCEQ, represented expected future use to remain a trucking facility. A copy of the Revised Action Plan will be included in the agenda packet with this staff report.

ADJACENT PROPERTIES - The adjacent property to the north is Baker Distributing Company at 801

SH 146. The adjacent property to the south is burdened with an easement to TNMP for the location of transmission poles and wires. No survey has been provided, but the width of the easement when scaled with the Google Maps tool indicates a width of approximately 200ft. However, the existence of overhead power lines in close proximity to the location should be noted. Immediately south and adjacent to the TNMP easement is Golden Rule Logistics, another distribution entity. Golden Rule Logistics is a tenant on the property. Records show the property south of the proposed site to have common ownership, LM Storage, LLC, with the subject location. It is understood the project owner, Alpha Omega Power, LLC, will also be a tenant. The property is bounded on the west by the railroad. Gulf Coast Water Authority owns the vacant property which is immediately west of the railroad. The site is bounded on the east by S.H. 146. The TNMP substation is located immediately east of SH 146.

TNMP HEIGHTS SUBSTATION - The applicant's submission includes the following information regarding the location in proximity to the TNMP Heights Substation:

The project location near the TNHeights substation was chosen based on detailed power flow analysis of the transmission system within TNMP service area. This analysis identified the TNHeights substation as an ideal candidate for a utility-scale BESS, providing sufficient injection capacity while remaining close to TNMP critical load centers. Injection capacity is a metric used to show how much electrical power (in MW) can be transmitted into a point of interconnection, such as a substation. The TNHeights substation has the highest injection capacity (over 800MW), making it the ideal point of interconnection for multiple BESS projects to support regional grid reliability and electricity demand. Currently, one BESS project is operational at the TNHeights substation (BRP Heights, 10MW project), while three others are in queue to interconnect (Zeya 256MW, IEP Blackhawk 100 MW, and Southern Select 100MW). The combined capacity of these four projects (466MW) is well below the available injection capacity of the substation, indicating the substation is capable of supporting multiple BESS projects.

BATTERY CHEMISTRY and MANUFACTURER - The application indicates an intent to use LFP (lithium iron phosphate) battery cells which is the cell chemistry which currently available information indicates may be less prone to thermal runaway than the NMO (nickel manganese cobalt) battery cells. Applicant has indicated Fluence or Tesla are likely manufacturers, and that they intend to use CATL cells. CATL cells are considered Tier 1 cells.

FLOOD PLAIN/COASTAL ENVIRONMENT - The site is not located in a flood plain. It is located inside the area protected by the Texas City Hurricane Levee. Container foundations will be placed at elevation 7.0ft in accordance with Texas City ordinances.

Regarding protection from the saltwater/coastal environment, the applicant advises in an email received 7.19.2024 that the containers are fully integrated cabinets and shipped to the site as such, so there is no exposure to the elements during the installation process. The containers will meet the requirements of IP 67 at the Pack level and IP55 at the Battery Container level. IP67 means the individual battery packs do not allow for the ingress of dust particles. They are protected against the ingress of water from spraying/water jets and are rated to be submerged in up to 3' of water for up to 30 minutes without penetration. IP55 means the battery containers themselves provide protection from dust, low pressure water jets and damp and wet weather. The storage units also meet an anti-corrosion class of up to C5-H depending on the local environment. C5 is the highest class of anti-corrosion coating. Air filter maintenance is also a critical element of maintaining the units for optimal operating conditions and will be performed by a regular maintenance crew as often as needed, which may be weekly. Some of the indications in the email are different from the spec sheet provided with the application. The representations of the email are considered to supersede the spec sheet insofar as the conditions being presented to the Planning Board and others for approval at this time. **The codes and standards most appropriate for saltwater/coastal environment will be applied by the Fire Marshal and Chief Building Official during the permitting process.**

FIRE PROTECTION - Fire protection will be provided by on-site systems specifically designed for this application with Fire Marshal coordination. The project will be subject to the 2024 fire codes and building codes. The Fire Marshal may require additional submittals at the time of permitting and has advised these requirements will include at minimum commissioning and decommissioning plans, site safety plan, all UL test results for the batteries to be installed, a bond or other security for decommissioning and some requirements for insurance. The Chief Building Official is likely to require annual certification and inspection of ventilation systems at minimum. The Applicant acknowledges these, and other requirements must be satisfied to obtain the necessary permits.

DECOMMISSIONING - The costs of decommissioning have been identified as an issue of concern for cities because it is known that batteries have a service life which expires. Additionally, as technology

evolves, installations become obsolete. A recent article from the Green Clean Solar, January 11, 2023, references some key findings from a study of the Electric Power Research Institute. The study estimated the cost of decommissioning for a 1-MWh NMC lithium-ion based grid energy storage system as \$91,500. Applying this factor to the 410 MWH capacity proposed for this project would estimate the decommissioning cost as \$37,515,000. Although this project is not proposing NMC lithium-ion batteries, the estimated decommissioning cost is based upon 40% dismantling and packaging, 30% transportation and only 30% recycling. The battery chemistry would have the most impact on the cost of recycling. The estimated cost is significant enough to warrant the posting of substantial security.

SECOND POINT OF ACCESS: The secondary access is proposed to be through adjacent property which is represented has have common ownership with the site being rezoned. Applicant provided a proposed access agreement with the adjoining property owner just before the Planning Board meeting. Staff have subsequently provided comments on the access easement and recommend the final location be dedicated by plat as a fire lane for secondary access to the site. Such platting is necessary to be sure the access can be maintained permanently through the adjacent property which is used for logistics and staging. Fire Marshal has indicated a requirement for lockbox access. **THE APPLICANT HAS NOT AGREED TO PROVIDE THE ACCESS BY PLAT BUT IS MAINTAINING THE EASEMENT AGREEMENT AS SUFFICIENT.**

APPLICANT'S EXPERIENCE/COMPANY HISTORY – The applicant is AOP Holdings, LLC d/b/a Alpha Omega Power, which was established in 2023. The company profile and resumes of the key personnel are attached to the staff memos.

RECOMMENDATION

At its regular meeting on July 22, 2024, the Planning Board voted 3-2 to approve the proposed Detailed Site Plan and to recommend approval of the zoning change to the Zoning Commission and to the City Commission.

At its regular meeting on August 6, 2024, the Zoning Commission held a public hearing. Notices of Public Hearing were mailed to eight (8) adjacent property owners before the hearing. One property owner appeared to ask questions about the proposed development but did not state an opposition to the request for rezoning or to the project. Following discussion and deliberation the Zoning Commission voted 4-1 to recommend the rezoning to the City Commission.

Fiscal Impact

Attachments

701 Hwy 146 N - ZC Staff Report

701 Hwy 146 N - Exhibits

701 Hwy 146 N - Legal Description

701 Hwy 146 N - PB Staff Report


07-22-2024 PB Meeting Minutes

701 Hwy 146 N - Alpha Omega Supplemental Submission 1

701 Hwy 146 N - Alpha Omega Supplemental Submission 2

701 Hwy 146 N - Access Easement Agmt with LM Storage LLC

STAFF REPORT

To: Zoning Commission - Regular Meeting – August 6, 2024
From: Kim Golden, P.E., City Engineer 
CC: Doug Kneupper, P.E.
Date: July 29, 2024
Re: Southern Select Energy Storage Project (BESS) – 701 Hwy 146 N

Background: The applicant is Alpha Omega Power, LLC. The proposed project will encompass approximately 5.71 acres on 6.29 acres of vacant land. The location of the project is on the west side of S.H 146 N and north of the existing Golden Logistics. The property owner is LM Storage, LLC. The property is zoned District F. The project proposes to develop up to 106 lithium-ion containers for 205MW, 410MWh capacity at the site.

At its regular meeting on July 22, 2024, the Planning Board voted 3-2 to approve the proposed Detailed Site Plan and to recommend approval of the zoning change to the Zoning Commission and to the City Commission.

Requested Action: The applicant is requesting approval of a zoning change for development of an electric power generating station utilizing lithium-ion battery energy storage system. The application is being processed as a District SP (Site Plan) rezoning consistent with Section 160.051(A)(1)(f) *provide for the development of specific uses which are not normally found in zoning districts*, and (h) *provide additional information and regulatory controls concerning the proposed use or uses for the protection of the public health, safety, morals and general welfare of the community*. Zoning Commission recommendation will be presented to the City Commission for action regarding the requested zoning change.

Staff Review and Recommendation: The project will include up to 106 individual battery containers for 205MW, 410MWh two-hour capacity at the site. The two-hour designation is in reference to the time to fully charge and fully discharge under standardized conditions.

This proposed BESS installation is approximately 20times larger in battery capacity than the previously approved BESS installations. The site is also physically much larger than the previously approved. This site is 6.29 acres with 5.71 acres in use for batteries, as compared to the two previously approved projects which were 0.48 acres and 1.5 acres respectively.

PROPOSED SITE IMPROVEMENTS - The Site improvements will include a 20ft concrete perimeter fire lane with access to all containers and two access roads as required by the Fire Marshal, security fencing, and landscaping of at least 6ft in

"the place where COMMUNITY MATTERS"

height to provide screening of the battery containers from S.H. 146. The fencing along SH 146 will be a 6ft masonry wall. Container spacing has been adjusted to the 15ft minimum required by the Fire Marshal. In addition to the generating station, offsite improvements include electric transmission infrastructure that connects to Texas-New Mexico Power facilities in the vicinity. No water or sewer will be needed for this development. Site drainage will be accomplished using an on-site collection system that outfalls into the adjacent drainage systems.

EXISTING SITE - The project site is part of the former ETC Texas City Trucking Terminal. The site has been determined to have certain environmental concerns affecting the groundwater. Specifically, a barium plume. Monitoring wells have been established and were monitored for a required amount of time. Applicant has indicated and provided documentation that the monitoring has been concluded and the wells have been or will be removed. The location of the monitoring wells have been indicated on the site plan. As part of an approved Response Plan, the property is subject to a deed restriction which limits its use to commercial/industrial use. A Revised Response Action Plan dated June 9, 2021, and prepared for the previous owner, Enterprise Logistic Services, LLC, to provide to TCEQ, represented expected future use to remain a trucking facility. A copy of the Revised Action Plan will be included in the agenda packet with this staff report.

ADJACENT PROPERTIES - The adjacent property to the north is Baker Distributing Company at 801 SH 146. The adjacent property to the south is burdened with an easement to TNMP for the location of transmission poles and wires. No survey has been provided, but the width of the easement when scaled with the Google Maps tool indicates a width of approximately 200ft. However, the existence of overhead power lines in close proximity to the location should be noted. Immediately south and adjacent to the TNMP easement is Golden Rule Logistics, another distribution entity. Golden Rule Logistics is a tenant on the property. Records show the property south of the proposed site to have common ownership, LM Storage, LLC, with the subject location. It is understood the project owner, Alpha Omega Power, LLC, will also be a tenant. The property is bounded on the west by the railroad. Gulf Coast Water Authority owns the vacant property which is immediately west of the railroad. The site is bounded on the east by S.H. 146. The TNMP substation is located immediately east of SH 146.

TNMP HEIGHTS SUBSTATION - The applicant's submission includes the following information regarding the location in proximity to the TNMP Heights Substation:

The project location near the TNHeights substation was chosen based on detailed power flow analysis of the transmission system within TNMP service area. This analysis identified the TNHeights substation as an ideal candidate for a utility-scale BESS, providing sufficient injection capacity while remaining close to TNMP critical load centers. Injection capacity is a metric used to show how much electrical power (in MW) can be transmitted into a point of interconnection, such as a substation.

The [attached map] shows the individual injection capacity for four of the largest substations within city limits. The TNHeights substation has the highest injection capacity (over 800MW), making it the ideal point of interconnection for multiple BESS projects to support regional grid reliability and electricity demand. Currently, one BESS project is operational at the TNHeights substation (BRP Heights, 10MW project), while three others are in queue to interconnect (Zeya 256MW, IEP Blackhawk 100 MW, and Southern Select 100MW). The combined capacity of these four projects (466MW) is well below the available injection capacity of the substation, indicating the substation is capable of supporting multiple BESS projects.

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FLOOD PLAIN/COASTAL ENVIRONMENT - The site is not located in a flood plain. It is located inside the area protected by the Texas City Hurricane Levee. Container foundations will be placed at elevation 7.0ft in accordance with Texas City ordinances.

Regarding protection from the saltwater/coastal environment, the applicant advises in an email received 7.19.2024 that the containers are fully integrated cabinets and shipped to the site as such, so there is no exposure to the elements during the installation process. The containers will meet the requirements of IP 67 at the Pack level and IP55 at the Battery Container level. IP67 means the individual battery packs do not allow for the ingress of dust particles. They are protected against the ingress of water from spraying/water jets and are rated to be submersed in up to 3' of water for up to 30 minutes without penetration. IP55 means the battery containers themselves provide protection from dust, low pressure water jets and damp and wet weather. The storage units also meet an anti-corrosion class of up to C5-H depending on the local environment. C5 is the highest class of anti-corrosion coating. Air filter maintenance is also a critical element of maintaining the units for optimal operating conditions and will be performed by a regular maintenance crew as often as needed, which may be weekly. Some of the indications in the email are different from the spec sheet provided with the application. The representations of the email are considered to supersede the spec sheet insofar as the conditions being presented to the Planning Board and others for approval at this time. **The codes and standards most appropriate for saltwater/coastal environment will be applied by the Fire Marshal and Chief Building Official during the permitting process.**

FIRE PROTECTION - Fire protection will be provided by on-site systems specifically designed for this application with Fire Marshal coordination. The project will be subject to the 2024 fire codes and building codes. The Fire Marshal may require

additional submittals at the time of permitting and has advised these requirements will include at minimum commissioning and decommissioning plans, site safety plan, all UL test results for the batteries to be installed, a bond or other security for decommissioning and some requirements for insurance. The Chief Building Official is likely to require annual certification and inspection of ventilation systems at minimum. The Applicant acknowledges these, and other requirements must be satisfied to obtain the necessary permits.

DECOMMISSIONING - The costs of decommissioning have been identified as an issue of concern for cities because it is known that batteries have a service life which expires. Additionally, as technology evolves, installations become obsolete. A recent article from the Green Clean Solar, January 11, 2023, references some key findings from a study of the Electric Power Research Institute. The study estimated the cost of decommissioning for a 1-MWh NMC lithium-ion based grid energy storage system as \$91,500. Applying this factor to the 410 MWh capacity proposed for this project would estimate the decommissioning cost as \$37,515,000. Although this project is not proposing NMC lithium-ion batteries, the estimated decommissioning cost is based upon 40% dismantling and packaging, 30% transportation and only 30% recycling. The battery chemistry would have the most impact on the cost of recycling. The estimated cost is significant enough to warrant the posting of substantial security.

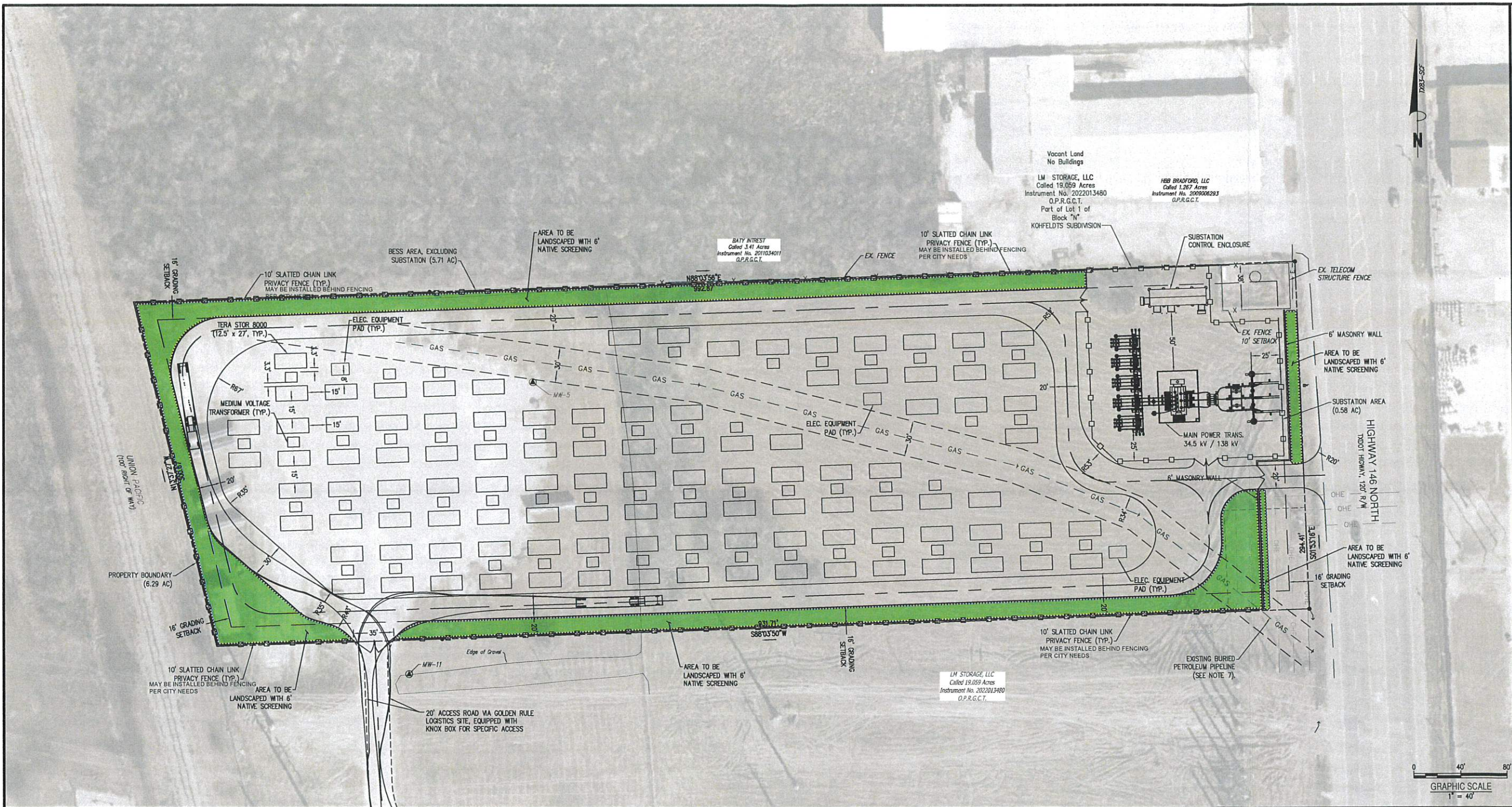
SECOND POINT OF ACCESS – ISSUE UNRESOLVED: The secondary access is proposed to be through adjacent property under lease to Golden Rule Logistics. Applicant provided a proposed access agreement with the adjoining property owner just before the Planning Board meeting. Staff have subsequently provided comments on the access easement and recommend the final location be dedicated by plat as a fire lane for secondary access to the site. Such platting is necessary to be sure the access can be maintained permanently through the adjacent property which is used for logistics and staging. Fire Marshal has indicated a requirement for lockbox access.

APPLICANT'S EXPERIENCE/COMPANY HISTORY – The applicant is AOP Holdings, LLC d/b/a Alpha Omega Power, was established in 2023. The company profile and resumes of the key personnel are provided with this memo.

Analysis and RECOMMENDATION: City staff have reviewed the submitted Site Plan and provided numerous comments regarding spacing, paving, screening and landscaping standards. All of the site plan specific comments have been resolved, with the exception of the issue regarding the second point of access. Staff cannot make a recommendation regarding the adequacy of the second point of access without more information regarding the specific agreement with the adjacent property owner and tenant. Staff maintains its recommendation that the final location of the second access be approved by the Fire Marshal and granted by plat.

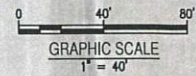
Applicant's information indicates it is a start-up company. Given the magnitude of the potential estimated cost of the decommissioning, the need for posting of a substantial bond should not be overlooked.

Staff makes no recommendation regarding this application for rezoning.



NOT FOR CONSTRUCTION

SPECIAL EXCEPTION SITE PLAN
SOUTHERN SELECT BATTERY SITE
ALPHA OMEGA POWER
 GALVESTON COUNTY, TEXAS
 CITY OF TEXAS CITY

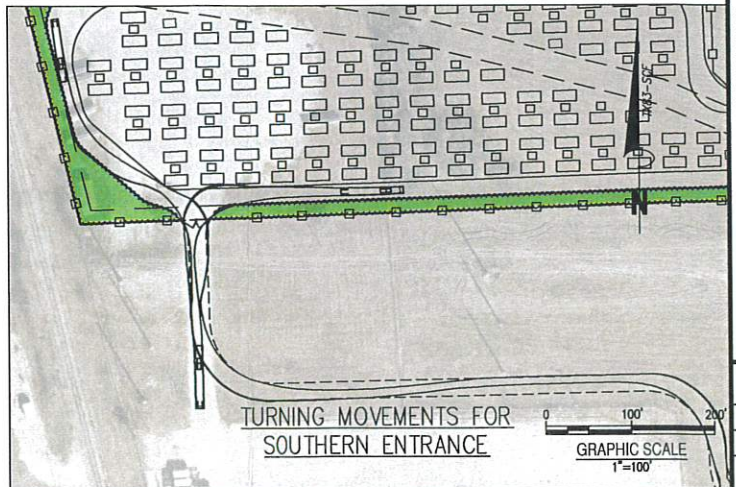
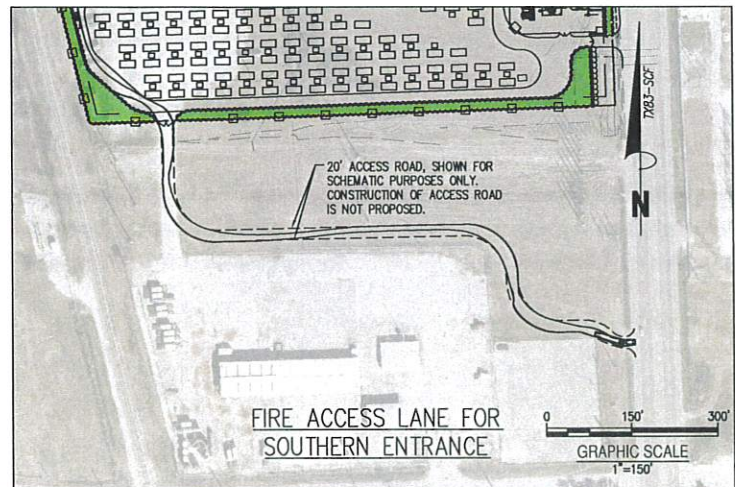


ENERGY STORAGE SYSTEM DESCRIPTION	
NAMEPLATE	205 MW / 410 MWH
PROPERTY AREA	6.29 ACRES
BESS AREA	5.71 ACRES
SUBSTATION AREA	0.58 ACRES

MAJOR EQUIPMENT LIST	
NUMBER OF TERA STOR 8000 SERIES, AC/CP 2 (205 MW / 410 MWH)	106
NUMBER OF EPC POWER 6M (INSIDE BESS UNITS)	106
NUMBER OF MEDIUM VOLTAGE TRANSFORMERS, RATED AT 7.5 MVA	53

- LEGEND:**
- PROPERTY LINE
 - 6" MASONRY WALL
 - FENCE
 - - - EXISTING SETBACK
 - - - CIVIL GRADING SETBACK
 - PIPELINE
 - OVERHEAD POWER LINE GATE
 - MONITORING WELL
- ABBREVIATION LIST:**
- BESS - BATTERY ENERGY STORAGE SYSTEM
 - BOL - BEGINNING OF LIFE
 - EOL - END OF LIFE
 - POI - POINT OF INTERCONNECTION
 - TYP - TYPICAL

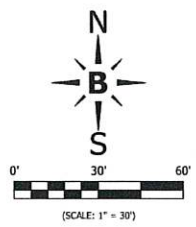
- NOTES:**
- THIS IS THE FINAL PERMITTING SITE PLAN, NOT FOR CONSTRUCTION. A SEPARATE DETAILED DESIGN PACKAGE SHALL INCLUDE ALL RELEVANT CIVIL, STRUCTURAL, SAFETY, AND ELECTRICAL DETAILS FOR CONSTRUCTION. EQUIPMENT QUANTITIES AND DIMENSIONS LISTED IN EQUIPMENT LIST ARE PROVIDED BY THE CLIENT AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE CONSULTANT.
 - THE SITE BOUNDARY ON THE EAST WILL HAVE A MASONRY WALL.
 - LANDSCAPING SHALL BE PROVIDED AT 15% OF THE SITE AREA, WHICH IS APPROXIMATELY 41,000 SF.
 - LAYOUT AS SHOWN WOULD BE CONSIDERED NEAR EXPOSURE UNDER THE GUIDELINES OF NFPA 855 AND IFC.
 - AUGMENTATION NOT INCLUDED ON LAYOUT.
 - ALL ACCESS AND DRIVING AREAS ARE PAVED WITH CONCRETE.
 - THE PIPELINE HAS BEEN ABANDONED AND THE GAS COMPANY IS IN THE PROCESS OF RELEASING THE EASEMENT.
 - BOTH ACCESS ROADS TO BE CONCRETE.
 - MONITORING WELLS HAVE BEEN DECOMMISSIONED.



CONSTRUCTION REVISION SUMMARY			
NO.	DATE	DESCRIPTION	ISSUED FOR
A	07/05/24	ISSUED FOR REVIEW	DESIGN
B	07/06/24	ISSUED FOR SITE ACCEPTANCE PLAN	CAS
C	05/31/24	ISSUED FOR SITE ACCEPTANCE PLAN	TNC

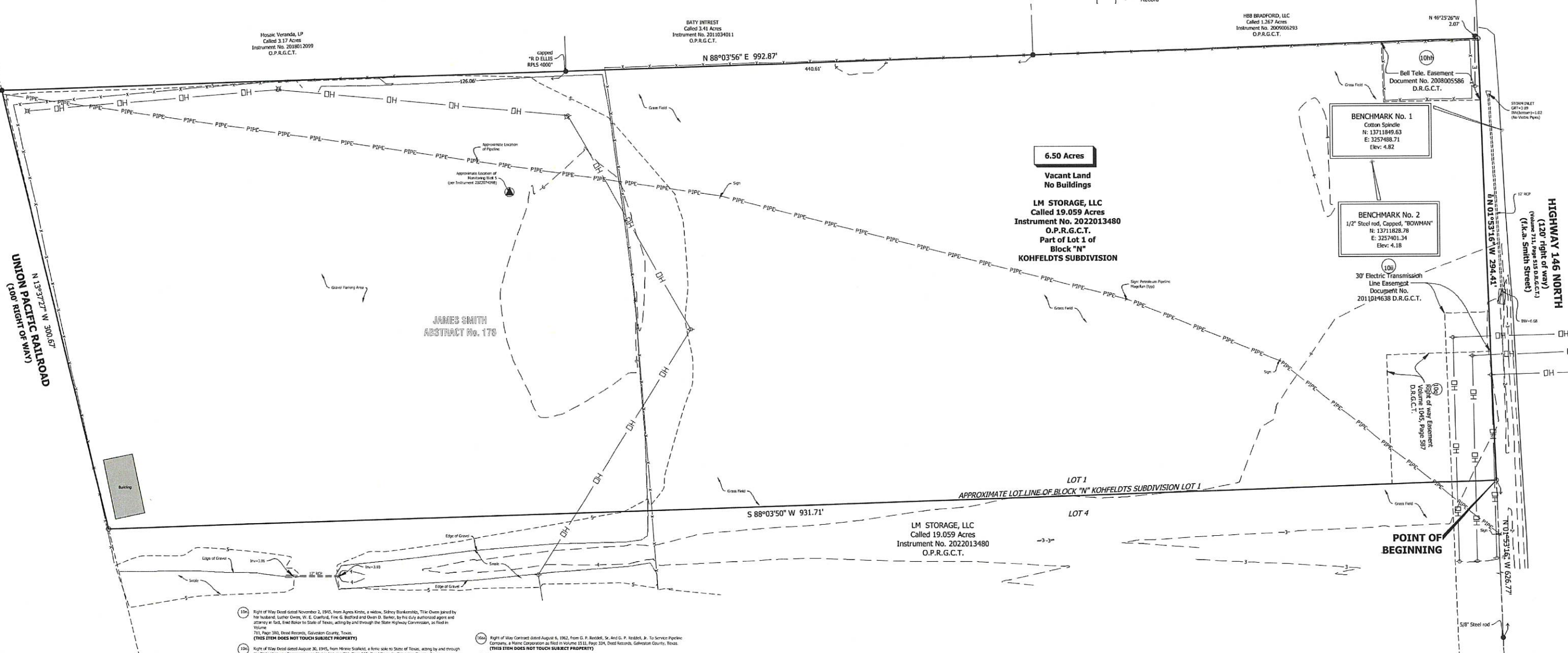
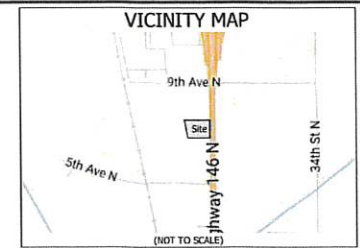
TNC DESIGN, CAS DRAWN, TNC CHKD
 JOB No. V:070747-01-0021
 DATE: Jul 11, 2024
 SHEET 1

ALTA/NSPS LAND TITLE SURVEY SOUTHERN SELECT SITE



LEGEND

- 1/2 Inch Steel Rod Capped "TRUE MERIDIAN" Found unless otherwise noted
- 1/2 Inch Steel Rod Capped "BOWMAN" Set
- X — Fence Line
- Aerial utility line
- ⚡ Power Pole
- ⊕ Monitoring Well
- O.P.R.G.C.T. — Official Public Records of Galveston County, Texas
- D.R.G.C.T. — Deed Records of Galveston County, Texas
- [] Record



6.50 Acres
Vacant Land
No Buildings
LM STORAGE, LLC
Called 19.059 Acres
Instrument No. 2022013480
O.P.R.G.C.T.
Part of Lot 1 of
Block "N"
KOHFELDT'S SUBDIVISION

BENCHMARK No. 1
Cotton Spindle
N: 13711849.63
E: 3257468.71
Elev: 4.82

BENCHMARK No. 2
1/2" Steel rod, Capped, "BOWMAN"
N: 13711828.78
E: 3257401.34
Elev: 4.18

UNION PACIFIC RAILROAD
(100' RIGHT OF WAY)
N 13°37'27" W 300.67'

HIGHWAY 146 NORTH
(120' RIGHT OF WAY)
(Volume 111, Page 515 D.R.G.C.T.)
(F.R.A. Smith Street)

JAMES SMITH
ABSTRACT No. 178

EXCEPTIONS FROM COVERAGE

- Amtrust Title Insurance Company
Effective Date: October 4, 2023
Issued Date: October 20, 2023
File No. FW-61002-TX
- (10a) Oil and Gas Mineral Leases as filed in Volume 825, Page 121, Volume 828, Page 62, Volume 2090, Page 485, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT SURVEY RELATED)**
 - (10b) Right of Way Deed dated July 13, 1931, from Francis Graham and Mrs. Mera Graham, a widow to the Texas Pipeline Company, as filed in Volume 492, Page 498, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10c) Right of Way Contract dated July 26, 1933, from Mera Graham, a widow, and Francis Graham to Standard Pipeline Company, a Delaware corporation as filed in Volume 487, Page 7, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10d) Right of Way Contract from Mera Graham, a widow and Francis Graham, her son to Pan American Pipeline Company, a Delaware corporation as filed in Volume 547, Page 551, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10e) Pipeline Easement dated December 27, 1935, from Francis Graham and Mera, M. Graham, a widow, to Bennett Cude Oil Refining Company as filed in Volume 562, Page 6, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10f) Right of Way Agreement dated February 26, 1941, from Mera Joanne Scovel, a widow, to Pan American Pipeline Company, as filed in Volume 627, Page 554, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10g) Right of Way Agreement dated January 3, 1950, from Mera Joanne Scovel to Shell Pipeline Corporation as filed in Volume 893, Page 466, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10h) Right of Way Deed dated November 8, 1943, from Mera Joanne Scovel, a widow to DeLima Plant Corporation, a corporation controlled by the United States of America as filed in Volume 628, Page 369, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**
 - (10i) Right of Way Deed dated November 8, 1943, from Mera Joanne Scovel, a widow to DeLima Plant Corporation, a corporation controlled by the United States of America as filed in Volume 671, Page 519, Deed Records, Galveston County, Texas. **(THIS ITEM IS NOT PLOTTED, BLANKET IN NATURE)**

Legal Description

19.059 ACRES, MORE OR LESS, BEING ALL THAT CERTAIN TRACT OR PARCEL OF LAND SITUATED IN GALVESTON COUNTY, TEXAS, BEING ALL OF LOT 1 AND PART OF LOT 4 IN SUBDIVISION "N" KOHFELDT'S SUBDIVISION OF THE JAMES SMITH SURVEY, ABSTRACT 178, GALVESTON COUNTY, TEXAS, AS DESCRIBED IN THAT CERTAIN SPECIAL WARRANTY DEED WITH VENDOR'S LIES FROM KAG LEASING, INC., A DELAWARE CORPORATION TO LM STORAGE, LLC, A TEXAS LIMITED LIABILITY COMPANY, FILED OF RECORD IN DOCUMENT NO. 2022013480 OF THE OFFICIAL DEED RECORDS OF GALVESTON COUNTY, TEXAS. (CAD 1 & 2)

As-Surveyed Description

BEING all that tract of land located in the James Smith Survey, Abstract No. 178 in Galveston County, Texas, being part of Lot 1 in Subdivision "N" Kohfeldt's Subdivision, recorded in Volume 9, Page 101 of the Deed Records Galveston County Texas (D.R.G.C.T.) and being part of that called 19.059 acres of land as described in a deed to LM Storage, LLC as recorded in Instrument 2022013480 of the Official Public Records of Galveston County Texas (O.P.R.G.C.T.), and further described as follows:

BEGINNING at a 1/2 inch steel rod, capped "BOWMAN" set in the common line of 19.059 acres and the west right of way line of Highway 146 North, also being at the approximate common corner of Lot 1 and Lot 4 of the Kohfeldt's Subdivision, from which a 5/8 inch steel rod found, bears South 01 degrees 53 minutes 16 seconds East, a distance of 234.41 feet for reference;

THENCE South 88 degrees 03 minutes 56 seconds East a distance of 931.71 feet with the approximate lot line of Lot 1 and Lot 4 and through said 19.059 acres to a 1/2 inch steel rod, capped "BOWMAN" set at the southwest corner of here described tract of land and being in the common line of said 19.059 acres and the northwest line of Union Pacific Railroad;

THENCE North 13 degrees 37 minutes 27 seconds West a distance of 300.67 feet with said common line of said 19.059 acres and Union Pacific Railroad to a 1/2 inch steel rod found at the northwest corner of said 19.059 acres and being the southwest corner of that called 1.157 acres of land as described in a deed to HBB Bradford, LLC, recorded in Instrument 2009005293 of said O.P.R.G.C.T.;

THENCE North 88 degrees 03 minutes 56 seconds East a distance of 992.87 feet with the common line of said 19.059 acres and said 1.157 acres passing the northeast line of said 3.17 acres and with that called 2.41 acres of land as described in a deed to Billy Interco, recorded in Instrument No. 2011034811 of said O.P.R.G.C.T. and with that called 1.357 acres of land as described in a deed to HBB Bradford, LLC, recorded in Instrument 2009005293 of said O.P.R.G.C.T.;

THENCE South 01 degrees 53 minutes 16 seconds East a distance of 234.41 feet with the common line of said 19.059 acres and the west right of way line of Highway 146 North, from which a 1/2 inch steel rod, capped True Meridian, found, bears South 25 degrees 26 seconds West, a distance of 2.07 feet for reference;

ALTA/NSPS LAND TITLE SURVEY
5.00 ACRES OUT OF THE JAMES SMITH SURVEY,
ABSTRACT 178, GALVESTON COUNTY, TEXAS

BEING PART OF LOT 1, IN SUBDIVISION "N" KOHFELDT'S SUBDIVISION OF THE JAMES SMITH SURVEY, ABSTRACT 178, GALVESTON COUNTY, TEXAS, AS DESCRIBED IN THAT CERTAIN SPECIAL WARRANTY DEED WITH VENDOR'S LIES FROM KAG LEASING, INC., A DELAWARE CORPORATION TO LM STORAGE, LLC, A TEXAS LIMITED LIABILITY COMPANY, FILED OF RECORD IN DOCUMENT NO. 2022013480 OF THE OFFICIAL DEED RECORDS OF GALVESTON COUNTY, TEXAS

1519 Job No.: 07047-01-002	Drawn By: REP
Sheet 1 of 1	Reviewed By: DWC
Property Address: 3030 5th Avenue North La Marque, TX 77590	Prepared For: Alpha-Omega

To: Stewart Title Guaranty Company:

This is to certify that this map or plot and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 2, 3, 4, 5, 7, 8, 11, 13, 14 and 15 of Table A thereof.

The field work was completed on August 24, 2023.
Date of Plot or Map: September 15, 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.

Daniel Wayne Dugan
Registered Professional Land Surveyor
Texas Registration No. 6894

Purpose:

Date of Release: _____, 2021

The survey may only be used for the original transaction for which it was created. Digital or photostatic reproductions of this survey may not be used for subsequent transactions. This survey is only valid with the presence of a sealed impression seal.

Bowman
CENTRAL TEXAS | 3054 Franklin Ave., Ste. A, Waco, TX 76710
381.776.0539 | TDSPLA@BOWMAN.COM

BEING all that tract of land located in the James Smith Survey, Abstract No. 176 in Galveston County, Texas, being part of Lot 1 in Subdivision "N" Kohfeldt's Subdivision, recorded in Volume 9, Page 101 of the Deed Records Galveston County Texas (D.R.G.C.T.) and being part of that called 19.059 acres of land as described in a deed to L.M. Storage, LLC as recorded in Instrument 2022013480 of the Official Public Records of Galveston County Texas (O.P.R.G.C.T.), and further described as follows:

BEGINNING at a 1/2 inch steel rod, capped "BOWMAN" set in the common line of 19.059 acres and the west right of way line of Highway 146 North, also being at the approximate common corner of Lot 1 and Lot 4 of the Kohfeldt's Subdivision, from which a 5/8 inch steel rod found, bears South 01 degrees 53 minutes 16 seconds East, a distance of 626.77 feet for reference;

THENCE South 88 degrees 03 minutes 50 seconds West a distance of 931.71 feet with the approximate lot line of Lot 1 and Lot 4 and through said 19.059 acres to a 1/2 inch steel rod, capped "BOWMAN" set at the southwest corner of here described tract of land and being in the common line of said 19.059 acres and the northwest line of Union Pacific Railroad;

THENCE North 13 degrees 37 minutes 27 seconds West a distance of 300.67 feet with said common line of said 19.059 acres and Union Pacific Railroad to a 1/2 inch steel rod found at the northwest corner of said 19.059 acres and being the southwest corner of that called 3.17 acres of land as described in a deed to Mosaic Veranda, LP, recorded in Instrument No. 2018012099 of said O.P.R.G.C.T.

THENCE North 88 degrees 03 minutes 56 seconds East a distance of 992.87 feet with the common line of said 19.059 acres and said 3.17 acres passing the northeast line of said 3.17 acres and with that called 3.41 acres of land as described in a deed to Baty Interest, recorded in Instrument No. 2011034011 of said O.P.R.G.C.T. and with that called 1.267 acres of land as described in a deed to HBB Bradford, LLC recorded in Instrument 2009006293 of said O.P.R.G.C.T., to a 1/2 inch steel rod, capped "BOWMAN" set at the intersection former by the common line of said 19.059 and said 1.267 acres with the west right of way line of Highway 146 North, from which a 1/2 inch steel rod, capped True Meridian, found, bears North 46 degrees 25 minutes 26 seconds West, a distance of 2.07 feet for reference;

THENCE South 01 degrees 53 minutes 16 seconds East a distance of 294.41 feet with the common line of said 19.059 acres and the west right of way line of Highway 146 to the **POINT OF BEGINNING, CONTAINING 6.50 ACRES OF LAND**



Texas City

EST. 1911

ENGINEERING & PLANNING

STAFF REPORT

To: Planning Board – Regular Meeting – July 22, 2024

From: Kim Golden, P.E., City Engineer *KG*

CC: Doug Kneupper, P.E.

Date: July 19, 2024

Re: Southern Select Energy Storage Project (BESS) – 701 Hwy 146 N

Background: The applicant is Alpha Omega Power, LLC. The proposed project will encompass approximately 5.71 acres on 6.29 acres of vacant land. The location of the project is on the west side of S.H 146 N and north of the existing Golden Logistics. The property owner is LM Storage, LLC. The property is zoned District F. The project proposes to develop up to 106 lithium-ion containers for 205MW, 410MWh capacity at the site.

Requested Action: The applicant is requesting approval of a Detailed Site Plan for development of an electric power generating station utilizing lithium-ion battery energy storage system. The application is being processed as a District SP (Site Plan) rezoning consistent with Section 160.051(A)(1)(f) *provide for the development of specific uses which are not normally found in zoning districts, and (h) provide additional information and regulatory controls concerning the proposed use or uses for the protection of the public health, safety, morals and general welfare of the community.* Planning Board recommendation will be presented to the Zoning Commission and City Commission as required for the District SP rezoning.

Staff Review and Recommendation: The project will include up to 106 individual battery containers for 205MW, 410MWh two-hour capacity at the site. The two-hour designation is in reference to the time to fully charge and fully discharge under standardized conditions.

This proposed BESS installation is approximately 20times larger in battery capacity than the previously approved BESS installations. The site is also physically much larger than the previously approved. This site is 6.29 acres with 5.71 acres in use for batteries, as compared to the two previously approved projects which were 0.48 acres and 1.5 acres respectively.

PROPOSED SITE IMPROVEMENTS - The Site improvements will include a 20ft concrete perimeter fire lane with access to all containers and two access roads as required by the Fire Marshal, security fencing, and landscaping of at least 6ft in height to provide screening of the battery containers from S.H. 146. The fencing along SH 146 will be a 6ft masonry wall. Container spacing has been adjusted to the

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15ft minimum required by the Fire Marshal. In addition to the generating station, offsite improvements include electric transmission infrastructure that connects to Texas-New Mexico Power facilities in the vicinity. No water or sewer will be needed for this development. Site drainage will be accomplished using an on-site collection system that outfalls into the adjacent drainage systems.

EXISTING SITE - The project site is part of the former ETC Texas City Trucking Terminal. The site has been determined to have certain environmental concerns affecting the groundwater. Specifically, a barium plume. Monitoring wells have been established and were monitored for a required amount of time. Applicant has indicated and provided documentation that the monitoring has been concluded and the wells have been or will be removed. The location of the monitoring wells have been indicated on the site plan. As part of an approved Response Plan, the property is subject to a deed restriction which limits its use to commercial/industrial use. A Revised Response Action Plan dated June 9, 2021 and prepared for the previous owner, Enterprise Logistic Services, LLC, to provide to TCEQ, represented expected future use to remain a trucking facility. A copy of the Revised Action Plan will be included in the agenda packet with this staff report.

ADJACENT PROPERTIES - The adjacent property to the north is Baker Distributing Company at 801 SH 146. The adjacent property to the south is burdened with an easement to TNMP for the location of transmission poles and wires. No survey has been provided, but the width of the easement when scaled with the Google Maps tool indicates a width of approximately 200ft. However, the existence of overhead power lines in close proximity to the location should be noted. Immediately south and adjacent to the TNMP easement is the Golden Rule Logistics, another distribution entity. Golden Rule Logistics is a tenant on the property. Records show the property south of the proposed site to have common ownership, LM Storage, LLC, with the subject location. It is understood the project owner, Alpha Omega Power, LLC, will also be a tenant. The property is bounded on the west by the railroad. Gulf Coast Water Authority owns the vacant property which is immediately west of the railroad. The site is bounded on the east by S.H. 146. The TNMP substation is located immediately east of SH 146.

TNMP HEIGHTS SUBSTATION - The applicant's submission includes the following information regarding the location in proximity to the TNMP Heights Substation:

The project location near the TNHeights substation was chosen based on detailed power flow analysis of the transmission system within TNMP service area. This analysis identified the TNHeights substation as an ideal candidate for a utility-scale BESS, providing sufficient injection capacity while remaining close to TNMP critical load centers. Injection capacity is a metric used to show how much electrical power (in MW) can be transmitted into a point of interconnection, such as a substation.

The [attached map] shows the individual injection capacity for four of the largest substations within city limits. The TNHeights substation has the

highest injection capacity (over 800MW), making it the ideal point of interconnection for multiple BESS projects to support regional grid reliability and electricity demand. Currently, one BESS project is operational at the TNHeights substation (BRP Heights, 10MW project), while three others are in queue to interconnect (Zeya 256MW, IEP Blackhawk 100 MW, and Southern Select 100MW). The combined capacity of these four projects (466MW) is well below the available injection capacity of the substation, indicating the substation is capable of supporting multiple BESS projects.

BATTERY CHEMISTRY - The application indicates an intent to use LFP (lithium iron phosphate) battery cells which is the less cell chemistry which current available information indicates may be less prone to thermal runaway than the NMO (nickel manganese cobalt) battery cells. Applicant has not indicated the specific cell manufacturer nor the specific manufacturer that will be providing the assembled containers for installation.

FLOOD PLAIN/COASTAL ENVIRONMENT - The site is not located in a flood plain. It is located inside the area protected by the Texas City Hurricane Levee. Container foundations will be placed at elevation 7.0ft in accordance with Texas City ordinances.

Regarding protection from the saltwater/coastal environment, the applicant advises in an email received 7.19.2024 that the containers are fully integrated cabinets and shipped to the site as such, so there is no exposure to the elements during the installation process. The containers will meet the requirements of IP 67 at the Pack level and IP55 at the Battery Container level. IP67 means the individual battery packs do not allow for the ingress of dust particles. They are protected against the ingress of water from spraying/water jets and are rated to be submersed in up to 3' of water for up to 30 minutes without penetration. IP55 means the battery containers themselves provide protection from dust, low pressure water jets and damp and wet weather. The storage units also meet an anti-corrosion class of up to C5-H depending on the local environment. C5 is the highest class of anti-corrosion coating. Air filter maintenance is also a critical element of maintaining the units for optimal operating conditions and will be performed by a regular maintenance crew as often as needed, which may be weekly. Some of the indications in the email are different from the spec sheet provided with the application. The representations of the email are considered to supercede the spec sheet insofar as the conditions being presented to the Planning Board and others for approval at this time. **The codes and standards most appropriate for saltwater/coastal environment will be applied by the Fire Marshal and Chief Building Official during the permitting process.**

FIRE PROTECTION - Fire protection will be provided by on-site systems specifically designed for this application with Fire Marshal coordination. The project will be

subject to the 2024 fire codes and building codes. The Fire Marshal may require additional submittals at the time of permitting and has advised these requirements will include at minimum commissioning and decommissioning plans, site safety plan, all UL test results for the batteries to be installed, a bond or other security for decommissioning and some requirements for insurance. The Chief Building Official is likely to require annual certification and inspection of ventilation systems at minimum. The Applicant acknowledges these, and other requirements must be satisfied to obtain the necessary permits.

SECOND POINT OF ACCESS – ISSUE UNRESOLVED: The secondary access is proposed to be through adjacent property under lease to Golden Rule Logistics. Applicant has indicated we would be provided with a copy of the signed access agreement with the adjoining property owner prior to the Planning Board meeting, but at the time of preparation of this memo we have not received either a draft or a signed version of any agreement. In addition, the form of agreement must ensure the access will be open and available at all times. Fire Marshal has indicated a requirement for lockbox access. We have indicated a requirement for the access to be dedicated by plat or perpetual easement in favor of the public.

APPLICANT'S EXPERIENCE/COMPANY HISTORY – INFORMATION NOT YET RECEIVED. We have requested and not yet received information about applicant, Alpha Omega Power, LLC, regarding its formation and length of existence and regarding key staff's experience and qualifications with BESS installations. As of the time of preparation of this memo we have not yet received that information. In conversation staff have indicated some previous experience with other projects in Texas City.

RECOMMENDATION: City staff has reviewed the submitted Site Plan and provided numerous comments regarding spacing, paving, screening and landscaping standards. All of the site plan specific comments have been resolved, with the exception of the issue regarding the second point of access. Staff cannot make a recommendation regarding the adequacy of the second point of access without more information regarding the specific agreement with the adjacent property owner and tenant. Additionally, staff have not yet received the requested information regarding the Applicant's company history and experience with BESS projects. For that reason, staff are not able to make a recommendation at the time of writing of this staff report.

Staff will update this report as more information is received.

PLANNING BOARD MINUTES

JULY 22, 2024

The Planning Board of the City of Texas City met in a special-called meeting on Monday, July 22, 2024, at 5:00 p.m. Planning Board members present: Chairman Dickey Campbell, Co-Chairman Perry O'Brien, Commissioner Jami Clark, Alternate Member Aric Owens, and Alternate Member Jose Boix. Staff members present: Kimberly Golden (Secretary), Casey Bennett (Chief Building Official), David Kinchen (Deputy Building Official) and Veronica Carreon. Guests were: Joel Rodriguez (Air Products); CW Scheibe and Paula Drnevich (LAN Inc.); Sherri McElwee (Quiddity Engineering); Ricardo Cuellar (RDLR); Daniel Ortiz (RPCR); Carlos Sotelo (Kirksey); Felix Herrera (Awesome Auto Accessories); Andres Delgado; Deano Merrigan; Guillaume Dufay and Karl Harris (AOP Renewables); Jason Richards (Vaughn Construction); Moises Weber (Cannon Design); Stephanie Tabor (A&S Engineers); Carlos Pacas (Dally Associates); Bo Bacon (College of the Mainland); Jerry LeBlanc (Binnacle Development); and Julie Tovar (SHIP Intern).

Chairman Dickey Campbell indicated a quorum was present and called the meeting to order.

1) APPROVAL OF MINUTES

A motion to approve the minutes of July 1, 2024 with corrections noted below, was made by Jose Boix/Commissioner Jami Clark. All other members present voted aye.

- Page 1, paragraph 6 – corrected Chairman Dickey Clark to Chairman Dickey Campbell
- Page 1, paragraph 6 – corrected Mr. Bryan Clark to Mr. Bryan Carnes
- Page 2, paragraphs 1, 2, 3, and 5 - corrected Mr. Clark to Mr. Carnes

2) PUBLIC COMMENTS

There were no public comments.

3) REGULAR AGENDA

a. Consider and take action on the Development Plan Air Products Temporary Modular Construction Offices. Located at 14 4th Street South, Texas City.

Ms. Golden stated this project sits on a little more than a ½ acre site. The site was vacant and previously used for the lunch tents and emergency assembly area. Because Air Products is doing a second project at the facility in Texas City they will need the construction offices for a longer duration. Since the temporary construction facilities will be in place for more than six months, they will be required to meet all the code provisions and zoning requirements, so Air Products has brought a site plan forward. The temporary construction offices are already assembled at the site because Air Products was not aware that a permit was required. When notified of the requirement, Air Products acted immediately to correct the oversight.

Air Products will be paving the lot, adding landscaping, screening the dumpster, and providing an ADA compliant entrance.

The location of the temporary modular offices encroaches over an existing public alley that goes through that area. Rather than require the temporary modular offices be relocated to remove the encroachment, staff recommends Air Products apply for an abandonment of that alley.

The modular offices are currently installed at a 10 ft. setback. Although the IBD district does not have a specific setback stated in the ordinance, staff applies a policy standard of the setbacks which apply to similar uses in the basic districts. For this use, that would be the light industrial setback of 25 ft. for anything permanent. Air Products has indicated if they do something permanent, they will abide by the 25 ft. setback.

Chairman Dickey Campbell asked Joel Rodriguez (Air Products) if he could show them the location on the map, to which he did. He then asked Ms. Golden about the 25 ft. setback from streets and the 10' setback from the property line to which Ms. Golden replied there aren't any setbacks in the IBD ordinance, but staff are trying to adhere to its policy.

Mr. Jose Boix asked where the alley is that will need to be abandoned. Ms. Golden indicated it on the exhibit.

Chairman Campbell than asked if the property is leased or greenbelt, to which Mr. Rodriguez replied it is leased from Eastman Chemical till the end of 2026, fourth quarter.

Chairman Campbell asked if there were any additional questions. There were none.

A motion was made by Alternate Member Jose Boix/Commissioner Jami Clark to approve the Development Plan for Air Products Temporary Modular Construction Offices. All other members present voted aye.

b. Consider and take action on the Development Plan for College of the Mainland Site Projects. Located at 1200 N. Amburn Road, Texas City.

i. Overall Site Plan

Ms. Golden stated College of the Mainland (COM) has a 2023 bond program for which voters approved a property tax back in 2023. There are six projects, but three that will entail brand new buildings that will be constructed fairly close in time over the next three years. Due to this, staff have asked COM to submit an overall site plan so the overall impact could be considered on parking, traffic, landscaping and detention.

Ms. Golden stated that they wanted to do this so that they could accommodate COM's growth without chopping because the program included demolishing some buildings, renovating some existing buildings, extending some existing buildings and adding some new buildings. Staff thought the overall analysis would work better for COM as the effects of the net changes in detention, parking, landscaping and traffic were considered and addressed, rather than looking at each project as a standalone.

COM provided the requested overall site plan. A preliminary analysis of the impact on traffic showed that Monticello Drive is going to need to have some improvements and upgrades to accommodate the new construction south of Monticello and the other developments in the area, specifically the new elementary and junior high schools to the east. Staff is moving forward and scoping this project, but in the meantime, staff knows there is a possibility there will be some issues with vehicles stacking at the stop-controlled intersection with Amburn Street during the morning peak hour. Staff have discussed this with COM and recommended moving the driveways for the new parking lots at least 500 feet away from the intersection. COM declined the recommendation because the parking lots each have secondary means of ingress and egress.

The overall site plan has been tweaked a little per staff's comments. They have looked at landscaping campus wide for compliance with the landscaping ordinance to give COM the greatest flexibility to balance its landscaping throughout the campus for a uniform, beautiful experience.

Staff have no objections to approval of the site plan for COM.

Chairman Campbell stated that he had some questions about the staff memo and then asked the other board members if they had any questions.

Co-Chairman Perry O'Brien stated he had some questions about the timeline and stages of this project. Paula Dnevich (LAN Inc.) replied that there are three parking lot projects and one of the parking lots is currently under construction. This will be a 15-month project that will be done in three phases. Ms. Golden reminded everyone that the parking lot project had been approved by the Planning Board in May 2024 so they could expedite the start of the project this summer.

Mr. CW Scheibe (LAN Inc.) then gave an outline of the other projects, which includes the WELD/IE building renovation that was also approved by the Planning Board in May 2024. This project will start construction this week. There is very minimal impact to the footprint because it is a renovation.

Mr. Scheibe added that the Public Safety Career Center (PSCC) and the Corporate & Continuing Education Center (CCEC) are both new buildings and are being brought to the Planning Board as one development application. The building permits will be issued separately for each building, based upon the approved joint development plan. The timeline of construction on both projects is November 2024. Construction will be self-contained within that site. PSCC will take about 15 months to construct and the CCEC will take about 12 months.

Ms. Drnevich then reported that the Library/Classroom Building would be constructed on the site of the demolished Technical Vocational building, with construction scheduled to begin in April 2025 and would take about two years to complete. This new 4-story building will include a new library, auditorium and classrooms. There will also be a penthouse.

Mr. Boix then asked about a statement in the Staff Report regarding the driveway and entrances and that the design team decided not to accept staff recommendations.

Ms. Golden replied that the intersection at Amburn Road and Monticello Drive is stop-controlled with a 4-way stop. In the future, Monticello Drive will act as a thoroughfare. There has not been a TIA study done because the elementary school east of COM is not in session, so staff plans to do one in the fall. Their prediction is during morning peak there will be a lot of stacking at the stop sign that may interfere with the entrances into the COM parking lots indicated on the exhibit. Staff also anticipates that the morning peak will be when the CCEC building will most likely be starting its sessions. Staff brought this to COM's attention and recommended the driveways into the parking lots be spaced at least 500ft away from the intersection. COM feels that being aware of that information, they did not want to move their driveways further down. Ms. Drnevich replied this is because there is a second entrance between the buildings. Ms. Golden added that this intersection will eventually have to be enhanced with a road improvement project on Monticello Drive. COM is looking at having the issue for a few years until the improvements are made.

Ms. Golden then pointed out an incorrect draft of the site plan was included in the agenda packet. The correct site plan would show no additional parking next to Lot A, but that area is to be retained as additional green space. Additional parking is not required to satisfy the City's requirement and COM is satisfied the parking is adequate. Ms. Drnevich replied they plan to add landscaping there.

Chairman Campbell then asked about the Library Classroom Building. Ms. Golden replied that she was planning to discuss each item separately, but if Chairman Campbell preferred to discuss the items together, she was good with that. Chairman Campbell indicated he would like to consider all of the items together.

ii. Library/Classroom Building

Ms. Golden then stated that the Library Classroom Building is a 160,000 sq. ft. building, which will be four stories. This will be a multi-use building that will include 42 classrooms, a theatre with a capacity of 299, and offices. The schedule for construction of this building is further out and is expected to start in August 2025. There will be approximately a two-year construction period. It will be located where the previously located Technical Vocational building was. The new parking lot for this building will include 283 spaces with entrances from Monticello Drive. The building will have an approximate ground area of 38,715 sq. ft., and a finished floor elevation of 18.55 ft. The approximate building height is estimated to be 80 ft.

The site plan has been modified to provide full circle access by fire lane as requested by the Fire Marshal.

COM has responded to all of staff's comments and staff have no objection to approval of the development plan for the Library and Classroom Building.

Commissioner Jami Clark asked if they would be tearing down the other theatre or was this an addition. Ms. Drnevich replied there is an auditorium inside the existing Limited Resource Center and Library, and that building would be torn down. This building will be slightly larger than the current theatre.

Chairman Campbell asked if there were any additional questions about the Library Classroom Building. There were none and Ms. Golden moved on to the next item.

iii. Continuing & Corporate Education Center (CCEC) and Public Safety Careers Center (PSCC)

Ms. Golden stated that the CCEC and PSCC projects are presented together as a joint application, but there are two different design teams. A joint application was requested due to the shared parking and detention. But the projects will apply for building permits separately when they are ready to move on to construction.

The CCEC building will be 20,400 sq. ft and one-story. The PSCC is 33,681 sq. ft. and also one-store. With the shared parking and shared detention, they have basically offset their impact. Staff have discussed their landscaping requirements, both of which are being accommodated. Staff have also discussed with COM that the landscaping can be extended along Monticello Drive to the west to provide a more uniform effect along the corridor.

All review comments have been addressed. The only thing staff thought to mention to them that is not considered a problem is the location of those driveways. Staff also talked to them about the eventuality of when the city does street improvements to Monticello Drive that, if needed, any additional ROW will have to come from the south side because there are a bunch of pipelines and existing infrastructure north of Monticello Drive. This might be an opportunity for COM to consider pushing their buildings further back, but they were not inclined to do that.

Mr. Boix then asked about the setback and if it complies with the ordinance. Ms. Golden replied that it does and that a 100 ft. ROW is typically enough for a three-lane project. On paper everything they know says it's not a problem, but again it's what's on paper. When they get out there and start digging, they don't know what's actually out there. She just wants everyone to be alert, especially when there are existing pipelines and existing drainage structure so they absolutely know it cannot come from the north side, but COM is compliant with the ordinance.

Chairman Campbell then asked how far the ditch runs. Mr. Carlos Pacas (Dally Associates) indicated the ditch on the exhibit.

Mr. Boix asked if the detention pond is new and how it is managed. Ms. Drnevich replied yes, and it is being constructed because of the two new buildings. Mr. Daniel Ortiz (RPCR) replied that it is a restrictor pipe that would eventually gravity flow into the city's ditch, without pumping.

Ms. Golden also acknowledged that COM is giving a 75 ft. easement on an existing canal that is along the east boundary. Mr. Scheibe added that this was approved by the Board of Trustees earlier in the day. Ms. Golden thanked him for this news.

Chairman Campbell wanted to make sure he understood the recommendation in the staff memo and asked about the last sentence of the memo that read, "For that reason only staff offer no objection to approval of the site plan". He asked if someone did offer objection to which Ms. Golden stated staff is saying they are complying with the ordinance and there is no objection.

A motion was made by Co-Chairman Perry O'Brien/Commissioner Jami Clark to approve the Overall Site Plan and the Development Plans for the following College of the Mainland projects: Library Classroom Building, Continuing & Corporate Education Center and Public Safety Careers Center. All other members present voted aye.

- c. Consider and take action on the Preliminary Plat for Brookwater Sections 1A and 1B. Located to the east of Park Place Subdivision on FM 2004 and northwest of Mainland City Centre (formerly Mall of the Mainland) in Texas City.**

Ms. Golden stated Brookwater Subdivision Sections 1A and 1B are part of a master planned residential development that will consist of 201 lots and a commercial area on FM 2004. The Master Plan was approved by City Commission in 2021 and it is still a valid master plan to consider this preliminary plat.

Sections 1A and 1B were previously submitted as a preliminary plat for all of it as just Section 1 and was previously approved by the Planning Board as Section 1. The Applicant is changing the Section into Phases 1A and 1B because they want to be able to buildout the smaller sections, record the final plat of the smaller area and sell the lots in Section 1A before then moving on to 1B.

Staff have received a complete set of construction plans for the full section that the Applicant will be presenting in phases. They have their approval for a combination of 50 ft., 60 ft., and 70 ft. wide lots.

Ms. Golden repeated that the only difference between this and what was previously approved is that it is now broken down into Sections 1A and 1B.

Chairman Campbell asked if there were any questions.

Co-Chairman O'Brien asked if the lot sizes changed. Ms. Golden replied they are exactly the same.

Chairman Campbell asked which ditch the rainfall would flow to. Ms. Stephanie Tabor replied that it would flow to the northwest corner. He then asked about an area to the south. Ms. Tabor replied that it is the sanitary sewer easement and also indicated a manhole that the sanitary line would tie in to.

Ms. Golden reminded everyone that the Applicant would have to get an easement, which is a little piece of property owned by the EDC. This is in the process of being worked out, but it will not hold up the preliminary plat. The easement will have to be in place before the final plat can be brought forward for consideration and approval.

Mr. Boix then asked about the mapping of sections. Ms. Tabor indicated on the master plan where Sections 1A and 1B would be located. She then indicated Sections 2 and 3.

Ms. Golden added that the park would be located in Section 1B. Staff do have a suggestion for a schedule as far as that park being built which is only 40% of the building permits would be issued and then construction would commence on the park. There is also a deadline for when the plans for the park will be submitted. Ms. Tabor replied that would happen before Section 2 plat is recorded.

Mr. Boix asked if there were any other amenities. Ms. Tabor stated there would only be the park, but it would include a picnic area, sidewalks and a splash pad.

Staff have no objections to approval.

A motion was made by Commissioner Jami Clark/Alternate Jose Boix to approve the Preliminary Plat for Brookwater Sections 1A and 1B. All other members present voted aye.

d. Consider and take action on the Preliminary Plat for Lago Mar Pod 9 Section 3. Located north of Pod 9 Sections 1, 2 and 4, and west of Pod 10 Section 3 on Hughes Road in Texas City.

Ms. Golden stated this is Lago Mar Pod 9 Section 3 and we are getting to the end of this project on the west side of I-45. This is Phase 3 of their development. This section will include 203 lots on 59.41 acres. Section 1 is almost built out with houses and in Section 2 the infrastructure is under construction. This is helping the Applicant to make progression in Pod 9.

The area being developed as a park in Pod 9 was originally going to be used for a school site, but DISD passed on the smaller scattered sites and instead chose the bigger site and so Pod 9 Section 4, which the board has not yet seen, will now have the community park. Staff have asked the Applicant to provide some construction plans, to which Ms. Sherri McElwee stated they are getting close to submitting those plans.

Chairman Campbell asked if the school was still going on the 30-acre site, to which Ms. McElwee replied it is. He then inquired about Hughes Road and where it meets Lago Mar and understands that Santa Fe has shut down any outlet to Bruce Hall Road, which is correct. He then added that Mr. Collin

Campbell told them they were looking for another outlet further east. Ms. McElwee replied that the city once had her look at Lago Front and maybe connecting to La Marque. She added that Mr. Doug Kneupper had her put together a cost estimate some time back. She did all of that, but she doesn't believe it went anywhere with La Marque, but she did indicate a turnaround and stated that it is ready for a connection to be made.

Ms. McElwee then stated they have four sections left to construct.

Staff have no objections to approval of the preliminary plat for Lago Mar Pod 9 Section 3 upon condition the plans for the park site be finalized before any more plats receive final approval and that construction of the park be commenced before any more plats are recorded.

A motion was made by Alternate Jose Boix/Commissioner Jami Clark to approve the Preliminary Plat for Lago Mar Pod 9 Section 3 upon condition the plans for the park site be finalized before any more plats receive final approval and that construction of the park be commenced before any more plats are recorded. All other members present voted aye.

e. Consider and take action on the Development Plan for Southern Select Energy, a Battery Energy Storage System (BESS). Located at 701 Hwy 146 N., Texas City.

Ms. Golden stated this site is across from the existing TNMP Substation and north of Golden Rule Logistics. This is a BESS project. The site is 6.29 acres, and the Applicant will be using 5.71 acres of the site for this project.

The Applicant has revised the site plan to have the 15 ft. spacing around the batteries that the Fire Marshal requires as part of the city's fire code. They have accommodated a pipeline that runs through the property. They have provided a paved ring road and paved access to all of the batteries. They are providing 15% landscaping, which is what staff is applying to the BESS projects. They are also providing masonry fencing along Hwy 146.

The Applicant is looking at providing a second access. The second access, however, is currently through property they will not own or will have control over, so staff have asked them for an easement plat showing that the second access will actually stay open and be available if the Fire Department ever needs it. These documents are in the works, but staff haven't seen anything signed and they actually haven't had time to review what has been submitted in terms of the first form of it and so there may be some comments staff may want to offer on those.

There has been a lot of progress on this, and the Applicant has provided some of their company information but that was not provided till today, which has been provided to the Planning Board for review. Staff have not had time to digest it or do any due diligence on background information. This is why this project is being brought to the Board without a recommendation.

Ms. Golden stated, in her opinion, that this is the right place to be looking for these types of projects to be placed because they are not interfering with residences, but there are still some concerns about the site that should be considered.

This is a larger project than what the Board has been asked to consider or approve before. The other two that have been approved were 10MG. These are for 200MG, so it is a much larger project. This is the first one that is of the utility size.

For context, Ms. Golden reminded the Board of the Red Egret project that was considered and recommended denial was also a large project. She believes that project was denied because of its location and size.

Ms. Golden then stated that the Developer and Property Owner were in attendance and would be glad to answer any questions the Board may have.

Co-Chairman O'Brien asked if he could hear more information on the secondary access.

Mr. Guillame Dufay introduced himself as one of the cofounders of this BESS project and stated he has built 25 of these BESS projects just in Texas. He added that they are one of the most experienced companies in Texas. Regarding the secondary access, they have worked together with the owner, Mr. Deano Merrigan, and have spec'd out an access easement that goes around the storage property to ensure that they do not disturb any operations of the logistics company and that the access stays open with no obstruction 100% of the time. They also obtained a signed agreement on the easement and will have that in place as needed. He indicated a lockbox for emergency-only access will be provided. Another requirement by the city was to have 15 ft. spacing between containers, which is not a standard requirement, but it allows first responders to go across the site as needed. This is an extra safety design that they have included.

Co-Chairman O'Brien asked what the surface between the batteries is. Mr. Dufay replied that it would be gravel. Chairman O'Brien asked if this would support a fire truck to which Mr. Dufay replied no Fire Marshal would bring a \$1M truck in between containers to get stuck, but they will stick to the concrete road. If they wanted to, they could bring in a smaller vehicle between the batteries.

Mr. Boix expressed his concern and the number of issues about the batteries everywhere. He is concerned about having these concentrated in one area as opposed to being everywhere with one or two little pods here and there. He doesn't know how power is bought and sold, but he's also concerned if there is a power failure, what is the potential of the BESS draining that substation and creating another issue for the city. He also read something about contamination of the ground. He doesn't understand how the monitoring wells will work. He also doesn't understand how the buying and selling of power work if there is a failure of the drainage of power. Is there a check valve? He does not have a full grip on what this will bring or not bring to the city.

Mr. Dufay replied that he was part of the project in 2019 that is currently on 34th Street North in Texas City. It was online during the winter storm of 2021 and this location pushed power when everyone needed it. He stated they are always super open about the way these batteries work. They work with the best insurance companies, lenders and banking companies. He likes to say they are prime developers. With these batteries, which are connected to the grid through that substation, if there is a ground failure, there is a breaker that will shut down the site. There are also some sub-breakers on the median voltage center that will isolate each of the subcircuits. If there is a ground failure that is happening anywhere on the site, they will isolate it. If for some reason they do not isolate it there is a second layer of breakers that will shut down the site. In the case they don't take it, which should never happen, but if it does, the power line that goes into the mid substation from TNMP (another utility breaker), has a protection plan to shut down any issue at their site. The sites are fully vetted and designed and used by TNMP in this case.

Mr. Felix Herrera asked if this is three layers of protection, to which Mr. Dufay stated yes – two by the BESS and one by the TNMP grid.

Chairman Campbell recalled the first BESS and how the power goes into the grid, but it's not really designated for Texas City – it goes wherever it is needed and asked if this is correct. It helps the company and the landowner, and he understands this.

Mr. Dufay replied that the reason they are developing physically in Texas City is because it is one of the largest industrial nodes in Texas - where there is the most power demand in Texas. A lot of the power for Texas PC comes from Fort Bend County, Brazoria and from West Texas. So, there is a rush of power coming to Texas City from all these power lines. The power lines are all congested and it is a major problem in Galveston County. The utilities cannot upgrade fast enough to get all the power needed for industrial use.

When there is a rush of power need (i.e., 5:00 PM) what happens is that the way the grid is set up there is a price signal for every node in the grid, so when's there's a rush of demand the price goes up for all the consumers and there is no way to get more power. These locations charge during the night or when there is plenty of power available and then at 5:00 PM they provide the power to the industries that need it in Texas City. This does two things – 1) it allows for the utility to need less

transmission upgrades in the future, and 2) it cuts millions of dollars, and they are straight across the rate of payers through everybody's power belt. Will this save millions for everybody? Probably not, but this thing probably will contribute to a few dollars of savings on your power bill every month.

Mr. Owens asked if they are doing this for tax credit or are they doing this out of their dollar only. He stated because if not then it's coming out of our pocket regardless, right? He added that if they could tell him that they are funding 100% of this project he can see that, but if they are getting something back in return then what Mr. Dufay is telling them is not accurate.

Mr. Dufay replied that renewable energy projects are qualified under the Inflation Reduction Act that was passed three years ago for a tax credit of 30%. Mr. Owen stated that this doesn't really do much for the local guy as they are suggesting making it cheaper, it makes it beneficial to them as an investor.

Mr. Dufay stated that what it does for the local guys is that you take federal money, and you make a local investment. Mr. Owen replied that he is making his point for him.

Mr. Dufay stated that power in the United States has always benefited from politics and policies, and everybody has their own political view. He added that the Biden administration and the Trump administration have maintained tax credit on renewable energy, and it is what it is. They are funding these projects and the rest of the 70% that does not come from tax credits is funded by a group of investors called Fengate which is also cofounded by the owners of the company, which he is a part of. They have a direct interest in making these projects intrinsically safe and it's going to come back to one of the previous questions.

They also don't really look at proliferation of these assets as a good thing for anybody because when you have twenty 10MW assets anywhere they have to be managed and they usually end up needing a little bit of tender loving care. These 200 MW assets are going to have a dedicated team on the project that will be located in an office that will be somewhere between here and La Marque. These guys are going to be dedicated to this project. Whenever there's something happening at the project it will usually send a message about a small thing like a fuse that is out or a piece of the transducer that needs to be changed. It will come to this location, and they will replace it. They also create more benefit for the local community because you've got 200MW of grid support here as opposed to smaller projects that have a limited impact.

Chairman Campbell asked Mr. Dufay if he stated a few minutes ago that this project would directly put electricity into the local industrial complex.

Mr. Dufay replied that this project provides power at the TNMP Heights substation and as such, all the electrons that come out of this project are not subject to all the congestion. It is going to the grid, but it's going to the grid at this location where it's needed.

Chairman Campbell asked Co-Chairman O'Brien to help the Board understand what is being said about the power going to local industry.

Co-Chairman O'Brien stated that TNMP is in the process of upgrading every station right now by removing 69K and putting up 138K. It has been 69K for a long time. TNMP's power goes all over their service area. Industry within Texas City takes a lot of TNMP's juice from Heights, from Cattail and from the ones that are close to the sites - they directly feed into it. At the same time, TNMP's electricity goes on to the big grid that services all our houses. So, to say that that power exclusively will go to industry is inaccurate. A portion of it may go to industry, especially during peak times. So, where these things are extremely helpful is storm situations and peak times during the extreme high temperature days or cold temperature days and that's where these are beneficial, in his opinion.

Co-Chairman O'Brien continued by saying the nice thing about this project is its size. Mr. Dufay stated it is 200MW, so that's a large one. It's not the little 10K that is on 34th Street North. Co-Chairman O'Brien continued that what he sees in West Texas where they have the large ones - Reeves County is just covered with these things. You see large developments like this, the 100MW and 200MW, and there are always people there in those stations. It seems like when he goes by them, there's some sort of truck with a team working on them. He doesn't know what they're doing there, but the fact is

that they are attended to. The other smaller ones, they're not really attended unless there's a light that goes off somewhere and then somebody has to go to it. From this standpoint he prefers the bigger stations and believes there is a need for this type of development all across our state.

Co-Chairman O'Brien stated TNMP cannot tell them [the BESS project] "no". If a company makes a request for a tie-in, they [TNMP] nor any other provider can't say no. If a developer is willing to make the tie in and pay what it cost to make the tie in, TNMP can't say no. So, if a company or a city or a development or whatever is going to object it is not coming from the power company because they can't say no.

Mr. Owens stated he had two other questions he would like to ask. [First], 10MW was a good thing in your investment a couple years ago and now 200MW is much better. But now 10MW is really not a good thing and we are stuck with it at this point. At what point does 200MW become too small? Do these things grow over time and become maybe less attended? [Second] The huge problem he has with this is the location which is right next to the regional Gulf Coast Water Facility, so this does not impact only Texas City. It impacts League City, Galveston, La Marque, Tiki Island, San Leon, and Dickinson. [The GCWA plant] supplies all the raw water to industry. Let's say there's a problem at the BESS site and that somehow reaches into our water system we've got a massive problem. He just doesn't believe the location is the right place. He doesn't know if anybody has talked to the folks at Gulf Coast Water Authority. If not, he would encourage them to do that. This is the water supply for the entire county.

He added that this might be a great investment for the Applicant, but he does not believe this is a great investment for our community.

Mr. Boix stated that he thinks the city should come up with an overall plan on how to manage these units because there are going to be problems. He asked about the other BESS projects that have been approved. Ms. Golden replied that there is one active site and another that has been approved. If those smaller sites are not manned, he is concerned that the load will be placed upon the city. He loves the technology, but he is concerned there is not a master plan for the Planning Board to either consistently approve or not approve something – and now we have two small BESS approved in the city. He asked what the objective was and how many others will be allowed. For this reason, he is staying away from an approval.

Mr. Dufay asked if he could reply to Mr. Owens' question earlier about contamination and explained that the battery containers that you see there are enclosures that look like a Conex typical shipping container. They are built with IP55 protection or higher at the container level. This means they are waterproof, and the opposite is true, they are leaking proof so if you have a spill inside, they will contain it. The battery container itself is not full, it's stacked with the modules inside. Each module is about the size of a typical suitcase and each of these modules get stacked side by side within the container. Each module is made of cells about the size of a laptop. The cells are made of the lithium-ion technology that everybody talks about mysteriously and they don't know what it is. Lithium-ion technology is kind of like a lead acid battery with a cathode and anode and a solution that flows in the middle. The difference is that the anode and cathode are actually flat. Think about foils and they are very close together and the solution is in the middle and there's 57 cathodes and 57 anodes in each module. It's kind of like a book with pages of cathode and anode. The electrolyte that carries the lithium-ions is in the middle and each cell has an IP67 rating, which is one of the highest IP ratings you can think of. It's not bulletproofed, but it won't take any dust, water, or anything from the outside.

So, what can happen in the case one of these units sets on fire is yes, you may have some spillage, but the fire should actually consume the electrolyte because it's a Hydrocarbon based electrolyte, so you won't have much spillage into the container and the container itself is made to contain the spillage.

All these things are actually tested in real life. They work with several suppliers, but the supplier for this project they expect to be Fluence, which is a US based company and listed on the New York Stock Exchange. The company that makes these enclosures, they're the second biggest after Tesla. He has also worked with Tesla, but they like Fluence better for different reasons. No, they're not cheap.

Affluence gives you a little bit more freedom than Tesla which is very strict, and you can re-cycle them differently, so it's just a matter of flexibility. But price wise, they talk to each other. These guys run these containers through a UL 9458 type of testing. Every container has to be approved for that UL type of testing. They set them on fire, and they see what happens. So, what happens when they set the module on fire is that they see if the next module sets on fire as well. They set a cell on fire to see if the next cell catches on fire and if the fire stays within the module or if it goes to the next module and to the next track, etc.

They also measure the gas coming out of it and they measure the spillage out of it. They have a criterion for passing or failing and they work with the biggest insurance companies in the country to validate all of these results. They are only going to use top-tier-one batteries from either Tesla or Fluence or one of the top five suppliers that makes the best product.

Because the big project has had a lot of scrutiny, it's going to be insured. There will be hundreds of people looking at your project, making sure you're doing things right. On the small project sometimes there are a little bit of shortcuts being made, so you want to be more careful as a jurisdiction. All of this is checked, and Mr. Dufay has never heard of any spillage issue on any of the top-tier battery containers.

Mr. Boix believes that if the city develops a master plan, he would rather see the BESS projects installed on the Greenbelt just by the industry.

Mr. Dufay replied that they aimed for this area because it is industrial.

Chairman Campbell asked Commissioner Clark if she had anything to ask about this project.

Chairman Clark asked what the Fire Marshal had to say about the site plan. Ms. Golden replied that the Fire Marshal asked for the 15 ft. spacing requirement and the Applicant has met that requirement. The Fire Marshal also asked for the two opposite accesses and that requirement has also been met.

When it gets to the actual permitting process, then there's going to be requirements for a decommissioning plan, a security plan, and posting a bond. This is when they will look into their insurance, so they'll get a lot more into the specifics about what exactly is going in there, but from a site plan standpoint, the Fire Marshal's requests have been accommodated in the site plan.

The property owner, Deano Merrigan, added that the property is already polluted and so are the neighboring properties. The property can't be anything but industrial or commercial. He stated that most of the properties along the refineries are polluted. TCEQ came out there and took samples on the monitoring wells he has out there. They came back and told them nobody could build any houses out there, but it could be used as industrial and got a notice of no further action required from the TCEQ. He stated that the water that is out there is in the canal is refinery water, it is not drinking water. Once it goes past the water authority the water is not drinkable.

Mr. Owens stated that this is not 100% accurate because this is north of the water plant.

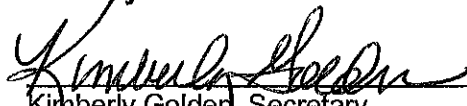
Co-Chairman O'Brien asked if this is coming with no recommendation from the city. Ms. Golden replied that it is coming with no recommendation from staff. She stated that what the Planning Board is doing is making a recommendation to move the site plan forward to the Zoning Commission.

A motion was made by Co-Chairman Perry O'Brien/Commissioner Jami Clark to approve the Site Plan for Southern Select Energy, a Battery Energy Storage System (BESS) rezoning from District F to District SP. Voting by show of hands was 3 – 2 in favor of the motion. Chairman Dickey Campbell, Co-Chairman Perry O'Brien, and Commissioner Jami Clark voted aye. Alternates Aric Owens and Jose Boix voted nay.

4) GENERAL UPDATES

5) OTHER BUSINESS (Any conceptual development proposal requesting to come before the Planning Board)

Chairman Dickey Campbell asked if there was any other business to which there was none. **A motion was made by Commissioner Jami Clark/Alternate Aric Owens to adjourn. All members present voted aye.**


Kimberly Golden, Secretary

8/19/2024
Date

Minutes approved by the Planning Board at its meeting on 8/19/2024.



Kim Golden, City Engineer
1801 9th Ave N
Texas City, TX 77592
kgolden@texascitytx.gov

2/22/2024

Dear Kim Golden,

Please accept this supplemental submission from Alpha Omega Power's Southern Select Energy Storage project, a 100MW Battery Energy Storage System (BESS) proposed for development on a 3.9-acre portion of the 6.44-acre parcel identified as parcel # ID 213837, located on HW 146, south of the intersection with 9th Ave N.

The purpose of this supplemental submission is to provide additional information on the following items:

1. BESS Safety
2. Per item [j] of Section 160.051 District S-P, Site Plan
 - a. An explanation of the compelling need for additional installation at Substation TNHeights
 - b. An explanation of the direct benefits to the City of Texas City, TX and its residents & citizens that would result from approval of this project.
3. Reasons that this is the Ideal site location for the proposed BESS project.
4. Manufacturer's Set-back Specifications

Alpha Omega Power Contact List:

- Simon Labrosse-Gelinas – Developer, slabrosse@aoprenewables.com, 979.476.4227
- Gemy Thomas – Director of EPC, gthomas@aoprenewables.com,
- Guillaume Dufay – SVP of Development & EPC, gdufay@aoprenewables.com, 346.561.4123
- Georgia Meisler – Director of Development, gmeisler@aoprenewables.com, 818.970.9592

We look forward to working with Texas City's Engineering and Planning department to develop this project in full compliance with City requirements. Please don't hesitate to contact AOP at any time during this project.

Kind Regards,

Simon Labrosse-Gelinas



A blue rectangular box containing the text "Energy Storage" in white.

Energy Storage

A large white title on a dark blue background, with a background image of power lines and towers at sunset.

Energy Storage Enhances Grid Reliability & Resilience

Credit: AES

Energy storage is, at its core, a **resilience enabling** and **reliability enhancing** technology. Across the country, states are choosing energy storage as the best and most cost-effective way to improve grid resilience and reliability.

How do energy storage systems strengthen grid reliability?

- 1 Frequency Response and Regulation:** Energy storage ensures the moment-to-moment stability of the electric system at all times.
- 2 Peaking Capacity:** Energy storage meets short-term spikes in electric system demand that can otherwise require use of lower-efficiency, higher-cost generation resources.
- 3 Maximizing Renewable Energy Resource:** Energy storage reduces curtailment of renewable generation resources and maximizes their contribution to system reliability.
- 4 Grid Infrastructure Support:** Energy storage relieves transmission and distribution infrastructure congestion, prevents reliability violations on power lines, enhances the resilience of wires infrastructure, and creates a more flexible power system.
- 5 Increasing Operational Flexibility:** Energy storage facilitates efficient integration of a diversity of generation resources and improves the ability of the electric grid to adapt rapidly to changes in demand and generation.
- 6 Improving Grid Resilience:** Energy storage serves as back-up power for individual homes, businesses, communities, and the broader grid system to minimize and prevent power outages and service interruptions from extreme weather.

Energy Storage

Energy Storage Lowers Electricity Costs & Reduces Ratepayer Bills

Energy storage technologies are uniquely positioned to reduce energy system costs and, over the long-term, lower rates for consumers by:

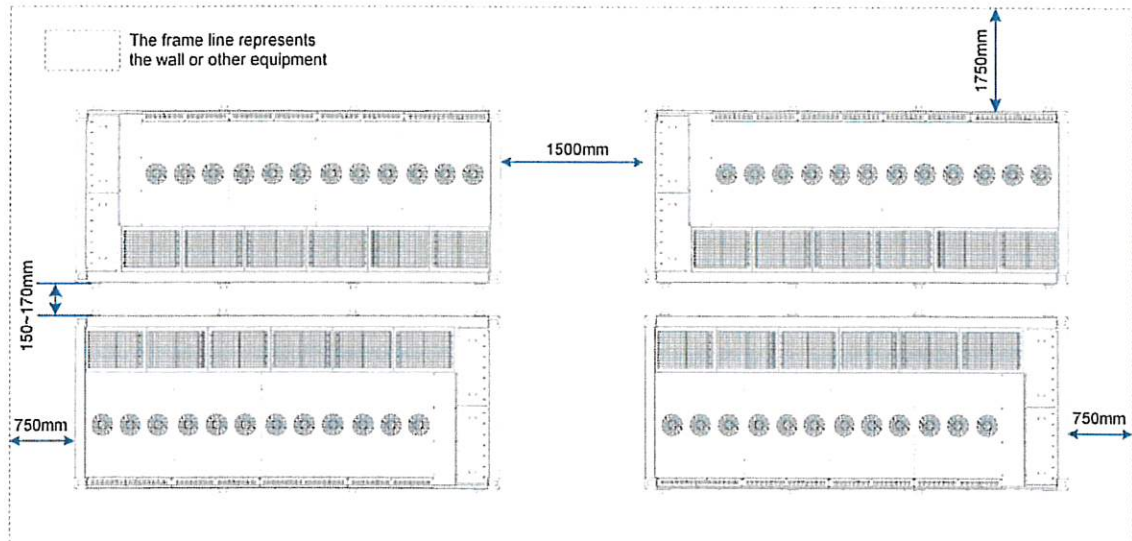
- **Optimizing the grid;**
- **Bolstering reliability; and**
- **Enabling a clean grid.**



How does storage reduce energy costs?

- 1 Supports the integration of more wind and solar generation:** Wind and solar are the cheapest sources of electricity. Energy storage supports the integration of higher and higher shares of renewables, enabling the expansion and incorporation of the most cost-effective sources of electricity generation.
- 2 Reduces energy waste:** Energy storage can help eliminate energy waste and maximize the benefits of renewable energy. Energy storage is the only grid technology that can both store and discharge energy. By storing energy when there is excess supply of renewable energy compared to demand, energy storage can reduce the need to curtail generation facilities and use that energy later when it is needed.
- 3 Improves grid efficiency:** Energy storage is instantly dispatchable to function both as generation and load, so it can help the grid adjust to fluctuations in demand and supply, which optimizes grid efficiency, alleviates transmission congestion, and increases grid flexibility. This reduces overall system costs.
- 4 Limits costly energy imports and increases energy security:** Energy storage improves energy security and maximizes the use of affordable electricity produced in the United States.
- 5 Prevents and minimizes power outages:** Energy storage can help prevent or reduce the risk of blackouts or brownouts by increasing peak power supply and by serving as backup power for homes, businesses, and communities. Disruptions to power supply can be extremely costly and hazardous to health and safety. Energy storage makes the grid more resilient and reliable.

4. Manufacturer's Set-back Specifications



Per the BESS ordinances adopted by the City of Texas City, TX on 2/21/24 –

"There shall be a minimum of 15ft spacing between containers"

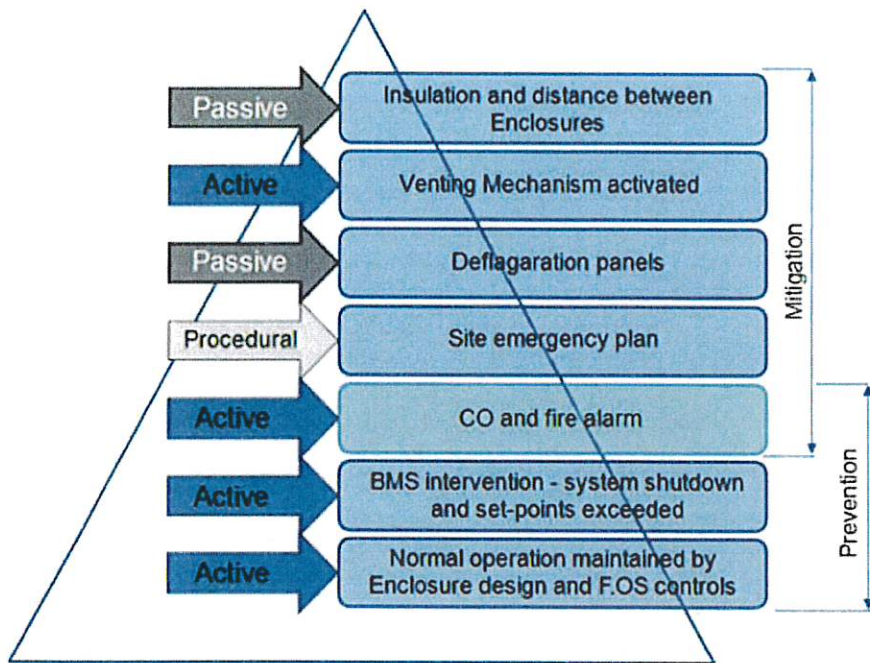
Our current system design deviates from the ordinance for the following reasons;

BESS systems begin with individual battery cells, which are electrically connected and then packaged in a battery module. Battery modules are aggregated with controls and other equipment and housed within racks, which in turn are built into an enclosure. In the case of a 2-hour battery energy system such as the system proposed here, two enclosures connected to an inverter make up a string. The total system is made up of a series of strings, each comprised of two enclosures connected to an inverter.

According to manufacturer specification, the recommended distance between enclosures that make up a single string is 150mm (approx. 6in) and the minimum recommended distance between strings is 1500mm (approx. 5ft). NFPA 855, which sets standards for site planning, recommends spacing of 3ft-10ft between strings. Our proposed site plan shows 10ft between strings, which allows the project to achieve the proposed 100MW energy density.

The reason for deviating from Texas City's BESS ordinance is to maintain economic feasibility for development of the project. The proposed 100MW energy density not only achieves project economic feasibility, it also maximizes the grid stabilizing and resiliency of BESS for The City and its residents.

1. Battery Energy Storage System Safety



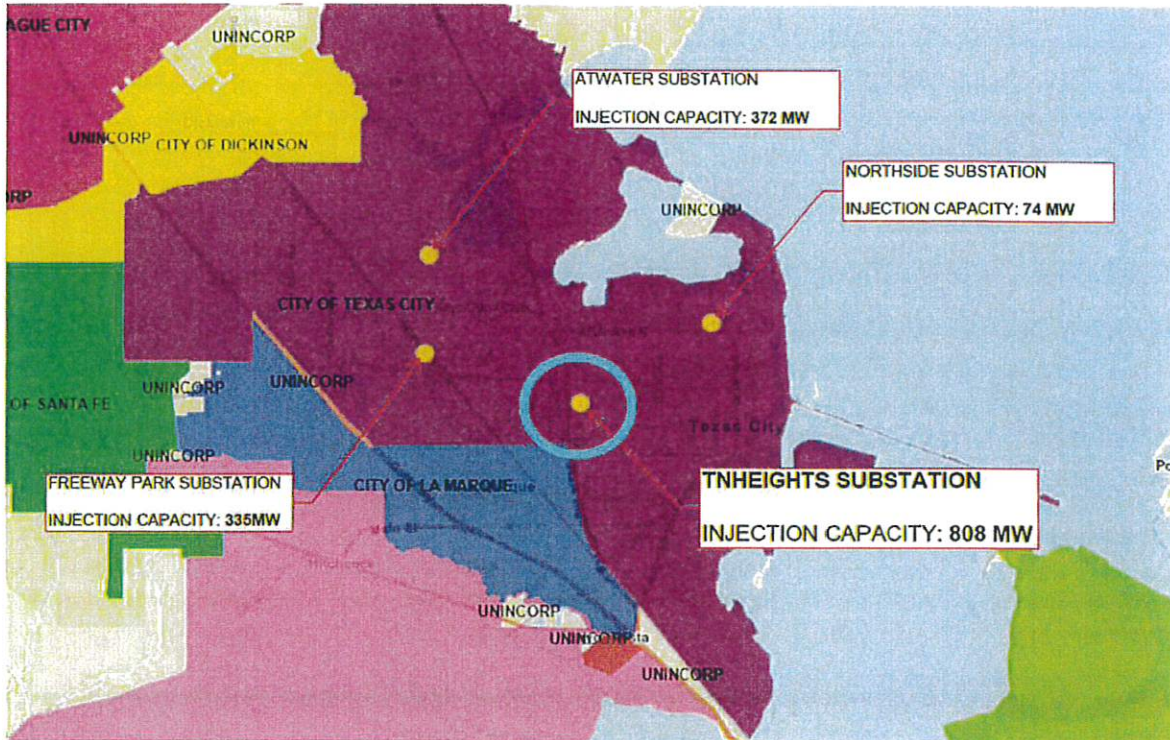
The battery safety system is designed with layered approach simply explained as follows:

- The first preventive layer of safety is the **system design**. The battery system is designed, built, and tested to prevent an event from happening in the first place.
 - The Enclosure is designed with enough cooling capacity to cover all foreseeable operating conditions.
 - Inverter and battery are matched to assure that power, current and voltage will be within the allowed operating range for the battery system.
- The **Battery Management System (BMS)** provides the second preventive safety layer by disconnecting the battery system in case of excessive cell temperature, over- and under-voltage, and excessive current during charge or discharge.
 - Safety functions as performed by the BMS have been designed and tested to comply with class 1 software as per UL1998.
- The fire **alarm system** is the third layer of safety in the Enclosure and provides both mitigation and prevention functions:
 - It provides mitigation by shutting down the HVAC and chiller units in the originating Enclosure in case of a smoke/fire alarm.
 - It provides mitigation through its local and remote alarm functions as described below.
 - The fire alarm system is designed, built, and tested to comply with NFPA 72, and its primary function is to make sure:
 - The incipient off-gassing and fire can be very quickly identified before any significant volume of gases are released;
 - That the location originating Enclosure can be easily identified;
 - That first responders are notified;

- That - given the sound and visible alarms, following the site-specific emergency plan, evacuation from the affected location can happen.
- In terms of risk reduction, the fire alarm system has been assessed by a third-party and determined to comply with a SIL 2 under IEC 61508. It is the most important safety function in terms of reducing overall exposure to the risk area in the proximity of the affected unit.
- In terms of Mitigation, the **Site Emergency Plan (SEP)** is key. It is the SEP together with the fire alarm system that makes sure employees, duly authorized visitors, first responders, and eventual service providers have been trained and informed how to quickly evacuate the site and how to further proceed in case of a fire or CO alarm, eliminating any undue exposure related to a potential event.
- The **deflagration panels** provide the fifth layer of safety to the Enclosure. If enough gas accumulates in the time between activation of the fire alarm and opening of the deflagration vents, the deflagration vents will swiftly release the pressure within the enclosure.
- The **venting mechanism** is the sixth layer of safety and has been designed and tested to make sure that combustible gases cannot accumulate in large quantities inside the Enclosure.

2. Per item [j] of Section 160.051 District S-P, Site Plan

a. An explanation of compelling need for additional installation at Substation TNHeights



Source – EE Horizon, EEPlus

The Project location near the TNHeights substation was chosen based on detailed power flow analysis of the transmission system within TNMP service area. This analysis identified the TNHeights substation as an ideal candidate for a utility-scale BESS, providing sufficient injection capacity while remaining close to TNMP critical load centers. Injection capacity is a metric used to show much electrical power (in MW) can be transmitted into a point of interconnection, like a substation.

The map above shows the individual injection capacity for four of the largest substations within city limits. The TNHeights substation has the highest injection capacity (over 800MW), making it the ideal point of interconnection for multiple BESS projects to support regional grid reliability and electricity demand. Currently, one BESS project is operational at the TNHeights substation (BRP Heights, a 10MW Project), while three others are in queue to interconnect (Zeya 256MW, IEP Blackhawk 100MW, and Southern Select 100MW). The combined capacity of these four projects (466MW) is well below the available injection capacity of the substation, indicating the substation is capable of supporting multiple BESS projects.

Given that Texas City is one of the largest power demand centers in Texas, having multiple BESS projects at the TNHeights substation will benefit the general health, safety and welfare of the City of Texas City, TX and its residents and citizens. These benefits are explained in 2b.

b. See attached "Energy Storage" pamphlet for BESS benefits



Southern Select Energy Storage *Company and team description*

July 22nd, 2024

Executive Summary

AOP Holding Company, LLC (“AOP”) is an Independent Power Producer founded in 2023 by industry veterans with experience deploying the largest fleet of the Battery Energy Storage Systems (“BESS”) in Texas and a cumulative 70 years of industry experience. AOP is a Fengate Asset Management (“Fengate”) portfolio company and will own the Project through a special-purpose vehicle, Southern Select Energy Storage LLC. Details about our team members’ experience, including a list of projects we have successfully completed, are provided later in this document.

Project history

Following several successful projects construction in the area: Texas City, League City, Dickinson, Alvin, La Marque, the AOP team has engaged with the utility TNMP and ERCOT to develop a transmission-connected Energy storage asset into the TNHeights substation in Texas City. The project was named Southern Select after the Texas City – brewed famous drink from the late Galveston-Houston Brewing company. This brewery was founded by the family of one of AOP’s executive, and intends to be an homage to the vibrant history of the community

Technical Information

Our technical solution closely aligns with Texas most critical needs for a reliable and efficient battery energy storage resource.

Engineered to endure temperatures ranging from -10°F to 125°F, the project control system maintains optimal performance levels throughout the year and will significantly improve power supply and quality stability in the region of Texas, City, along with reducing power price swings and peak charges that local Industrial customers may be subject to.

Based on a review of the leading BESS manufacturers, AOP has identified lithium-ion BESS manufactured by Fluence, Sungrow Solutions, Tesla, LG Energy and CATL Energy Storage Technology as the potential equipment suppliers for the Project. These manufacturers were shortlisted for their commitment to product quality, reliability, and compliance with all specified safety requirements. AOP requires the strictest safety and quality standards in their vendors and the list mentioned above is strictly limited to market leaders as AOP does not deploy solutions that have reputation or experience issues. To maintain timelines and competitiveness AOP is leading the due diligence in parallel for several vendors to have a backup plan available.

Suppliers list and description

1. Fluence

Fluence is a US based and NYSE publicly traded company that’s a leading provider of energy storage products and services, with a proven track record in delivering reliable and high-

performance lithium-ion BESS solutions. Their Gridstack product line offers modular and scalable BESS solutions that can be tailored to meet the specific requirements of the Project.

- BESS systems to be integrated with EPC Power M-series PCS which feature a modularized 500 kVA design that is customizable to the project needs.
- Utilizes advanced lithium-ion battery cells tailored for Fluence's specifications, ensuring exceptional performance and durability. The cells are supplied either by CATL, world largest Lithium ion cells manufacturer, or by AESC Envision, a Japanese suppliers for Nissan and other Electric Vehicle that manufactures cells in the US.
- Efficient liquid cooling systems and remotely monitored fire suppression systems ensure operational safety and reliability.

Fluence offers advanced thermal management systems and fire suppression solutions integrated into their products. Preventive maintenance will be performed by AOP, while Fluence backs capacity and performance warranties. Support for corrective maintenance is also provided.

2. Sungrow Solutions

Sungrow Solutions (“Sungrow”) is an alternative to the proposed Fluence BESS supplier for the Project. Their solution is scalable based on the Power Titan 2.0 building block.

Sungrow Solutions offers some of the best thermal management and lowest maintenance needs on the market and are the #1 supplier of power equipment for renewable energy in the US, usually ranking as the most or among the most bankable suppliers in the industry. Some preventive inspection and maintenance will be performed by AOP, while Sungrow will back capacity and performance warranties. Sungrow will also offer warranty support in the event that some corrective maintenance is needed. Sungrow’s main operation center are in Phoenix, AZ and Houston, TX. While certain equipment requires periodic service and replacement, Sungrow systems are rated for over 9,000 cycles, offering 25 years of operations under normal conditions.

3. CATL

CATL (Contemporary Amperex Technology Co., Limited) is a global leader in lithium-ion battery manufacturing; known for its innovation and commitment to performance and safety. With extensive experience in supplying batteries for electric vehicles and large-scale energy storage systems, CATL brings significant production capacity and potential cost-effectiveness to the project.

CATL's focus on research and development could translate into high-performance BESS solutions tailored for the project's requirements. Their emphasis on safety aligns well with the critical safety demands of grid-scale energy storage.

4. TESLA

Tesla is the world largest Electric Vehicle manufacturer and also the largest producer of

Energy Storage systems for grid applications in the USA. Their reputations, financial robustness and technological advancements have sealed their position as one of the Energy Storage equipment supplier of choice for large scale projects across the nation.

5. LG

Formerly the world's largest lithium ion cells manufacturer until 2021 and CATL's rapid rise, LG remains #2 cells maker and are now offering extremely advanced integrated Energy Solution equipment. They recently deployed over 1 GWh of their solutions in the world's largest energy storage project Edward Sandborn in California, along with BYD and Samsung.

Financial Capability

AOP began operations on March 10, 2023, and has a capital commitment from Fengate, which will provide sufficient equity for the Project.

AOP intends to finance the Project through a combination of sponsor equity, debt, and tax equity. We anticipate securing a construction facility prior to start of construction, along with a tax equity bridge loan. Both the AOP and Fengate teams have significant financing experience across both debt and equity capital markets, including experience specific to financing BESS assets in Texas and other markets. Timing of financing strategy varies by proposal. The Project is expected to raise senior debt at construction start close, with tax equity to close prior to energization.

Owner's Capabilities and Experience

AOP is led by industry veterans with 70 years of cumulative experience in the power and renewables sectors. The leadership team brings extensive battery storage experience to AOP, with its four founding members holding senior management positions at Broad Reach Power from 2020-2023.

In their tenure, the leadership team has actively overseen, built, financed and managed the development and deployment of almost 1.5 GWhs of battery storage technology, including the management of assets and availability during winter storm Uri in Houston, Texas. The full AOP team brings experience from GlidePath Power Solutions, Broad Reach Power/Engie, Akuo, Plus Power, and Cypress Creek Renewables.

Fengate Infrastructure Partners, AOP's corporate sponsor, is a leading alternative investment manager focused on infrastructure, private equity, and real estate strategies. Founded in 1974 in Ontario, Canada, Fengate is a Canadian-based alternative investment management firm with mandates in infrastructure, real estate, and private equity. Fengate currently manages over C\$7 billion in equity commitments on behalf of Fengate Funds, representing investments from over 40 North American, European, and Asian multi-employer pension plans, university pension plans, university endowment funds, corporate pension plans, and global financial institutions. As of December 31, 2022, Fengate had invested in more than 45 infrastructure assets located in Canada and the U.S, with a total

enterprise value of over C\$35 billion.

Key Team Member Qualifications & experience with proposed resource

- AOP is led by industry veterans with 70 years of cumulative experience in the power and renewables sectors. The leadership team brings extensive battery storage experience to AOP, with its four founding members holding senior management positions at Broad Reach Power from 2020-2023.
- Leadership team has actively overseen, built, financed and managed the development and deployment of almost 1.5 GWs of battery storage technology, including the management of assets and availability during winter storm Uri in Houston, Texas. The full AOP team brings experience from GlidePath Power Solutions, Broad Reach Power/Engie, Akuo, Plus Power, and Cypress Creek Renewables.

Simon Gelin-Labrosse, Lead developer for the project, joined the company early in its history and has since grown the Texas project development portfolio to rank in the top 5 of the best development portfolios in Texas. Simon previously owned a Commercial and Industrial solar PV company and several positions in various petro-chemical companies. Simon is an Engineer as well as a former elite hockey player.

Georgia Meisler, Director of Development, joined the founders of AOP in the role of Director of Development as the company's first employee in early 2023. Ms. Meisler brings six years' experience managing the development of solar and standalone storage projects working with companies including Cypress Creek Renewables, sPower (now AES) and Plus Power. Ms. Meisler has supported and led the permitting, project management, and interconnection of more than 400 MW of solar and storage projects in multiple states across the country.

Gemy Thomas, Director of Engineering, Procurement and Construction (EPC), Lead EPC Manager for the Project joined AOP in the role of Director of Engineering, Procurement, and Construction in early 2024. Mr. Thomas brings over 15 years of experience in energy ranging from early conceptual design through project execution and COD. Mr. Thomas joins AOP from Broad Reach Power/Engie where he initially served as Pre-Construction Manager and Project Manager and ultimately transitioned into an Engineering Manager role. During his time in energy storage, Mr. Thomas has been responsible for the engineering and technical aspects of a variety of battery energy storage projects and challenges. He has a proven track record of leading and supporting teams of engineers and technicians to successfully execute projects.

Guillaume Dufay, PMP, Senior Vice President Engineering, Procurement and Construction (EPC) and Development is one of the four founding members of AOP. Mr. Dufay is a multi-disciplinary engineer with 14 years of experience in energy. He is also a certified Project Management Professional. Mr. Dufay joins AOP from Broad Reach Power where he served in project management, procurement, and construction management. His expertise includes EPC, project engineering, and project management. Guillaume has managed the development of more than 30

projects totaling over 1,500 MW from site selection to commercial operation and has led phenomenally successful teams of engineering and development professionals.

Michael Henson, Senior Vice President Finance, Lead Finance Manager for the Project is another of the four founding members of AOP. Mr. Henson brings over 12 years of experience in energy finance. His experience includes investment banking, private equity, and clean energy finance. His most recent experience includes work at Broad Reach Power and NGP Energy Capital Management where he served in roles ranging from Director to Vice President. He leads project financial modeling to establish financially viable project contracts & structures, and, at later stages in the project development cycle, leads construction and project financing.

Kara King, Senior Vice President, Finance, is the final founder of AOP. She brings more than 14 years of experience across multiple industries with a focus on financial planning, capital raising, structuring, tax and compliance. She has specialized in the utility-scale battery storage space for the past seven years, with experience at Broad Reach Power and GlidePath Power Solutions, with roles ranging from Director to Vice President. She leads company operations.

Key team projects in operation or under development

Alpha Omega Power corporate and team member experience. Excluding Fengate Asset Management portfolio of several GW of power generations.

Vertus Energy Storage, La Marque, Texas

- Simon Labrosse-Gelinas, Leading project development
- 200 MW/400 MWh battery storage project
- Awarded CUP in Q1 2024
- Short-listed for off-take contract Q1 2024
- Target COD Q1 2026

Southern Select Energy Storage, Texas City, Texas

- Simon Labrosse-Gelinas, Leading project development
- 200 MW/400 MWh battery storage project
- Target Q2 2024 for Special Permit award
- Short-listed for off-take contract Q1 2024
- Target COD Q3 2026

Cross Town Energy Storage, Gorham, Maine

- Georgia Meisler, Led project development process through NTP
- 175 MW / 350 MWh battery storage project
- Awarded an ISO New England Capacity Supply Contract in FCA15
- Under construction, COD expected Q2 2025

Cranberry Point Energy Storage, Carver, Massachusetts Georgia Meisler, Supported project development process through NTP

- 150 MW / 300 MWh battery storage project
- Awarded an ISO New England Capacity Supply Contract in FCA15
- Under construction, COD expected Q2 2025

Pavo BESS, Pecos County, Texas

- Gemy Thomas, Engineering Manager, Managed engineering design and construction
- 175 MW / 175 MWh
- COD April 1, 2024

Noosa Energy Storage, Rippon, California

- Gemy Thomas, Engineering Manager, Managed engineering design and procurement
- 100 MW / 400 MW
- COD December 1, 2024

BRP Zeya BESS, Texas City, Texas

- Gemy Thomas, Project Manager, Managed pre-construction and engineering design
- 200 MW / 400 MWh
- COD June 1, 2025

200MWh North Fork & Bat Cave Energy Storage, Hill Country area, Texas

- Guillaume Dufay, Lead developer, managed all development and design process through COD
- Operations executive: managed in-house Operations teams through commissioning and day-to-day O&M
- 100 MW / 100 MWh each project
- COD Q4 2021

825MWh Dickens, Paleo, Pavo, Tortolas, Hydra, Crockett Energy Storage, Northwest and Houston region, Texas

- Guillaume Dufay, Lead developer and design manager, then Procurement and Construction Director
- Total 825MW / 825MWh
- COD March 1, 2024

150MWh ERCOT DGR TX15 portfolio:

- Guillaume Dufay, Lead developer from initial land search through COD, design manager

- Operations executive: managed in-house Operations teams through commissioning and day-to-day site O&M
- 15 projects of 10MW / 10MWh each
- COD staggered from April 2020 to August 2021

5GWh Other projects

- Guillaume Dufay, Early development to design management for over 3GW ERCOT BESS projects
- Technical support and design for 1.8GWh CAISO projects
- Managed 2 CAISO project from mid stage development through construction end 150MWh
- Target COD 2025

360MW standalone BESS portfolio across ERCOT and CAISO

- Michael Henson, led project modeling for investment underwriting and revenue contracting
- Revenue contracts include revenue put and ancillary service swaps
- Led financial modeling and commercial diligence for \$160 million project financing
- Eighteen projects, ranging from 10 to 100 MW
- Currently operating; CODs range from 2020 to 2021

880MW standalone BESS portfolio across ERCOT and CAISO

- Michael Henson, Led project modeling for investment underwriting
- Seven projects, ranging from 10 to 200 MW
- Currently under construction; CODs in 2024

Libra BESS, Guadalupe County, Texas

- Michael Henson, Led negotiations and execution definitive documents for sale of project
- 200 MW / 200 MWh
- Currently under construction; COD in 2024

360MW standalone BESS portfolio across ERCOT and CAISO

- Kara King, Managed capital allocation and contract compliance for deployment of over \$500mm in equity and debt commitments across 18 projects
- Led insurance and compliance efforts on \$160 million project financing
- Eighteen projects, ranging from 10 to 100 MW
- Currently operating; CODs range from 2020 to 2022
- 25MW Solar Project, Guam
- Led \$100m re-financing effort on distressed asset purchase
- Oversaw ongoing compliance for Section 1603 grant
- Managed day-to-day remote operations and PPA compliance

250 MW Wind Portfolio, PJM, SPP and CAISO

- **Kara King, Led debt compliance efforts for re-financed portfolio of seven wind farms across four states**
- **Managed landowner relations and payments for 20+ vendors**
- **Maintained PPA and FERC compliance for project operations**
- **Monitored merchant revenues and marketed RECs post-PPA period**

After recording return to:

Simon Labrosse
Alpha Omega Power Holding LLC
4201 Main St, Suite 200-145
Houston, Texas 77002

ACCESS EASEMENT AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF GALVESTON §

THIS ACCESS EASEMENT AGREEMENT (this "Agreement") is made, dated and effective as of July 22nd, 2024 (the "Effective Date"), between LM Storage LLC, a Texas limited liability company (together with its successors, assigns and heirs, "Owner"), and Alpha Omega Power, LLC, a Delaware limited liability company (together with its transferees, successors and assigns, "Grantee"), and in connection herewith, Owner and Grantee agree, covenant and contract as set forth in this Agreement. Owner and Grantee are sometimes referred to in this Agreement as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, Owner owns certain real property located in Galveston County, Texas, described or depicted on Exhibit A, attached hereto and incorporated herein (the "Property"),

WHEREAS, Grantee is developing and intends to construct and operate a battery energy storage development project or projects (the "Project") in the vicinity of or adjacent to the Property, as more particularly described or depicted on Exhibit C, attached hereto and incorporated herein (the "Project Property");

WHEREAS, Grantee desires to obtain an access easements and related rights over that certain portion of the Property more particularly described or depicted on Exhibit B ("Easement Area") in order to access the Project Property across the Easement Area and facilitate the development, construction, operation of the Project, and Owner desires to grant such easement and rights on the terms and conditions set forth herein;

NOW, THEREFORE, for Ten Dollars (\$10.00) and in consideration of the mutual promises of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENTS

1. Grant of Easement. Owner hereby grants to Grantee a permanent easement on, above, along, under, and across, the surface of the Easement Area ("Easement") as more specifically set forth and defined as follows:

A. Conveyance.

i. Access Easement. Owner hereby conveys, transfers and warrants to Grantee, and its employees, contractors, subcontractors, agents, successors and assigns (and for the benefit of and useable by the local fire department and emergency services, and their vehicles, employees, contractors, subcontractors, agents, successor and assigns) a non-exclusive easement ("Access Easement") for the purpose of: (i) vehicular and pedestrian access, including but not limited to a secondary fire access lane, to and from, and ingress to and egress from, the Property Project and Highway 146; (ii) an exclusive right to construct a roadway and driveways, as needed, over and along the Easement Area; (iii) install and maintain knock box for the use of the local fire department to be unlocked as needed; and (iv) the right to undertake any such purposes or other activities that Grantee determines are necessary, useful or appropriate to accomplish any of the purposes or uses set forth in this Agreement or that are compatible with such purposes or uses. Owner acknowledges and agrees that the exact location of the Access Easement may not be determined until final development and construction, and that Grantee may relocate the location and route of the Access Easement. In the event Grantee desires to change the location and route of the Access Easement, Grantee shall consult with Owner before making final siting decisions; provided that, Owner agrees that Grantee shall have sole discretion over final siting decisions so long as the nature and extent of any such relocated or rerouted Access Easement is not materially different and imposes no greater burden on the Property than the original proposed locations or routes.

ii. Clearance Easement. Owner hereby grants, conveys, transfers and warrants to Grantee an exclusive easement and right (the "Clearance Easement") to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation, and other hazards now or hereafter existing in the Easement Area and to trim, cut down and remove any trees, brush, vegetation or fire or other hazards located outside of the Easement Area now or hereafter, which might interfere with Grantee's rights hereunder, as determined by Grantee. Owner will not, nor will cause Owner's lessees on the Property to, materially interfere the Access Easement Area.

iii. Easement In Gross. The Easement and other rights granted by Owner in this Agreement are EASEMENTS IN GROSS for the benefit of Grantee, its successors and assigns, there being no real property benefiting from the easements and other rights granted in this Agreement, such easements and other rights being independent of any other lands or estates or interests in lands. The Easement and this Agreement shall further run with the land for the Easement Area and Grantor does hereby bind itself and its successors and assigns to the terms of this Agreement.

2. Term.

A. Term. The term of this Agreement shall be perpetual (the "Term"), subject to rights of termination set forth in this Paragraph 2.

B. Grantee Termination. Grantee may, at Grantee's sole discretion and at any time, terminate and release all or any portion of its right, title, and interest in the Easement Area, by executing and causing to be acknowledged and recorded in the real property records, a release describing with particularity the portion of such right, title, or interest so released and the part of the Easement Area to which it applies. Such release shall become effective and shall be deemed delivered to and accepted by Owner upon such recordation. Upon any such release by Grantee, the Parties' respective rights and obligations hereunder shall cease as to the portion of the Easement Area or the right, title, or interest therein to which such release applies, but the Parties' respective rights and obligations hereunder shall remain in full force and effect as to any other portions of the Easement Area and any right, title, and interest of Grantee not so released. Notwithstanding anything to the contrary, from the construction commencement date of the Project until the removal of the Project's facilities, Grantee will not terminate this Agreement without the prior written consent of Texas City (which consent

shall be granted as long as the fire safety purposes are no longer applicable). Grantee may, without needing any consent from Texas City, terminate this Agreement at any time before Project facilities are located on the Property or at any time after Project facilities are removed from the Property.

3. Owner's Representations, Warranties and Covenants. Owner hereby represents, warrants and covenants as follows:

A. Owner's Authority. Owner is the sole owner of the Easement Area, has good and indefeasible title to the Easement Area, and has the unrestricted right and authority to execute this Agreement and to grant to Grantee the rights granted under this Agreement. Each person signing this Agreement on behalf of Owner is authorized to do so, and all persons having any ownership interest in the Easement Area are signing this Agreement as Owner. Grantee shall have the right to quietly and peaceably hold, possess, and enjoy the Easement, without hindrance, and Owner shall defend Grantee's right of use and occupancy to the same against the claims of all persons. When executed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

B. No Interference. Owner shall not, nor allow any other party to, interfere with Grantee's use of the Easement Area for the purposes described in this Agreement or Grantee's rights under this Agreement. Without limiting the foregoing, Owner shall not, within the Easement Area erect or install any buildings, structures, tanks, antennas, or other improvements; place or store flammable materials; plant trees; place water, sewer, or drainage facilities; or alter the elevation of the existing ground surface.

C. Cooperation. From time to time, Grantee may request that, and Owner shall not unreasonably delay or withhold agreement to, assist and cooperate with Grantee, so long as Owner is reimbursed for its out-of-pocket expenses therefor, in reasonably amending this Agreement as required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Project. Owner shall reasonably cooperate with Grantee or any potential lender or mortgagee, title insurance company, hedge provider, power purchaser, tax equity investor, assignee or any other similar entity (collectively "Requestor") in the execution and delivery of such consents, stoppage certificates and other documents as Grantee or any Requestor may reasonably request, including, without limitation, any instruments reasonably required to evidence such Requestor's rights under this Agreement.

D. Liens. Except as disclosed in the official land title records office of the county in which the Easement Area is located (the "Records Office"), or as disclosed in writing by Owner to Grantee prior to the Effective Date, Owner's fee simple title to the Easement Area is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, mineral, oil or gas rights, rights of first refusal, options to purchase, contracts, energy development rights, claims and disputes (collectively, "Liens"). Grantee shall be entitled to obtain, and Owner shall fully cooperate with and assist Grantee in obtaining, a subordination agreement, non-disturbance agreement or other appropriate agreement from each party holding a Lien that might interfere with Grantee's rights under this Agreement, at no out of pocket expense to Owner.

E. Hazardous Materials. To the best of Owner's knowledge, as of the Effective Date, there are no Hazardous Materials located on the Property or Easement Area and the Property has not been used for the generation, treatment, storage or disposal of Hazardous Materials, no underground storage tanks have ever been located on the Property nor are any underground storage tanks presently located on the Property. So long as this Agreement is in place Owner shall not violate, and shall indemnify Grantee against any violation by Owner or any Owner Party of, any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials, in, on, under or about the Property or Easement Area, including without limitation any such violation which may have occurred by Owner or any other person prior to the Effective Date. Owner's violation of the foregoing prohibition shall constitute a material breach and default under this Agreement and Owner shall indemnify and hold harmless and defend Grantee from and against any claims, damages, penalties, liabilities or costs caused by or arising out of said violation. In

conformance with the requirements of applicable law, Owner shall clean up, remove, remedy and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials by Owner or any Owner Party in, on, under, or about the Property or Easement Area.

F. Confidentiality. Owner shall maintain in the strictest confidence, for the benefit of Grantee, all information pertaining to the financial terms of or payments under this Agreement, Grantee's site or product design, methods of operation, methods of construction, availability of the Project Facilities, and the like, whether disclosed by Grantee, or discovered by Owner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or any Owner Party, or (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity. Owner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Grantee. Notwithstanding the foregoing, Owner may disclose such information to Owner's lenders, attorneys, accountants and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena or court order; provided Owner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

4. Reservation of Rights. Owner reserves for Owner and Owner's heirs, successors, and assigns the right to continue to use and enjoy the Easement Area for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Easement by Grantee for the Easement Purpose.

5. Default; Remedies. If a Party (the "Defaulting Party") fails to perform an obligation under this Agreement (an "Event of Default") such Defaulting Party shall not be in default of the terms of this Agreement if, (a) in the case of the failure to pay when due any amounts payable under this Agreement (a "Monetary Default") the Defaulting Party pays the past due amount within forty-five (45) days after receiving written notice of the Event of Default (a "Notice of Default") from the other Party (the "Non-Defaulting Party"), and (b) in the case of an Event of Default other than a Monetary Default (a "Non-Monetary Default"), the Event of Default is cured within ninety (90) days after receiving the Notice of Default; provided, that if the nature of the Non-Monetary Default requires, in the exercise of commercially reasonable diligence, more than ninety (90) days to cure then the Defaulting Party shall not be in default as long as it commences performance of the cure within ninety (90) days and thereafter pursues such cure with commercially reasonable diligence. Should an Event of Default remain uncured by the Defaulting Party the Non-Defaulting Party shall have and shall be entitled to at its option and without further notice, but subject to the limitations set forth in the last sentence of this paragraph, to exercise any remedy available at law or equity, including, without limitation, a suit for specific performance of any obligations set forth in this Agreement or any appropriate injunctive or other equitable relief, or for damages resulting from such default (including, without limitation, the cost of obtaining alternative easements). Both Parties agree that remedies at law may be inadequate to protect against any actual or threatened breach of this Agreement. In the event of any breach or threatened breach, either Party shall have the right to apply for the entry of an immediate order to restrain or enjoin the breach and otherwise specifically to enforce the provisions of this Agreement. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, or any rights at law or in equity, in no event shall any default or breach of this Agreement, or any failure to perform any obligations under this Agreement, terminate, or entitle any Party to terminate, this Agreement or any Easement or right granted hereunder. Without limiting the foregoing, no Party may terminate this Agreement, except as expressly described in Paragraphs 2(B) of this Agreement.

6. Assignment. Grantee shall have the right, without Owner's consent, to: (i) encumber, hypothecate, mortgage, pledge, or otherwise finance the Easement (including by mortgage, deed of trust or personal property security instrument) all or any portion of its right, title, or interest under this Agreement, the Easement, and/or the Project to any mortgagee as security for the repayment of any indebtedness and/or the performance of any mortgage (each an "Easement Mortgage"); (ii) grant co-easements, separate easements, sub-easements, licenses, leases, or similar rights (however denominated) to one or more persons

or entities (each an "Assignee"); and (iii) sell, convey, lease, assign, mortgage, encumber, hypothecate or transfer to one or more Assignees or Easement Mortgagees any or all right or interest of Grantee in all or any portion of this Agreement, the Easement Area, or the Easement. Owner shall be provided with a copy of each assignment. No Owner consent shall be required for any change in ownership of Grantee; no Owner consent shall be required for any grant, sale, lease, conveyance or assignment by any lender or mortgagee following foreclosure of such lender or mortgagee of its rights in this Agreement and/or the Easement. All assignees will be subject to all of the obligations, covenants and conditions applicable to the Grantee under this Agreement. Upon Grantee's assignment of its entire interest under this Agreement as to all or any portion of the Easement, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Owner shall recognize the assignee as Grantee's proper successor, the assignee shall have all of the assigned rights, benefits and obligations of Grantee under and pursuant to this Agreement, and Grantee shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment.

7. Cure; Rights of Easement Mortgagee. If Grantee has provided notice to Owner of an Easement Mortgagee, then:

A. Owner and Grantee will not modify, cancel, or terminate this Agreement without the prior written consent of the Easement Mortgagee;

B. Upon any default by Grantee under this Agreement, Owner shall concurrently deliver a copy of the applicable Notice of Default to Grantee and any Easement Mortgagee;

C. The Easement Mortgagee shall have the right, but not the obligation: (i) to do any act or thing required to be performed by Grantee under this Agreement, and any such act or thing performed by an Easement Mortgagee shall be as effective to prevent a default under this Agreement as if done by Grantee, and (ii) to cure any default under this Agreement; and

D. Prior to exercising any right under this Agreement resulting from a default by Grantee, Owner shall give any Easement Mortgagee the same time period as Grantee after receipt of Notice of Default to remedy the default, or cause the same to be remedied, plus, in each instance, the Easement Mortgagee shall have an additional time period of forty-five (45) days to complete such cure.

8. Indemnity. Grantee, to the extent allowed by law, hereby binds itself, its successors and assigns, to indemnify and hold Owner, and Owner's heirs, personal representatives and assigns, harmless from any and all claims, demands and causes of action of any kind or character ("Owner Claims") asserted against Owner, and Owner's heirs, personal representatives, and assigns to the extent that any such Claim is caused by or is the result of (i) the negligent acts and/or omissions of Grantee and its agents and employees, in connection with the exercise of any right or privilege hereunder; and (ii) any condition created, maintained or suffered to exist on or about the Easement Area to the extent same is due to the negligent acts or omissions of Grantee and its agents and employees. This indemnity shall survive termination of this Agreement. In no event shall Grantee be responsible for defending, indemnifying or holding harmless Owner to the extent of any Claim caused by, arising from the negligence or willful misconduct of Owner or Owner's employees, contractors, subcontractors, agents or representatives. Owner, to the extent allowed by law, hereby binds itself, its successors and assigns, to indemnify and hold Grantee, and Grantee's heirs, personal representatives and assigns, harmless from any and all claims, demands and causes of action of any kind or character ("Grantee Claims") asserted against Grantee, and Grantee's heirs, personal representatives, and assigns to the extent that any such Claim is caused by or is the result of (i) the negligent acts and/or omissions of Owner and its agents and employees, in connection with the exercise of any right or privilege hereunder; (ii) any breach by Owner of the terms and conditions of this Agreement; and (iii) any condition created, maintained or suffered to exist on or about the Easement Area to the extent same is due to the negligent acts or omissions of Owner and its agents and employees. This indemnity shall survive termination of this Agreement. In no

event shall Owner be responsible for defending, indemnifying or holding harmless Grantee to the extent of any Claim caused by, arising from the negligence or willful misconduct of Grantee or Grantee's employees, contractors, subcontractors, agents or representatives.

9. Recording of Agreement. Grantee shall cause the recordation of a duplicate original of this Agreement in the Official Public Records where the Easement Area is located promptly after execution of this Agreement.

10. Legal Description. In the event that it is determined that there are any inaccuracies in or changes required to the legal descriptions in Exhibit A, Exhibit B or Exhibit C of this Agreement, the validity of this Agreement shall not be affected, and, upon the request of Grantee, Owner and Grantee shall change the legal descriptions for such Exhibit(s) to reflect the final, as-built legal description of the Property contained in a survey, title commitment or other title report obtained by Grantee for the Easement Area (including without limitation recording an amendment of this Agreement) and/or to reflect updated more precise descriptions of the applicable land areas.

11. Notices. Any notice required or permitted under this agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any Party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph. The names and addresses for the service of notices, requests, deliveries, or consents referred to in this Paragraph 11 are:

If to Owner:

Deano Merrigan
LM Storage LLC
5309 Gulf Freeway
La Marque, TX 77002

If to Grantee:

Simon Labrosse
Alpha Omega Power Holding LLC
4201 Main St, Suite 200-145
Houston, Texas 77002

12. Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding.

13. Estoppel Certificates. Owner shall execute such estoppel certificates certifying as to such matters as Grantee or any Requestor may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case. The failure of Owner to deliver any signed estoppel certificate, whether such estoppel certificate indicates agreement or disagreement with the accurateness of the certificate, within ten (10) days after Grantee's or any Requestor's written request therefor shall be conclusive evidence that (i) this Agreement is in full force and effect and has not been modified; (ii) any amounts payable by Grantee to Owner have been paid through the date of such written request; (iii) there are no uncured events of default by Grantee; and (iv) the other certifications requested by Grantee or any Requestor in its estoppel, are in fact, true and correct.

14. Binding Effect. This Agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns.

15. Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the state in which the Easement Area is located. If the Parties are unable to resolve amicably any

dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state district courts with jurisdiction over the county in which any portion of the Easement Area is located. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is hereby waived. The prevailing party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing party.

16. Headings. The headings of the paragraphs of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part thereof.

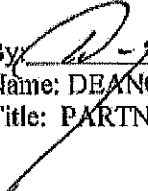
17. Counterparts. This Agreement may be executed in any number of counterparts and evidenced by facsimile and/or electronic scanned signature with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

OWNER:

LM Storage LLC,
a TEXAS limited liability company

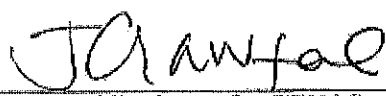
By: 
Name: DEANO MERRIGAN
Title: PARTNER

ACKNOWLEDGMENT

THE STATE OF TEXAS
COUNTY OF GALVESTON

This instrument was acknowledged before me on this 22nd day of JULY, 2024, by DEANO MERRIGAN, PARTNER of LM Storage LLC, a TEXAS limited liability company, on behalf of such limited liability company.




Notary Public, State of TEXAS

My commission expires:
03/17/2026

GRANTEE:

Alpha Omega Power, LLC,
a Delaware limited liability company

By: [Signature]
Name: Paul Choi
Title: CEO

ACKNOWLEDGMENT

STATE OF Texas
COUNTY OF Harris

This instrument was acknowledged before me on the 30 day of JULY, 2024 by Paul Choi, CEO of Alpha Omega Power, LLC, a Delaware limited liability company, on behalf of such limited liability company.

[SEAL]

[Signature]
Notary Public in and for the State of TEXAS
My commission expires: 07/14/2026

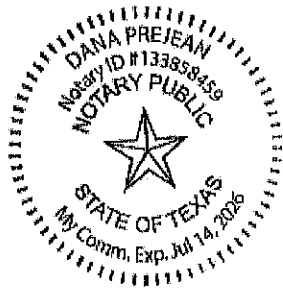


EXHIBIT A
Description and Depiction of the Property

[Pursuant to the terms of the Agreement, the description of the Property contained on this Exhibit A shall, upon request by Grantee, be replaced with a more detailed description approved by Grantee and its Title Company or surveyor]

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF GALVESTON, STATE OF TEXAS:

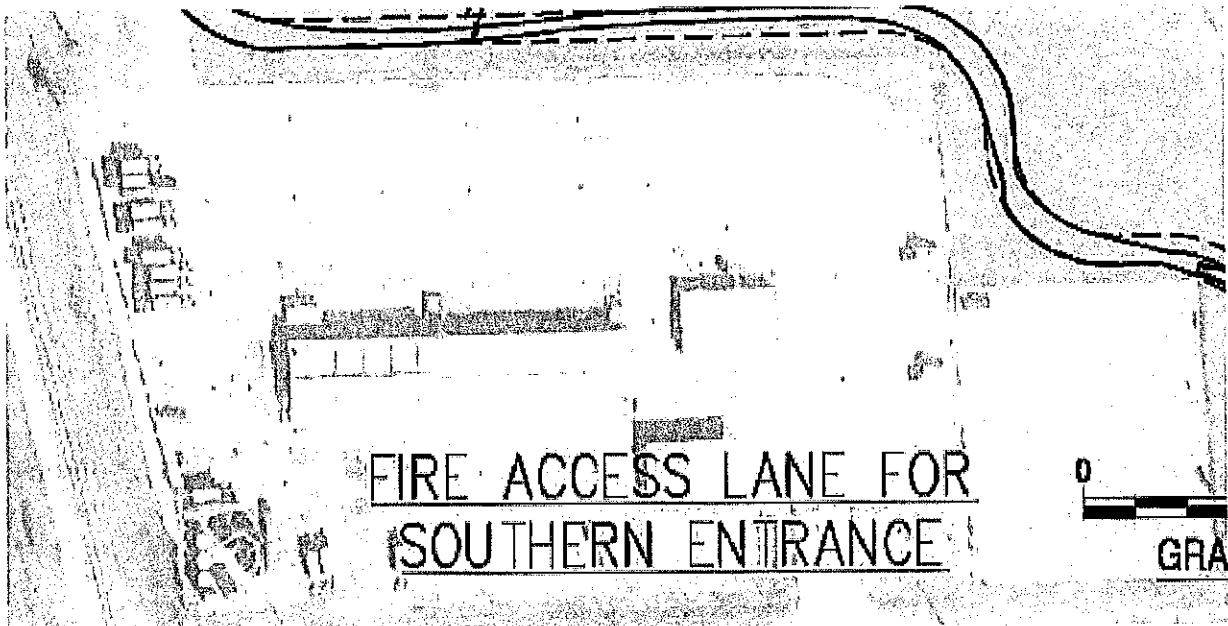


EXHIBIT B
Description and Depiction of the Easement Area

[Pursuant to the terms of the Agreement, the description of the Easement Area contained on this Exhibit B shall, upon request by Grantee, be replaced with a more detailed description approved by Grantee and its Title Company or surveyor.]

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF GALVESTON, STATE OF TEXAS:

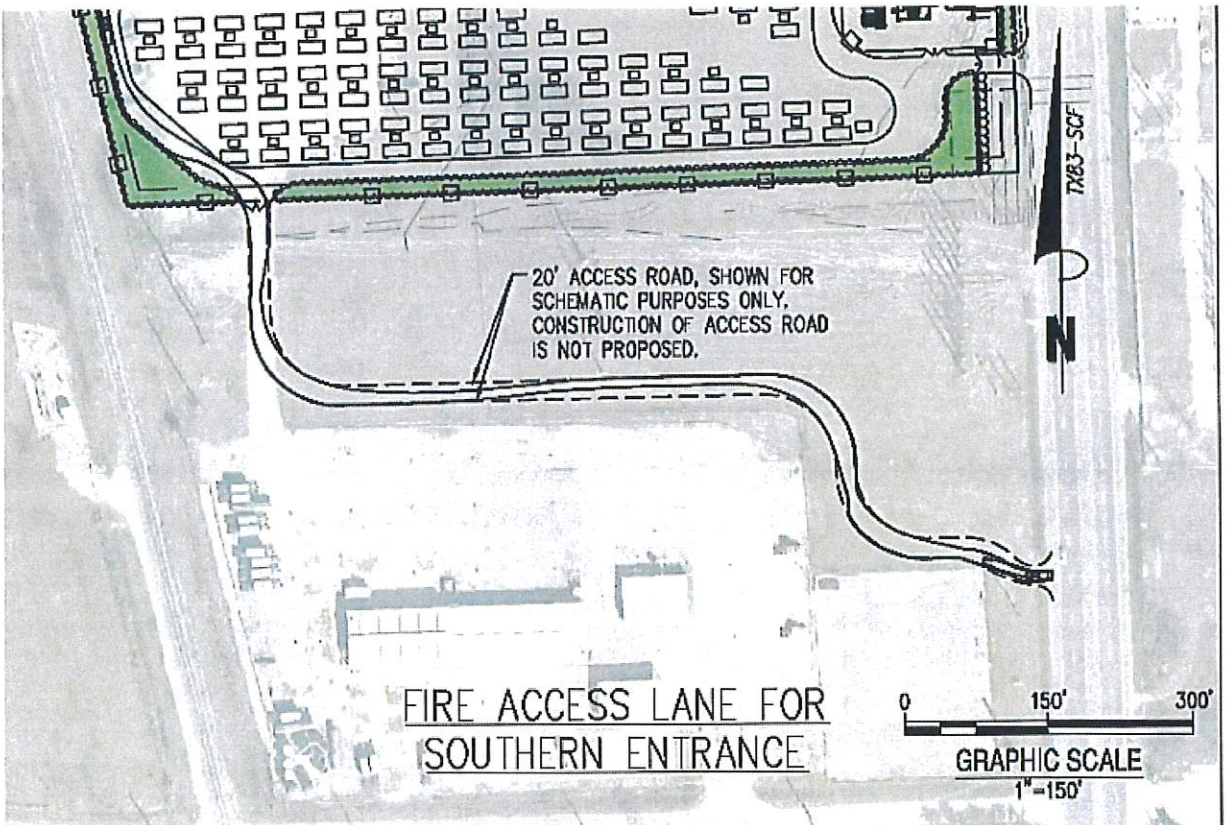


EXHIBIT C

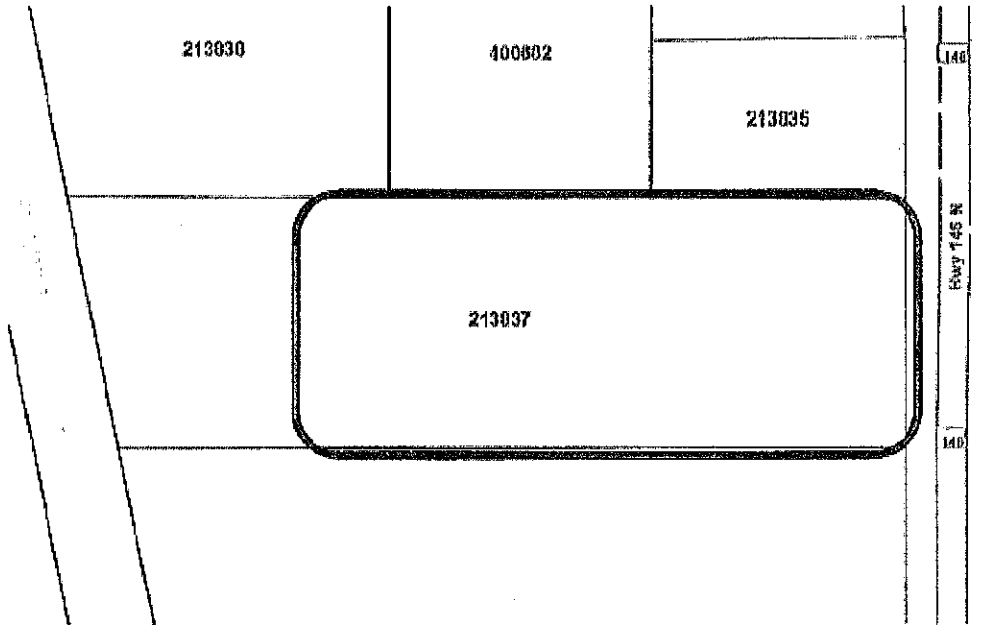
[Pursuant to the terms of the Agreement, the description of the Project Property contained on this Exhibit C shall, upon request by Grantee, be replaced with a more detailed description approved by Grantee and its Title Company or surveyor]

Description and Depletion of the Project Property

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF GALVESTON, STATE OF TEXAS:

Overall Premises: A certain tract with County Appraisal District Tract ID#213837 of approximately 6.5 acres.

Property: A certain tract with approximately 5 acres, including approximately 4 Unencumbered Constructible Acres adjacent to the Highway 146 on the Eastern side of the property. Property is approximately delineated in the red rectangle below



CITY COMMISSION REGULAR MTG

(8) (a)

Meeting Date: 09/04/2024

Submitted By: Rhomari Leigh, City Secretary

Department: City Secretary

Information

ACTION REQUEST

Approve City Commission Minutes for the August 21, 2024 meeting. (City Secretary)

BACKGROUND (Brief Summary)

RECOMMENDATION

Fiscal Impact

Attachments

Minutes

REGULAR CALLED CITY COMMISSION MEETING

MINUTES

WEDNESDAY, AUGUST 21, 2024 – 5:00 P.M.
KENNETH T. NUNN COUNCIL ROOM – CITY HALL

A Regular Called Meeting of the City Commission was held on Wednesday, AUGUST 21, 2024, at 5:00 P.M. in the Kenneth T. Nunn Council Room in City Hall, Texas City, Texas. A quorum having been met, the meeting was called to order at 5:01 p.m. by Mayor Dedrick D. Johnson.

1. ROLL CALL

Present: Dedrick D. Johnson, Mayor
Thelma Bowie, Commissioner At-Large, Mayor Pro Tem
Abel Garza, Jr. , Commissioner At-Large
DeAndre' Knoxson, Commissioner District 1
Keith Love, Commissioner District 2
Chris Sharp, Commissioner District 3
Jami Clark, Commissioner District 4

2. INVOCATION

Led by Dennis Johns, Pastor at First Baptist Church of Texas City.

3. PLEDGE OF ALLEGIANCE

Lead by Commissioner District 4 Jami Clark.

4. PROCLAMATIONS AND PRESENTATIONS

a. Service Awards

Amanda Gracia	Parks & Recreation	08/14/2014	10 years
Denise Castor	Library	08/24/2009	15 years
Hector Alonzo	Water Distribution	08/24/2009	15 years
Robert Judson	Police	08/23/2004	20 years
Michael Bullock	Bayou Golf	08/10/1999	25 years

5. REPORTS

a. Community Outreach (Police Department)

Manual Johnson, Assistant Police Chief, and Timothy Herd, Public Relations Officer, gave a PowerPoint presentation.

6. PUBLIC HEARING

- a. Public hearing to hear citizens' opinions in favor of or in opposition to the proposed 2024 tax rate of \$0.488635 per \$100 valuation.

Motion by Commissioner At-Large Abel Garza, Jr., Seconded by Commissioner At-Large, Mayor Pro Tem Thelma Bowie, to close the Pubic Hearing.

Vote: 7 - 0 CARRIED

7. PUBLIC COMMENTS

The following members of the public requested to address the City Commission: Mearlon A. Green, Jr., resident, and Jose Boix, resident.

8. CONSENT AGENDA

Commissioner At-Large, Abel Garza, made a motion to approve Consent Agenda items 8a, b, c, d, e, and f. The motion was seconded by Commissioner District 3 Chris Sharp.

- a. Approve City Commission Minutes for the August 7, 2024, meeting. (City Secretary)

Vote: 7 - 0 CARRIED

- b. Consider and take action on Resolution No. 2024-099, authorizing the execution of an Engineering Agreement with ARKK Engineers, LLC. for the 19th Avenue and 16th Street Storm Box Culvert Replacement Project. (Public Works)

Vote: 7 - 0 CARRIED

- c. Consider and take action on Resolution No. 2024-100, approving and awarding a contract for Bid No. 2024-013 Liquid Asphalt - Transport Load. (Public Works)

Vote: 7 - 0 CARRIED

- d. Consider and take action on Resolution No. 2024-101, authorizing an Agreement for Professional Consulting Services between Code Concepts Group, LLC, and the City of Texas City regarding BESS projects in Texas City. (City Engineer)

Vote: 7 - 0 CARRIED

- e. Consider and take action on Resolution No. 2024-102, awarding a contract to Willdan Engineering for Plan Review Services of COM Projects (LCB, CCEC and PSC). (City Engineer)

Vote: 7 - 0 CARRIED

- f. Consider and take action on Resolution No. 2024-103, authorizing the purchase of an inventory replacement for an ambulance chassis through the H-GAC Buy Program. (Fire)

Vote: 7 - 0 CARRIED

9. REGULAR ITEMS

- a. Consider and take action on Ordinance No. 2024-20, amending the fiscal year 2023-2024 budget for an Agreement for Professional Consulting Services on BESS proposed projects. (Finance)

Motion by Commissioner District 3 Chris Sharp, Seconded by Commissioner District 4 Jami Clark, to approve amending the fiscal year 2023-2024 budget for the Building Department to enter into a contract to assist with the review of plans and permits for various battery electrical storage systems (BESS) proposed projects.

Vote: 7 - 0 CARRIED

- b. Consider and take action on Ordinance No. 2024-21, amending the fiscal year 2023-2024 budget for Plan Review Services. (Finance)

Motion by Commissioner District 4 Jami Clark, Seconded by Commissioner At-Large, Mayor Pro Tem Thelma Bowie, to approve the request to amend the fiscal year 2023-2024 budget for Plan Review Services. \$55,000 to 101203-53680 Professional Fees from 101000-39000 General Fund Undesignated Balance.

Vote: 7 - 0 CARRIED

- c. Consider and take action on Ordinance No. 2024-22, levying an ad valorem tax for the year 2024 for the City of Texas City. (Finance)

Dedrick D. Johnson, Mayor --- aye
Thelma Bowie, Mayor Pro Tern, and Commissioner At-Large --- aye
Abel Garza, Jr., Commissioner At-Large --- aye
DeAndre' Knoxson, Commissioner District 1 --- aye
Keith Love, Commissioner District 2 --- aye
Chris Sharp, Commissioner District 3 --- aye
Jami Clark, Commissioner District 4 --- aye

Vote: 7-0 CARRIED

10. COMMISSIONERS' COMMENTS

11. MAYOR'S COMMENTS

An audiovisual recording of this meeting is available on the City's website and retained by the CSO for two years after the date of the adoption of the minutes to which the meeting corresponds.

12. ADJOURNMENT

Having no further business, Commissioner At-Large Abel Garza, Jr., made a MOTION to ADJOURN at 6:04 p.m.; the motion was SECONDED by Commissioner District 4 Jami Clark. All present voted AYE. MOTION CARRIED.

DEDRICK D. JOHNSON, MAYOR

ATTEST:

Rhomari Leigh, City Secretary
Date Approved:

CITY COMMISSION REGULAR MTG

(8) (b)

Meeting Date: 09/04/2024

Bid No. 2024-014 Building Materials Annual Contract

Submitted For: Mike McKinley, Public Works **Submitted By:** Mike McKinley, Public Works

Department: Public Works

Information

ACTION REQUEST

Approve and award a contract for bid # 2024-014 Building Materials Annual Contract.

BACKGROUND (Brief Summary)

On August 07, 2024, the Notice to Bidders was emailed to the Galveston Daily News, and published on August 09 and August 16, 2024. Bid packets were sent to local area vendors. Bids were opened on August 27, 2024, at 10 a.m. and read aloud. The lowest responsible bidder meeting all qualifications is Kilgore's Clear Lake Lumber in League City, TX. As this is an annual contract there are no guaranteed minimum or maximum purchases for the duration of this contract. Funding for this annual contract is budgeted in various department budgets.

A bid tabulation is attached for your review.

RECOMMENDATION

It is the recommendation of the Public Works Department to award the 2024-014 Building Materials Annual Contract to Kilgore's Clear Lake Lumber for the unit prices bid, and that the Mayor is authorized to execute a contract on behalf of the City Commission.

Thank you.

Fiscal Impact

Attachments

Exhibit A
Resolution

BID TABULATION

Building Materials Annual Contract

Bid #2024-014

Bids opened: Tuesday, August 27, 2024 @ 10:00 a.m.

VENDOR	TOTAL BID AMOUNT	DISCOUNT %
Kilgore Lumber	\$ 51,616.47	15%
Bohn's Building Materials *	\$58,931.48	15 – 20%

- * Items "No Bid"

RESOLUTION NO. 2024-104

A RESOLUTION AWARDDING BID NO. 2022-014 AND AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT FOR BUILDING MATERIALS ANNUAL CONTRACT; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, on August 09, 2024, and August 16, 2024, a Notice to Bidders was advertised in the Galveston County Daily Newspaper and bid packets were made available to area vendors for Bid No. 2024-014 Building Materials Annual Contract; and

WHEREAS, the bids were opened on August 27, 2024, and it is the recommendation of the Public Works Department that the bid be awarded to Kilgore's Clear Lake Lumber of League City, Texas.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the City Commission hereby accepts the contract by Kilgore's Clear Lake Lumber for Bid No. 2024-014 Building Materials Annual Contract.

SECTION 2: That the Mayor is hereby authorized to enter into an annual contract with Kilgore's Clear Lake Lumber for the respective unit price bid in **Exhibit "A"**, as attached hereto an incorporated herein for all intents and purposes.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of September 2024.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(8) (c)

Meeting Date: 09/04/2024

Approving contracts for employee medical, dental, vision, life and disability, health savings and flexible spending accounts, and an employee assistance program, and authorizing the Mayor to execute those agreements.

Submitted For: Jennifer Price, Human Resources

Submitted By: Jennifer Price, Human Resources

Department: Human Resources

Information

ACTION REQUEST

The Human Resources Department is seeking approval for the City of Texas City's entry into contracts with the following for employee benefits beginning 01/01/2025:

- Medical: Blue Cross Blue Shield
- Dental: United Concordia
- Vision: VSP
- Life and Disability: Mutual of Omaha
- Health Savings Account (HSA)/Flexible Spending Account (FSA): WEX
- Employee Assistance Program (EAP): Deer Oaks

BACKGROUND (Brief Summary)

RFP 2024-011 went out May 8, 2024 with proposals due June 6, 2024. A total of 56 proposals were received for the various employee benefits coverages. From there, the City of Texas City's insurance consultants and broker, HUB International, scored the vendors and identified the finalists for consideration. HUB went back to these finalists for their best and final offers (BAFO) as well as interviewed Blue Cross Blue Shield and United Healthcare along with the Chief Financial Officer, Executive Director of Management Services, and the Director of Human Resources.

RECOMMENDATION

After careful review by the City's benefit and insurance brokers along with the Chief Financial Officer, Executive Director of Management Services, and the Director of Human Resources, it is recommended for approval to enter the following contracts for employee benefits:

- Medical: Blue Cross Blue Shield
 - Dental: United Concordia
 - Vision: VSP
 - Life and Disability: Mutual of Omaha
 - Health Savings Account (HSA)/Flexible Spending Account (FSA): WEX
 - Employee Assistance Program (EAP): Deer Oaks
-

Fiscal Impact

Attachments

Vendor Scoring Matrices

Recommended Vendor Decisions
BCBS Sample ASO Agreement
Resolution

HUB Vendor Scoring – BAFO – ASO Medical, Stop Loss and PBM - Package



Carrier/Vendor	Finalist	Finalist	Finalist
Stop Loss	Cigna	BCBSTX	UHC
PBM	Zurich	BCBSTX	UHC
Cost (30%)	Cigna	BCBSTX	UHC
Cost Containment/ Innovative Solutions (20%)	30	29	29
Population Management Programs (20%)	19	20	19
Communication (5%)	20	19	20
Claims Processing (10%)	4	5	4
Integrated Systems / Technology Systems (10%)	9	10	10
Past Performance (5%)	9	10	10
	3	5	5
Carrier/Vendor	Cigna	BCBSTX	UHC
TOTAL SCORE	94	98	97

HUB Vendor Scoring – Stop Loss



Stop Loss RFP will remain open until BAFO's received from the markets in October

HUB Vendor Scoring – BAFO - PBM



Carrier/Vendor	Finalist				UHC
	Cigna	BCBSTX	Epiphany	Smith	
Cost (30%)	25	26	28	30	25
Cost Containment/ Innovative Solutions (20%)	19	20	19	19	19
Population Management Programs (20%)	20	19	18	17	20
Communication (5%)	5	5	4	4	5
Claims Processing (10%)	9	10	8	8	10
Integrated Systems / Technology Systems (10%)	9	10	8	8	10
Past Performance (5%)	3	5	3	3	5
Carrier/Vendor	Cigna	BCBSTX	Epiphany	Smith	UHC
TOTAL SCORE	91	96	88	89	94



HUB Vendor Scoring – BAFO – Dental

Carrier/Vendor	Finalist		*Finalist		*Finalist	
	MetLife	UCCI	BCBSTX	UCCI	BCBSTX	UHC
Cost (30%)	27	30	26	25	25	25
Cost Containment/ Innovative Solutions (20%)	19	20	20	19	19	19
Population Management Programs (20%)	20	20	20	20	20	20
Communication (5%)	5	5	4	5	4	5
Claims Processing (10%)	10	10	10	10	10	10
Integrated Systems / Technology (10%)	10	9	10	10	10	10
Past Performance (5%)	5	4	4	4	4	4
Carrier/Vendor	MetLife	UCCI	BCBSTX	UCCI	BCBSTX	UHC
TOTAL SCORE	96	98	94	98	94	93

*For MetLife, BCBSTX and UHC – HUB will explore package discounts and credits with Medical and/or Vision

HUB Vendor Scoring – BAFO - Vision

Carrier/Vendor	Finalist		*Finalist
	MetLife	VSP	UHC
Cost (30%)	27	30	28
Cost Containment/ Innovative Solutions (20%)	20	19	19
Population Management Programs (20%)	20	20	20
Communication (5%)	5	5	5
Claims Processing (10%)	10	10	10
Integrated Systems / Technology Systems (10%)	10	9	10
Past Performance (5%)	5	4	4
Carrier/Vendor	MetLife	VSP	UHC
TOTAL SCORE	97	97	96

*For MetLife and UHC – HUB will explore package discounts and credits with Medical and/or Dental

HUB Vendor Scoring – BAFO - Life/Disability



Finalist Finalist Finalist

Carrier/Vendor	VOYA	Mutual of Omaha	OCHS
Cost (50%)	50	50	49
Claims Processing (15%)	15	15	15
Integrated Systems / Technology Systems (25%)	25	25	24
References / Past Performance (10%)	10	9	9
Carrier/Vendor	VOYA	Mutual of Omaha	OCHS
TOTAL SCORE	100	99	98

HUB Vendor Scoring – BAFO - EAP



Finalist

Carrier/Vendor	Deer Oaks	Optum	UTEAP
Cost (50%)	50	40	38
Claims Processing (15%)	15	15	15
Integrated Systems / Technology Systems (25%)	25	25	25
References / Past Performance (10%)	9	9	8
Carrier/Vendor	Deer Oaks	Optum	UTEAP
TOTAL SCORE	99	89	86

HUB Vendor Scoring – BAFO – FSA / HSA / COBRA



Finalist

Carrier/Vendor	WEX	VOYA
Cost (50%)	48	50
Claims Processing (15%)	15	14
Integrated Systems / Technology Systems (25%)	25	24
References / Past Performance (10%)	10	7
Carrier/Vendor	WEX	VOYA
TOTAL SCORE	98	95

HUB Vendor Scoring – BAFO – Direct Primary Care



Finalist

Carrier/Vendor	NextLevel Prime
Cost (30%)	30
Cost Containment/ Innovative Solutions (20%)	20
Population Management Programs (20%)	19
Communication (5%)	5
Claims Processing (10%)	10
Integrated Systems / Technology Systems (10%)	10
Past Performance (5%)	5
Carrier/Vendor	
TOTAL SCORE	99

HUB Vendor Scoring – BAFO – ASO Medical and PBM - Package



Recommended

ASO Carrier/Vendor	Cigna	BCBSTX	UHC
PBM	Cigna	BCBSTX	UHC
Cost (30%)	29	30	29
Cost Containment/ Innovative Solutions (20%)	19	20	19
Population Management Programs (20%)	20	19	20
Communication (5%)	4	5	4
Claims Processing (10%)	9	10	10
Integrated Systems / Technology Systems (10%)	9	10	10
Past Performance (5%)	3	5	5
Carrier/Vendor	Cigna	BCBSTX	UHC
TOTAL SCORE	93	99	98

HUB Vendor Scoring – Stop Loss



Stop Loss RFP will remain open until BAFO's received from the markets in October

HUB Vendor Scoring – BAFO - Dental



Recommended

Carrier/Vendor	MetLife	UCCI	BCBSTX	UHC
Cost (30%)	27	30	28	27
Cost Containment/ Innovative Solutions (20%)	19	20	20	19
Population Management Programs (20%)	20	20	20	20
Communication (5%)	5	5	4	5
Claims Processing (10%)	10	10	10	10
Integrated Systems / Technology (10%)	10	9	10	10
Past Performance (5%)	5	4	4	4
Carrier/Vendor	MetLife	UCCI	BCBSTX	UHC
TOTAL SCORE	96	98	96	95

HUB Vendor Scoring – BAFO - Vision



Recommended

Carrier/Vendor	MetLife	VSP	UHC
Cost (30%)	26	30	28
Cost Containment/ Innovative Solutions (20%)	19	20	19
Population Management Programs (20%)	20	20	20
Communication (5%)	5	5	5
Claims Processing (10%)	10	10	10
Integrated Systems / Technology Systems (10%)	10	10	10
Past Performance (5%)	5	4	4
Carrier/Vendor	MetLife	VSP	UHC
TOTAL SCORE	95	99	96

HUB Vendor Scoring – BAFO - Life/Disability



Recommended

Carrier/Vendor	VOYA	Mutual of Omaha	OCHS
Cost (50%)	39	50	47
Claims Processing (15%)	15	15	15
Integrated Systems / Technology Systems (25%)	25	25	24
References / Past Performance (10%)	10	9	9
Carrier/Vendor	VOYA	Mutual of Omaha	OCHS
TOTAL SCORE	89	99	95

HUB Vendor Scoring – BAFO - EAP



Recommended

Carrier/Vendor	Deer Oaks
Cost (50%)	50
Claims Processing (15%)	15
Integrated Systems / Technology Systems (25%)	25
References / Past Performance (10%)	9
Carrier/Vendor	Deer Oaks
TOTAL SCORE	99

HUB Vendor Scoring – BAFO – FSA / HSA / COBRA



Recommended

Carrier/Mendor	WEX
Cost (50%)	48
Claims Processing (15%)	15
Integrated Systems / Technology Systems (25%)	25
References / Past Performance (10%)	10
Carrier/Mendor	WEX
TOTAL SCORE	98



**BlueCross BlueShield
of Texas**

BLUE BALANCE FUNDEDSM ADMINISTRATIVE SERVICES AGREEMENT

The Effective Date of this Agreement is [REDACTED].

For Employer Group Number(s): As specified on the most current ASO BPA (as defined below).

Account Number: [REDACTED].

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and consent to all of its terms and conditions as of the date and year specified below.

BLUE CROSS AND BLUE SHIELD OF TEXAS, [REDACTED] (“EMPLOYER”)
a Division of Health Care Service Corporation,
a Mutual Legal Reserve Company

Kel M. Sl

By: _____
Title: Vice President and Chief Underwriter
Date: Effective Date of Coverage noted above

By: _____
Title: _____
Date: _____

**Proprietary and Confidential Information of Claim Administrator
Not for use or disclosure outside Claim Administrator, Employer, their respective affiliated companies, and third-party
representatives, except with written permission of Claim Administrator.**

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This Agreement made as of the Effective Date, by and between **Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company** (“Claim Administrator”), and Employer, for Employer Group Number(s) set forth on page one (1) of this Agreement (each a “Party” and collectively, the “Parties”), WITNESSETH AS FOLLOWS:

RECITALS

WHEREAS, as part of Employer's benefit plan offered to its employees and their eligible dependents, Employer has established and adopted a Plan as defined herein; and

WHEREAS, Employer on behalf of the Plan has executed an Administrative Services Only Benefit Program Application (“ASO BPA”) and Claim Administrator has accepted such ASO BPA attached hereto as Exhibit 4; and

WHEREAS, Employer on behalf of the Plan desires to retain Claim Administrator to provide certain administrative services with respect to the Plan; and

WHEREAS, the Parties agree that it is desirable to set forth more fully the obligations, duties, rights, and liabilities of Claim Administrator and Employer.

NOW, THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Claim Administrator hereby agree as follows:

SECTION 1: CLAIM ADMINISTRATOR RESPONSIBILITIES

- 1.1 **Appointment.** Employer hereby retains and appoints Claim Administrator to provide the services set forth in Exhibit 1 in connection with the administration of the Plan (“Services”). Employer agrees that it will not perform or engage any other party to perform the Services with respect to any Covered Persons while this Agreement is in effect.
- 1.2 **Claim Administrator Responsibility.** Claim Administrator shall be responsible for and bear the cost of compliance with any federal, state or local laws that may apply to Claim Administrator's performance of its Services except as otherwise provided in this Agreement. Claim Administrator does not have final authority to determine Covered Persons' eligibility or discretion to establish or construe the terms and conditions of the Plan. Claim Administrator shall have no responsibility for or liability with respect to the compliance or non-compliance of the Plan with any applicable federal, state, and local rules, laws and regulations; and Employer shall have the sole responsibility for and shall bear the entire cost of compliance with all federal, state, and local rules, laws, and regulations, including, but not limited to, any licensing, filing, reporting, modification requirements, and disclosure requirements that may apply to the Plan, and all costs, expenses and fees relating thereto, including, but not limited to, local, state, or federal taxes, penalties, Surcharges or other fees or amounts regardless of whether payable directly by Employer or by or through Claim Administrator.
- 1.3 **Claim Appeals.** Appeals will be reviewed with a new full and fair review. If the denial reason was due to medical necessity or experimental/investigational clinical rationale, the appeal will be reviewed by a qualified Physician who had no involvement in the initial review or any prior reviews. If, pursuant to such review, the clinical decision is upheld, then the Covered Person may have the right to seek Independent External Review. The decision of the Independent Review Organization (“IRO”) will be final and binding.
- 1.4 **External Review Coordination.** If elected by Employer on the most current ASO BPA. Claim Administrator will coordinate, and Employer shall pay for, external reviews by IROs as described in Exhibit 1 and/or the most current ASO BPA, but in no event shall Claim Administrator have any liability or responsibility for any claim determination, act, or omission by an IRO in connection with any Independent External Review.
- 1.5 **Claim Administrator Review Of Eligibility Records.** During the term of this Agreement and within one hundred eighty (180) days after its termination, Claim Administrator may, upon at least thirty (30) days prior written notice to Employer, conduct reasonable reviews of Employer's membership records with respect to eligibility.

- 1.6 **Administrative Services.** In performing the Services, Claim Administrator, at its sole discretion, may contract with or delegate to other entities for performance of any of the Services; provided, however, Claim Administrator shall remain fully responsible and liable for performance of any such Services to be performed by Claim Administrator but contracted or delegated to other entities. Further, any of the Services may be performed by Claim Administrator, any subsidiary or affiliate of Claim Administrator, and any successor entity or entities to Claim Administrator, whether by merger, consolidation, or reorganization, without prior written approval by Employer.

SECTION 2: EMPLOYER RESPONSIBILITIES

- 2.1 **Employer Responsibility.** Employer retains full and final authority and responsibility for the Plan, payment of Claims under the Plan, determinations of eligibility under the Plan, and its operation; notwithstanding the foregoing, Claim Administrator remains responsible for the performance of its obligations under the terms of this Agreement. Claim Administrator performs Services for Employer in connection with the Plan within the framework, practices, and procedures of Employer and only as expressly stated in this Agreement or as otherwise mutually agreed. Employer shall remain fully responsible and liable for the performance of any of Employer's Vendor(s) (as defined below) to the extent Employer contracts for services related to the Plan or delegates to other entities any of its obligations under the Plan.
- The Parties acknowledge and agree Claim Administrator does not insure or underwrite the liability of Employer under the Plan and has no responsibility for designing the terms of the Plan or the benefits to be provided thereunder.
- 2.2 **Employer's Vendor's Responsibility.** Employer will identify to Claim Administrator any of Employer's Vendor(s). Employer represents and warrants that it has entered into separate contracts with any of Employer's Vendors. Employer agrees that in connection with any services the Employer's Vendor(s) perform related to the Plan, Employer's Vendor(s) shall not engage with or contact any Providers except as permitted by Claim Administrator. Employer agrees that neither Claim Administrator nor any of Claim Administrator's affiliates, delegates, subcontractors, or assigns shall have any responsibility for any act, error, or omission of Employer's Vendor(s). Employer also agrees Claim Administrator or any of Claim Administrator's affiliates, delegates, subcontractors, or assigns performance under this Agreement shall be excused to the extent they are unable to perform due to the performance or lack of performance of Employer's Vendor(s).
- 2.3 **Employer's Direction As To Benefit Design.** Employer shall direct Claim Administrator as to the terms and scope of benefits under the Plan and such directions shall be documented in the ASO BPA. Employer agrees that Claim Administrator shall process Claims in accordance with the ASO BPA. Employer agrees Claim Administrator may rely on the most current version of the ASO BPA or similar documentation as the authorized document that governs administration of Employer's Plan under this Agreement and will prevail in the event of any conflict with any other electronic or paper file.
- 2.4 **Eligibility.** Employer shall determine eligibility for coverage under the Plan. Employer is responsible for any benefits paid for a terminated Covered Person until Employer has notified Claim Administrator of such Covered Person's termination. Any clerical errors with respect to eligibility will not invalidate coverage that would otherwise be validly in force or continue coverage that would otherwise validly terminate. Such errors will be corrected according to Claim Administrator's reasonable administrative practices including, but not limited to, those related to Timely notification of a change in a Covered Person's status.
- 2.5 **Notices To Covered Persons.** Unless otherwise stated in this Agreement, Employer is responsible for all communications to Covered Persons, including as to the terms of the Plan. In addition, if this Agreement is terminated pursuant to Section 6.1, Employer agrees to notify all Covered Persons. Employer shall also communicate the provisions of Exhibit 3 to Covered Persons.
- 2.6 **Required Plan Information.** Employer shall furnish on a Timely basis to Claim Administrator information concerning the Plan and Covered Persons that Claim Administrator may require and request to perform its duties including, but not limited to, the following:
- a. All documents by which the Plan is established and any amendments or changes to the Plan.
 - b. All data as may be required by Claim Administrator with respect to any Covered Persons.

- c. Employer shall Timely notify Claim Administrator in a mutually agreeable format of any change in a Covered Person's status under this Agreement.
- d. By providing Covered Persons information that may include a telephone and text number, the Employer agrees that Claim Administrator may use that information to secure the Covered Person's consent to contact them via their preferred method of communication (e.g., phone, text, email) with the Claim Administrator.
- e. Employer is responsible for ensuring that the terms of the Plan are consistent with the terms of this Agreement.

2.7 Summary of Benefits And Coverage ("SBC"). Unless otherwise provided in the applicable ASO BPA and SBC Addendum (if applicable), Employer acknowledges and agrees that Employer will be responsible for the creation and distribution of the SBC as required by Section 2715 of the Public Health Service Act (42 USC 300gg-15) and SBC regulations (45 CFR 147.200), as supplemented and amended from time to time, and that in no event will Claim Administrator have any responsibility or obligation with respect to the SBC and that Claim Administrator will not be obligated to respond to or forward misrouted calls, but may, at its option, provide participants and beneficiaries with Employer's contact information.

2.8 Massachusetts Health Care Reform Act. If elected by Employer on the applicable ASO BPA, Claim Administrator will provide required written statements of creditable coverage to Covered Persons residing in Massachusetts and submit applicable electronic reporting to the Massachusetts Department of Revenue, in accordance with the Massachusetts Health Care Reform Act based on information provided to Claim Administrator by Employer and coverage under the Plan(s) during the term of this Agreement. Employer hereby certifies that it has or will review the Plan for Massachusetts Health Care Reform Act compliance, and, to the best of its knowledge, that such coverage under the Plan(s) is "creditable coverage" in accordance with the Massachusetts Health Care Reform Act. Employer acknowledges that Claim Administrator will not verify and is not responsible for verifying nor ensuring compliance with any tax and/or legal requirements related to this Service. Employer or its Covered Persons should seek advice from their legal or tax advisors as necessary. If not elected on the applicable ASO BPA, Employer acknowledges it will provide written statements and electronic reporting to the Massachusetts Department of Revenue as required by the Massachusetts Health Care Reform Act.

2.9 Employer Audits Claim Administrator. During the term of this Agreement and within one hundred eighty (180) days after its termination, Employer or an authorized agent of Employer (subject to Claim Administrator's reasonable approval) may, upon at least ninety (90) days prior written notice to Claim Administrator, conduct reasonable audits of records related to Claim Payments to verify that Claim Administrator's administration of the covered health care benefits is performed according to the terms of this Agreement. Any review of Claim information by Employer or an authorized agent of Employer to evaluate Claim Administrator's performance of the administrative services provided according to the terms of this Agreement shall be subject to the terms of this Section. Contingency fee based audits are not supported by Claim Administrator. Audit samples will be limited to no more than three hundred (300) Claims. If a pattern of errors is identified in an audit sample, Claim Administrator shall also identify Claims with the same errors and will reprocess such identified Claims in accordance with Claim Administrator policies and procedures. Notwithstanding anything in this Agreement to the contrary, in no event will Claim Administrator be obligated to reprocess Claims or reimburse Employer for alleged errors based upon audit sample extrapolation methodologies or inferred errors in a population of Claim Payments. Employer will be responsible for all costs associated with the audit. Employer will reimburse Claim Administrator for all reasonable expenditures necessary to support audits conducted after termination of this Agreement. All such audits shall be subject to Claim Administrator's then current external audit policy and procedures, a copy of which shall be furnished to Employer upon request to Claim Administrator. The audit period will be limited to the current Agreement year and the immediately preceding Agreement year. No more than one (1) audit shall be conducted during a twelve (12) consecutive-month period, except as required by state or federal government agency or regulation. Employer and such agent that have access to the information and files maintained by Claim Administrator will agree not to disclose any proprietary information, and to hold harmless and indemnify Claim Administrator in writing of any liability from disclosure of such information by executing an Audit Agreement with Claim Administrator that sets forth the terms and conditions of the audit. Claim Administrator has the right to implement reasonable administrative practices in the administration of Claims.

SECTION 3: CONFIDENTIAL DATA, INFORMATION AND RECORDS

- 3.1 Use and Disclosure Of Covered Persons' Information.** The Parties acknowledge and agree that they have entered into a Business Associate Agreement ("BAA") as required by HIPAA. The Parties agree the BAA will govern the use, access, or disclosure of all personally identifiable information ("PII"), including Protected Health Information ("PHI"), Claim Administrator may collect or receive. While Claim Administrator does not anticipate receiving or collecting PII about Covered Persons that is not PHI, Claim Administrator agrees to protect and secure any PII of Covered Persons according to the terms of the BAA and agrees to fulfill any other obligations related to PII as required therein.
- 3.2 Electronic Exchange Of Information.** If Employer and Claim Administrator exchange data and information electronically, Employer agrees to transfer on a Timely basis all required data to Claim Administrator via secure electronic transmission on the intranet and/or internet or otherwise, in a format mutually agreed to by the Parties. Further, Employer is responsible for maintaining any enrollment applications and enrollment documentation, including any changes completed by Covered Persons and to allow Claim Administrator reasonable access to this information as needed for administrative purposes.
- Employer authorizes Claim Administrator to submit reports, data, and other information to Employer in the electronic format mutually agreed to by the Parties.
- 3.3 Providing Data To Employer's Vendor(s).** If Employer requests for itself or directs Claim Administrator to provide data directly to Employer's third party consultant and/or vendor ("Employer's Vendor(s)"), Employer acknowledges and agrees that it will execute and shall require Employer's Vendor(s) to execute Claim Administrator's then-current data exchange agreement. Employer hereby acknowledges and agrees and Employer's Vendor(s) shall acknowledge and agree:
- a. That the requested documents, records, and other information (for purposes of this Section 3, "Confidential Information") are proprietary and confidential in nature and that the release of the Confidential Information may reveal Claim Administrator's Business Confidential Information.
 - b. To maintain the confidentiality of the Confidential Information and any Business Confidential Information (for purposes of this Section 3, collectively, "Information") and to prevent unauthorized use or disclosure by Employer's Vendor(s) or unauthorized third parties, including those of its employees not directly involved in the performance of duties under its contract with Employer, to the same extent that it protects its own confidential information.
 - c. To use and limit the disclosure of the Information strictly for and to the minimum extent necessary to fulfill the purpose for which it is disclosed.
 - d. To maintain the Information at a specific location under its control and take reasonable steps to safeguard the Information.
 - e. To use, and require its employees to use, at least the same degree of care to protect the Information as is used with its own proprietary and confidential information.
 - f. To not duplicate the Information furnished in written, pictorial, magnetic and/or other tangible form except as necessary to fulfill the purposes of this Agreement or as required by law.
 - g. To not sell, re-sell, or lease the information.
 - h. To securely return or securely destroy the Information at the direction of Claim Administrator or within a reasonable time after the termination of this Agreement, not to exceed sixty (60) days thereafter. If it is impractical or infeasible to securely return or securely destroy the information, Employer's Vendor and/or third party consultant agrees to protect the confidentiality of the data at the same level as under the current confidentiality agreement even after the termination of the Agreement.

Employer shall provide Claim Administrator in writing the names of any Employer's Vendor(s) with whom Claim Administrator is authorized to release, disclose, or exchange data and provide written authorization and specific directions with respect to such release, disclosure, or exchange. If Employer's Vendor(s) perform services that involve the use, access or disclosure of PHI as defined by HIPAA, the identity of Employer Vendor(s) shall be documented within the BAA between Claim Administrator and Employer.

- 3.4 Business Confidential Information And Proprietary Marks.** The Parties acknowledge that Claim Administrator has developed acquired or owns certain Business Confidential Information (“BCI”). Employer shall not use or disclose such Business Confidential Information, including this Agreement, to any third party without prior written consent of Claim Administrator. Employer agrees to provide written notice to Claim Administrator if Employer believes it is required by law to disclose BCI, including but not limited to this Agreement, to any entity or person, including but not limited to any Covered Person, any Covered Person’s authorized representative, or any governmental entity, so that Claim Administrator has the opportunity to object and ensure appropriate confidentiality protections are in place. Employer will at all times remain responsible for maintaining the confidentiality of this Agreement and shall ensure that any affiliated entities or third-party representatives to whom the Agreement is disclosed are bound in writing not to further disclose this Agreement without the prior written consent of Claim Administrator.
- Neither Party shall use the name, symbols, copyrights, trademarks, or service marks (“Proprietary Marks”) of the other Party or the other Party’s respective clients in advertising or promotional materials without prior written consent of the other Party; provided, however, that Claim Administrator may include Employer in its list of clients.
- 3.5 Claim Administrator/Association Ownership.** Employer acknowledges that certain of Claim Administrator’s Proprietary Marks and Business Confidential Information are utilized under a license from the Blue Cross and Blue Shield Association. Employer agrees not to contest (i) the Blue Cross and Blue Shield Association’s ownership of, or the license granted by the Blue Cross and Blue Shield Association to Claim Administrator for use of, such Proprietary Marks and (ii) Claim Administrator’s ownership of its Proprietary Marks or Business Confidential Information.
- 3.6 Infringement.** Claim Administrator agrees not to infringe upon, dilute or harm Employer’s rights in its Proprietary Marks. Employer agrees not to infringe upon, dilute or harm Claim Administrator’s rights in its Proprietary Marks, including those Proprietary Marks owned by the Blue Cross and Blue Shield Association and utilized by Claim Administrator under a license with the Blue Cross and Blue Shield Association.
- 3.7 Records.**
- a. Records Retention.** Claim Administrator shall retain all Claim records for the longer of (i) the time period required by applicable law or (ii) the time period required by Claim Administrator’s records retention policy, which policy is subject to change by Claim Administrator. The failure to agree upon a retention period shall not constitute breach of this Agreement.
 - b. Record Requests.** For a period of one (1) year following termination of this Agreement, Claim Administrator shall, upon the request of the Employer for general purposes (“Data Reclamation Request”), provide to Employer a copy of all Claim determination records, excluding any and all of the Business Confidential Information of Claim Administrator, other Blue Cross and/or Blue Shield companies, or Claim Administrator’s subsidiaries, affiliates, and vendors, in the possession of Claim Administrator. Within a mutually agreeable time frame of receipt of the Data Reclamation Request, Claim Administrator shall transmit the dataset in a form mutually agreed upon by the Parties with the cost of preparing the information for transmittal to be borne by Employer. The time period for general record requests does not impact nor restrict any legal, regulatory, or mandated data requests.
- 3.8 Use of Data for Industry Improvement Activities.** Claim Administrator may use or disclose a limited data set or de-identified data (“Data”) as permitted by the executed BAA, HIPAA, and other applicable federal and state laws for the purpose of supporting industry improvement activities such as analytic reviews, research studies, and other similar projects focused solely on promoting quality health care, managing health care costs, reducing administrative costs, or enhancing the Plan’s performance. Any Data used or disclosed will be managed and coordinated by the Claim Administrator or by the Blue Cross and Blue Shield Association (“BCBSA”) including any vendors that assist the Claim Administrator and the BCBSA in the industry improvement activities. The Data shall not be sold, used, or disclosed for the financial benefit or profit of the Claim Administrator, BCBSA, or vendor.

SECTION 4: LITIGATION, LEGAL PROVISIONS, ERRORS, AND DISPUTE RESOLUTION

4.1 Litigation. Employer shall, to the extent practical, advise Claim Administrator of any legal actions against one or both Parties that specifically or directly concern (a) the terms of or administration of the Plan, or (b) the obligations of either Party under the Plan and this Agreement. Employer shall undertake the defense of such action and be responsible for the costs of defense, including but not limited to attorneys' fees and costs, external claim reviews, and other expenses. Notwithstanding the foregoing, Claim Administrator shall have the option, at its sole discretion, to select and employ attorneys to defend any such action, in which event the fees and costs of those attorneys shall be the responsibility of Claim Administrator. For such actions, each Party shall reasonably cooperate with the other Party's defense, unless a conflict of interest exists. Some defense support by Claim Administrator, such as external claim review, may require an additional fee, the costs of which shall be Employer's responsibility.

4.2 Claim Overpayments. Employer acknowledges that unintentional administrative errors may occur. If Claim Administrator becomes aware of a Claim Overpayment to a Provider or Covered Person, Claim Administrator is authorized to follow its recovery processes, including, but not necessarily limited to, those items described below ("Recovery Process(es)"). Claim Administrator, however, will not be required to enter into litigation to obtain a recovery, unless specifically provided for elsewhere in this Agreement. Nor will Claim Administrator be required to reimburse the Plan, except for when gross negligence or intentional misconduct by Claim Administrator caused the Overpayment.

Recovery Process. Claim Administrator, on behalf of Employer, or on behalf of itself as an insurer, has the right to obtain a refund of an Overpayment from a Provider or a Covered Person. Unless otherwise agreed upon between Claim Administrator and the Provider, when a Provider fails to return an Overpayment to Claim Administrator, Claim Administrator has the right to utilize the following mechanisms to recover the Overpayment:

For purposes of Section 4.2(a.-e.) below, "Other Plan(s)" or "Another Plan" means any health benefit plan, including, but not limited to, individual and group plans or policies administered or insured by Claim Administrator.

- a. Reductions From Future Payments to Network Providers.** Claim Administrator has the right to offset future payments owed to the Provider: (i) from the Plan, or (ii) if the Provider is a Network Provider, from Other Plans, up to an amount equal to the Overpayment (collectively, "Offset").
- b. Cross-Plan Offsets for Network Providers.** Claim Administrator has the right to reduce Another Plan's payment to a Network Provider by the amount necessary to recover the Plan's Overpayment to the same Network Provider and to remit the recovered amount to Employer (net of fees, if any). Likewise, Claim Administrator has the right to reduce the Plan's payment to a Network Provider by the amount necessary to recover Another Plan's Overpayment to the same Network Provider and to remit the recovered amount to the Other Plan (each, a "Cross-Plan Offset").
- c. Division Of Recovery for Multiple Plans.** If Claim Administrator has made Overpayments to a Network Provider for more than one (1) Other Plan, Claim Administrator has the right to Offset two (2) or more of the Overpayments collectively against future payments owed to Another Plan as part of a single transaction, resulting in an Overpayment recovery amount which shall be applied based on the age of the Overpayments, beginning with the oldest outstanding Overpayment, or has the right to Offset as otherwise set forth in this Section 4.
- d. Employer Authorization for Offsets and Cross-Plan Offsets.** Employer authorizes and directs Claim Administrator to perform any Offsets and Cross-Plan Offsets. Cross-Plan Offsets will be carried out consistent with the terms of the Provider contract. Notwithstanding the foregoing, Employer acknowledges and agrees that claims processed through Inter-Plan arrangements with other Blue Cross and/or Blue Shield licensees operate under rules and procedures issued by the Association, and the recovery policies and procedures of each Blue Cross and/or Blue Shield independent licensee may apply.
- e. No Independent Right of Recovery.** Subject to the exception(s) set forth in this Section 4, Employer agrees that Claim Administrator shall administer Overpayment recoveries in accordance with its Recovery Process and that Employer has no separate or independent right to recover any Provider Overpayment from Claim Administrator, Providers, or Another Plan. Employer agrees that

it will not perform or engage any other party to perform Overpayment recovery activities with respect to Providers or Covered Persons without prior written consent of Claim Administrator.

- 4.3 Third Party Recovery Vendors And Outside Attorneys.** To assist in the recovery of payments, Claim Administrator may engage a third party to assist in identification or collection of recovery amounts related to Claim Payments made under the Agreement. In such event, the recovered amounts will be applied according to Claim Administrator's refund recovery policies. Claim Administrator may also engage a third party to assist in the review of Providers' Claim coding or billing to identify discrepancies post Claim Payment. Third parties' fees, as defined in the ASO BPA, associated with such assistance and Claim Administrator's fee for its related administrative expenses to support such third-party recovery identification and collection will be paid by Employer and are separate from and in addition to the Reimbursement Fees set forth in the ASO BPA.
- 4.4 Claim Administrator Indemnifies Employer.** Claim Administrator hereby agrees to indemnify and hold harmless Employer and its directors, officers and employees against any and all loss, liability, damages, penalties and expenses, including reasonable attorneys' fees, or other cost or obligation resulting from or arising out of claims, lawsuits, demands, settlements, or judgments with respect to this Agreement resulting from or arising out of any acts or omissions of Claim Administrator or its directors, officers or employees (other than acts or omissions of Claim Administrator done at Employer's direction) which have been adjudged to be (i) grossly negligent, fraudulent, or criminal or (ii) in material breach of the terms of this Agreement.
- 4.5 Employer Indemnifies Claim Administrator.** Employer agrees to indemnify and hold harmless Claim Administrator and its directors, officers and employees against any and all loss, liability, damages, fines, penalties, taxes, and expenses, including attorneys' fees and costs, or other cost or obligation resulting from or arising out of claims, lawsuits, demands, governmental inquiries or actions, settlements, or judgments brought or asserted against Claim Administrator in connection with the design, operation, or administration of the Plan, including but not limited to (a) any failure to provide or the provision of inaccurate information to Claim Administrator, (b) any disclosure of information Employer directs Claim Administrator to make, or (c) selection of Employer's Essential Health Benefits benchmark for the purpose of ACA; unless the liability therefor was the direct consequence of the acts or omissions of Claim Administrator or its directors, officers or employees (other than acts or omissions of Claim Administrator done at Employer's direction) and the acts or omissions are adjudged to be (i) grossly negligent, dishonest, fraudulent, or criminal or (ii) in material breach of the terms of this Agreement.
- 4.6 Adjudication of Preventive Care.** If either on the applicable ASO BPA or other document Employer directs Claim Administrator to process and adjudicate claims at one hundred percent (100%) of the applicable allowed amount Allowable Amount regardless of whether the high-deductible health plan's deductible has been met ("First Dollar Coverage"), Employer acknowledges and agrees that such direction is a benefit design decision and the responsibility of the Employer. Notwithstanding any other provision of this Agreement, Employer shall indemnify and hold harmless (and upon request defend) Claim Administrator against claims brought by any employees of Employer, participants in any benefit plan provided by Employer, or any governmental agency, in connection with or arising out of, directly or indirectly of the First Dollar Coverage. Employer acknowledges and agrees that Claim Administrator shall have no fiduciary obligation with respect to the directions to provide First Dollar Coverage.
- 4.7 Assignment.** Except as otherwise permitted by Section 1 of this Agreement, no part of this Agreement, or any rights, duties or obligations described herein, shall be assigned, transferred, or delegated, directly or indirectly, without the prior express written consent of both Parties. Any such attempted assignment in the absence of the prior written consent of the Parties shall be null and void. Claim Administrator's contractual arrangements for the acquisition and use of facilities, services, supplies, equipment, and personnel shall not constitute an assignment or delegation under this Agreement. This Agreement shall, however, be binding on any permitted assignees, delegates, or successors to the Parties.
- 4.8 Applicable Law.** This Agreement shall be governed by and construed in accordance with applicable federal laws and the laws of the state of Texas without regard to any state choice-of-law statutes, and any applicable federal law. All disputes between Employer and Claim Administrator arising out of or related to this Agreement will be resolved in Dallas, Texas. Changes in state or federal law or regulations or interpretations thereof may change the terms and conditions of the Services.

- 4.9 Notice And Satisfaction.** Unless specifically stated otherwise in this Agreement or in any written Exhibit or Addenda thereto, Employer and Claim Administrator agree to give one another written notice (in accordance with this section) of any complaint or concern the other Party may have about the performance of obligations under this Agreement and to allow the notified Party ninety (90) days in which to make necessary adjustments or corrections to satisfy the complaint or concern prior to taking any further action with regard to such, including but not limited to initiation of Dispute Resolution under Section 4.11 below. The written notice shall provide a description of the complaint or concern in such reasonable detail as to allow the notified Party the opportunity to make the necessary modifications within the agreed upon term. All notices given under this Agreement shall be deemed to have been given for all purposes when personally delivered and received or when deposited in the United States mail, first-class postage prepaid, and addressed to the Parties' respective contact names at their respective addresses or when transmitted by facsimile via their respective facsimile numbers as indicated on the most current ASO BPA. Each Party may change such notice mailing and/or transmission information upon Timely prior written notification to the other Party. Claim Administrator may also provide such notices electronically, to the extent permitted by applicable law.
- 4.10 Limitations; Limitation Of Liability.** No action or dispute shall be brought to recover under this Agreement after the expiration of three (3) years from the date the cause of action accrued, except to the extent that a later date is permitted under Section 413 of ERISA. As part of the consideration for services provided by Claim Administrator and for the fees paid by Employer under this Agreement, except as otherwise agreed below or otherwise prohibited by Law, Claim Administrator's liability (whether in contract, tort, or any other liability at law or equity) for any errors or omissions by Claim Administrator (or its officers, directors, employees, agents, or independent contractors) in connection with this Agreement shall not exceed the maximum benefits which should have been paid under the terms of the Plan had the errors or omissions not occurred (plus Claim Administrator's share of any arbitration expenses incurred), unless any such errors or omissions are adjudged to be the result of gross negligence, fraud, or criminal actions by Claim Administrator.
- 4.11 Dispute Resolution.** Any dispute arising out of or related to this Agreement shall be resolved in accordance with the procedures specified in this section, which shall be the sole and exclusive procedures for the resolution of any such disputes.
- a. Initial Notice And Negotiation.** Employer or Claim Administrator shall give written notice to the other Party of the existence of a dispute. Within sixty (60) days of receipt of the written notice, the Parties shall seek to resolve that dispute through informal discussions between authorized representatives of the Parties with appropriate authority to approve any resolution. All negotiations pursuant to this section are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- b. Confidential Arbitration.** In the event the Parties fail to agree with respect to any matter covered herein and only after making good faith efforts to resolve any dispute under this Agreement under this section, Employer or Claim Administrator may submit the dispute to confidential, binding arbitration before the American Arbitration Association ("AAA"), subject to the following:
1. For matters in which the amount in controversy is \$10,000 or less, Claim Administrator shall select an arbitrator. For matters in which the amount in controversy exceeds \$10,000, the arbitration shall be conducted by a single arbitrator selected by the Parties from a list furnished by the AAA. If the Parties are unable to agree on an arbitrator from the list, AAA shall appoint an arbitrator.
 2. Arbitration shall be held in Dallas, Texas.
 3. Arbitration proceedings will be governed by the AAA Commercial Rules.
 4. The arbitrator shall be required to issue a written opinion resolving all disputes in any matter in which the controversy exceeds \$10,000 and designating one Party as the prevailing Party.
 5. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the dispute.

6. The arbitrator's fees and any costs imposed by the arbitrator will be shared equally by the Parties. All costs and expenses, including but not limited to reasonable attorney and witness fees shall be borne by the non-prevailing Party or as apportioned by the arbitrator.
 7. This provision precludes Employer from filing an action at law or in equity and from having any dispute covered by this Agreement heard by a judge or jury.
 8. Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration pursuant to this Section without the prior written consent of both Parties.
- c. Except as provided otherwise in this Agreement, each Party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

4.12 Transparency and Surprise Billing Procedures. Unless another effective date is stated for a specific service, for plan years on or after January 1, 2022, Claim Administrator agrees to provide Employer the services and processes described in this section consistent with the Consolidated Appropriations Act of 2021 ("CAA"), Transparency in Coverage Final Rule, and the No Surprises Act ("NSA").

a. Transparency Procedures.

1. ***Contracted Provider Data Verification.*** Claim Administrator will maintain a central database of Contracted Providers' demographic information, which shall include name, address, phone number, specialty, and web address ("Data Elements"). Claim Administrator will initiate an outreach to Contracted Providers to verify the accuracy of the Data Elements up to ninety (90) days following the last recorded update or verification. Claim Administrator has implemented commercially reasonable procedures to track the receipt of updated data from a Contracted Provider and update the central database within appropriate timeframes.

2. ***Directory of Verified Contracted Providers.*** Claim Administrator will provide an online Provider directory representing the Contracted Providers who render Covered Services which may be billed to plans and policies administered by Claim Administrator. This directory shall include Providers contracted with Claim Administrator, Providers contracted with any Blue Cross and Blue Shield Plan, and any other entity performing Covered Services on behalf of Claim Administrator. The directory will not reflect services administered by external claims administrators or other Providers not contracted through Claim Administrator.

Providers who fail to confirm the accuracy of the Data Elements may be subject to removal from the Provider directory until they confirm the accuracy of their information.

To the extent information for the Provider directory is provided by a third party, Claim Administrator shall not be responsible for delays in updates to Provider data directories, or misinformation due to such delays in receiving information from such third party.

3. ***Provider Network Status Verification.*** Covered Persons in plans or policies administered by Claim Administrator may seek clarification of a Provider's Network status through Claim Administrator. Notwithstanding any terms in this Agreement, Employer authorizes Claim Administrator to communicate with Covered Persons as reasonably necessary to provide information to or responses in connection with this section. When this clarification is sought via phone, Claim Administrator will use commercially reasonable efforts to provide written, electronic, or print confirmation of the Provider's Network status within an appropriate timeframe. This verification shall be based on the information available to Claim Administrator at the time of the request and does not represent future guarantee of Network status.

Employer acknowledges that Claim Administrator will not issue a written confirmation of Provider Network status when request is sought through a third-party service center.

4. ***ID Cards.*** Claim Administrator will include up to four (4) lines of text for deductible limits and up to four (4) lines of text for out-of-pocket maximum limits for major medical coverage on the member ID card. The limits will reflect both family and individual limits when applicable to policy, together with in- and out-of-network limits.

For policies that include prescription drug coverage through Prime with an independent out-of-pocket maximum limit or Deductible, one (1) line of text for deductible limits and one (1) line of text for out-of-pocket maximum limits will be included on the ID card.

Claim Administrator will include a phone number and a website URL for consumer assistance information on ID cards issued by Claim Administrator.

Claim Administrator will issue physical ID cards in accordance with its standard processes and will not re-issue physical ID cards unless requested by Employer, in which case additional charges may apply. All newly issued physical ID cards will contain the information reflected in this section.

5. **Machine-Readable Files.** Claim Administrator will publish and host machine readable files populated with the negotiated rates with providers, and an aggregated out-of-network allowable amount file, as contemplated by the Centers for Medicare and Medicaid Services (“CMS”) standards, for services administered by Claim Administrator on behalf of the Plan. The files will be updated monthly and hosted on a publicly available website. The files will not reflect services administered by external claims administrators or other Providers not directly contracted through Claim Administrator. The Plan may choose to download and/or link to the files from their own website. Claim Administrator will supply an implementation guide that provides additional information on how to obtain a link to the website that will contain the machine-readable files. To the extent Employer or the Plan engages a third-party Vendor to administer or host the Machine-Readable Files, Employer hereby acknowledges and agrees that neither Claim Administrator nor any of Claim Administrator’s affiliates, delegates, subcontractors, or assigns shall have any responsibility for any act, error, or omission of such Vendor or with respect to the performance of such Vendor. Employer shall remain fully responsible and liable for the performance, acts, or omissions of any of Employer’s Vendors.

6. **Cost Sharing Estimator Tool.** Claim Administrator will make available a Cost Sharing Estimator Tool (“CSET”) to enable Plans to provide enrollees personalized cost-sharing estimates for items covered by the Plan administered by Claim Administrator. The CSET will be made available through either self-service tools or telephone upon member request, a secure member portal, and via a mobile application, for active policies, and include services in accordance with the following schedule:

Effective with the plan year beginning on or after January 1, 2023, enrollees will be able to search for the cost of five hundred (500) services, as defined by CMS, covered by the Plan administered by Claim Administrator, to identify the estimated cost for the procedure, illustrate how the member’s benefits will apply to the procedure, and disclose if there may be any prerequisites to care, such as requiring a prior authorization for a service or procedure.

For each plan year beginning on or after January 1, 2024, the services that can be estimated through the CSET will be expanded to support all services and procedures covered by the Plans that are administered by Claim Administrator.

To the extent Employer or the Plan engages a third-party Vendor to administer a substantially similar CSET for the same or similar services, Employer hereby acknowledges and agrees that neither Claim Administrator nor any of Claim Administrator’s affiliates, delegates, subcontractors, or assigns shall have any responsibility for any act, error, or omission of such Vendor or with respect to the performance of such Vendor. Employer shall remain fully responsible and liable for the acts or omissions of any of Employer’s Vendors.

7. **Drug Cost Reporting.** Claim Administrator will provide on behalf of Employer, based on the type of pharmacy coverage and data Claim Administrator administers and maintains for Employer, health and drug cost reporting to the extent within the possession of Claim Administrator as contemplated by Section 204 of the CAA according to Claim Administrator’s standard processes and procedures, unless otherwise mutually agreed in writing.

8. **Continuity of Care.** In the event of a Provider or facility termination for reasons other than failure to meet quality standards or fraud, Claim Administrator shall notify individuals enrolled under the Plan who are continuing care patients with respect to the Provider or facility at the time of the termination. Claim Administrator will provide each individual who is a continuing care patient of a terminated Provider or facility, the opportunity to request to continue to have the treatment provided under the same benefits provided, under the same terms and conditions as would have applied under the Plan had the termination not occurred, for a specified duration (for purposes of this section, "Continuity of Care"). Claim Administrator will identify continuing care patients and provide Continuity of Care and in accordance with Claim Administrator policies.
 9. **Required Disclosure/Notices.** Claim Administrator will post the disclosure on patient protections against balance billing on its public website where information is normally made available to participants, beneficiaries, and enrollees, on the Plan's behalf.
 10. **Mental Health Parity.** Claim Administrator has or will timely establish processes and procedures, in accordance with sound professional practices and prevailing industry standards, reasonably necessary for Claim Administrator to timely support good faith requests of Employer for data or other documentation that Employer may need to analyze and document the Plan's compliance with applicable Mental Health Parity requirements, including the amendments to the Mental Health Parity and Addiction Equity Act ("MHPAEA") of 2008. So long as Employer has elected to implement Claim Administrator's standard non-quantitative treatment limitations ("NQTs") and so long as Claim Administrator administers both mental health/substance abuse benefits and medical/surgical benefits on behalf of Employer, this may include applicable comparative documentation with respect to Claim Administrator-Administered non-quantitative treatment limitations (NQTs) under the Plan which may be necessary for addressing and complying with the requirement to analyze and document NQTL parity between mental health/substance abuse benefits and medical/surgical benefits, as required by Division BB, Title II, Section 203 of the CAA and guidance issued thereunder. In addition, in the event that the U.S. Department of Labor or other regulatory agency ("Agency") with competent jurisdiction over the Plan initiates an audit or other assessment related to the Plan's compliance with mental health parity requirements, including the obligation to perform and/or make available the comparative analyses described above, Claim Administrator agrees to provide expedited support to enable Employer and the Plan to timely provide documentation requested by the Agency. Both Parties agree and understand that no data or other documentation provided by Claim Administrator under this Section shall be reasonably interpreted as a certification of the compliance of the Plan or any Claim Administrator-Administered NQTs or other processes with State or Federal Mental Health Parity requirements. Employer agrees that compliance of the Plan with such requirements is solely the responsibility of Employer.
- b. Surprise Billing Requirements of the No Surprises Act.**
1. **Qualifying Payment Amount.** As it pertains to Employer's self-funded plans, Employer acknowledges that NSA requires, among other things, that member cost-share for certain items and services the Plan covers are calculated based on the lesser of the Provider's billed charge or the NSA's "Qualifying Payment Amount" ("QPA"). With respect to the calculation of QPA, Employer elects to use and adopts the QPA calculated by Claim Administrator based on Claim Administrator's self-funded business and not a QPA customized for Employer's Plan(s).
 2. **Negotiation and Independent Resolution Process.** Employer acknowledges that Claim Administrator will make on the Plan's behalf an initial payment amount on Claims consistent with Employer's direction as established by Employer's Plan and this Agreement. For covered NSA-eligible items and services reported on Claims from nonparticipating Providers (i.e., generally noncontracted), a Provider may seek additional payment through a dispute process established by the NSA and related regulations. This

process may include informal negotiations with the Provider and an independent dispute resolution (“IDR”) process as described in the NSA.

Employer authorizes Claim Administrator, or for Claims for service rendered outside of Claim Administrator’s service area another Blue Cross and Blue Shield licensee, to represent the Plan with respect to any Claim with items or services for which a Provider seeks to negotiate as provided by the NSA, or for which a Provider institutes IDR.

With respect to any negotiations where Claim Administrator represents the Plan to resolve any disputed Claim, Employer expressly authorizes Claim Administrator in such negotiations to attempt to resolve any disputed Claim, (i) for an amount not to exceed the greater of the QPA or the amount allowed on the initial notice of payment or denial of the claim, or (ii) as otherwise directed by Employer in the ASO BPA and agreed to by Claim Administrator.

Claim Administrator will maintain a summary description of its currently applicable approach to negotiation of services or Claims subject to the dispute resolution process of the NSA. The approach will be generally the same or similar for Claims under Employer’s Plan as for similarly-situated Claims under Claim Administrator’s fully insured health insurance policies.

Employer acknowledges and agrees that Claim Administrator shall follow its then-current negotiation approach, that such negotiations may not be successful, and may result in institution of IDR despite the approach outlined above or as otherwise directed by the Employer (with or without exhaustion of the full settlement authority Employer may grant to Claim Administrator), which in turn may result in additional administrative fees, as well as IDR entity fees in the event of settlement after institution of an IDR or an IDR loss. Notwithstanding the additional administrative fee and other possible expenses, Employer acknowledges that the approach set forth herein, or as it may direct (subject to Claim Administrator’s agreement) in the ASO BPA for attempting to resolve these Claims , notwithstanding the potential for IDR losses, is in the Plan’s interest.

Negotiation services Claim Administrator provides shall include communicating with Provider, supplying requested documentation as appropriate, and proposing and documenting resolution of disputed Claims. Services in connection with an IDR shall also include handling interactions with the IDR entity and Provider, supplying requested information in connection with the IDR, and analyzing circumstances of disputed Claims to determine position on disputed Claims. On a quarterly basis, Claim Administrator shall provide Employer with information regarding the status of negotiations and IDR decisions.

Employer acknowledges that Claim Administrator undertakes negotiations at the direction of the Employer, undertakes such negotiations because they are necessary to the operation of the Plan, that the compensation to be paid to Claim Administrator for such negotiations is reasonable, and that, notwithstanding any other section of this Agreement, Claim Administrator does not act as a fiduciary, including under ERISA in connection with the negotiation or IDR of any disputed Claim. Employer is solely responsible for payment of any amounts determined to be payable as a result of such negotiations or awards entered through IDR on NSA-eligible items and services. Employer indemnifies and will hold Claim Administrator harmless with respect to any award entered in IDR and any subsequent payment made thereon and/or any judgment entered thereon. Employer acknowledges that other terms, conditions, or fees may apply with respect to any negotiations or IDR processes performed by another Blue Cross and Blue Shield licensee.

- c. **Effect of Future Changes in Law and Regulations.** The laws and regulations that are the subject of this Section 4.12 are subject to additional rulemaking and interpretation. The terms and conditions stated herein, including any associated costs/fees, may change as additional requirements and regulatory guidance are released or as additional information becomes known. In the event of a change because additional requirements and regulatory guidance are released or as additional information becomes known, Claim Administrator shall provide notice to Employer and such change shall be effective ninety (90) days after such notice.

Employer acknowledges that Employer, and not Claim Administrator, shall be responsible for making the necessary adjustments to its ERISA Plan Document(s) (if applicable) and Summary Plan Description(s) to be consistent with Employer's election, including any amendments to governing Plan documents.

SECTION 5: ERISA

- 5.1 In Relation To The Plan.** Employer hereby acknowledges (i) that an employee welfare benefit plan must be established and maintained through a plan document, and (ii) an employee welfare benefit plan document may provide for the allocation and delegation of responsibilities thereunder. However, notwithstanding anything contained in the Plan or any other employee welfare benefit plan document of Employer, Employer agrees that no allocation or delegation of any responsibilities under the Plan or any other employee welfare benefit plan of Employer is effective with respect to or accepted by Claim Administrator except as set forth in this Agreement.
- 5.2 In Relation To The Plan Administrator/Named Fiduciary(ies).** Claim Administrator is not the plan administrator of Employer's separate employee welfare benefit plan as defined under ERISA. Employer represents and warrants that (i) Employer has a named Plan Administrator and a Named Fiduciary within the meaning of §414(g) of the Internal Revenue Code of 1986, as amended; and (ii) said Plan Administrator serves within the meaning of §3(16)(A) of ERISA.
- 5.3 Claim Administrator's Limited Fiduciary Responsibility.** Employer hereby delegates to Claim Administrator the discretionary authority to administer claims in accordance with the terms of Employer's ERISA welfare benefit plan and to make initial claim determinations concerning the availability of Plan benefits and final internal review and benefit determinations for appealed Claims. Claim Administrator hereby acknowledges and agrees that it shall act as an ERISA fiduciary to the Plan solely with respect to its performance of such claims processing and payment services and Employer acknowledges and agrees that Claim Administrator shall not have any other fiduciary duties or responsibilities under the Plan. In particular, but not in limitation of the foregoing, Employer acknowledges and agrees that Claim Administrator shall have no discretionary authority under its agreement with Employer except as otherwise set forth in this Agreement, and no fiduciary duty to the Plan, with respect to services performed by Employer, Employer's other vendors and Claim Administrator's separate financial arrangements with providers, pharmacy benefit managers, vendors, independent contractors, and subcontractors of any type. Employer further agrees and acknowledges that Claim Administrator shall have no authority or obligation to act on behalf of the Plan or Plan participants or beneficiaries as a fiduciary, except with respect to claims processing and payment services, as set forth herein. In addition, Employer agrees and acknowledges that Claim Administrator shall have no authority or obligation to act on behalf of the Plan or Plan Participants or beneficiaries with respect to any litigation, whether as a fiduciary or otherwise, including litigation by participants or beneficiaries or benefits under the Plan, except as may be required under Claim Administrator's indemnification obligations under this Agreement.

SECTION 6: OTHER PROVISIONS

- 6.1 Term And Termination.** This Agreement will continue in full force and effect from the effective date and continue from year to year unless terminated as provided herein. This Agreement may be terminated as follows:
- a. By either Party at the end of any month after the end of the Fee Schedule Period indicated in the Fee Schedule specifications of the most current ASO BPA with ninety (90) days prior written notice to the other party; or
 - b. By both Parties on any date mutually agreed to in writing; or
 - c. By either Party, in the event of conduct by the other Party constituting fraud, misrepresentation of material fact or material breach of the terms of this Agreement, upon written notice and following expiration of the cure period as provided under Section 4 above; or

- d. By Claim Administrator, if Employer fails to pay Timely all amounts due under this Agreement including, but not limited to, all amounts pursuant to and in accordance with the specifications of the Fee Schedule of the most current ASO BPA, upon Employer's failure to cure the non-payment within ten (10) days of written notice of the nonpayment to Employer as provided in Section 7.1 of Exhibit 2 of this Agreement.

6.2 Relationship Of The Parties And Non-Parties. Claim Administrator is an independent contractor with respect to Employer. Neither Party shall be construed, represented, or held to be an agent, partner, associate, joint venturer nor employee of the other. Nothing in this Agreement shall create or be construed to create the relationship of employer and employee between Claim Administrator and Employer; nor shall Employer's agents, officers, or employees be considered or construed to be employees of Claim Administrator for any purpose whatsoever. Nothing contained in this Agreement shall confer or be construed to confer any benefit on persons who are not parties to this Agreement including, but not limited to, employees of Employer and their dependents.

Claim Administrator or its subsidiaries or affiliates may also have ownership interests in certain providers who provide Covered Services to Covered Persons, and/or in vendors or other third parties who provide services related to this Agreement or provide services to certain Providers. Upon Employer request (not more than once per calendar year), Claim Administrator will provide a list of such entities to Employer.

6.3 Entire Agreement. This Agreement, including all Exhibits and Addenda of this Agreement, represents the entire agreement and understandings of the Parties with respect to the subject matter of this Agreement. All prior or contemporaneous agreements, understandings, representations, promises, or warranties, whether written or oral, in regard to the subject matter of this Agreement, including any and all proposal documents submitted by Claim Administrator to Employer (collectively, the "Prior Communications") are superseded, except as otherwise expressly incorporated into this Agreement. The provisions of this Agreement shall prevail in the event of a conflict with any Prior Communications that either Party or a third party asserts to be a component of the Agreement between the Parties. The Exhibits and Addenda of this Agreement are:

- a. Exhibit 1 - Claim Administrator Services
- b. Exhibit 2 - Fee Schedule and Financial Terms
- c. Exhibit 3 - Notices/Required Disclosures
- d. Exhibit 4 - ASO BPA
- e. Exhibit 5 – Blue Cross Blue Shield Association Disclosures and Provisions
- f. Exhibit 6 – Recovery Litigation Authorization
- g. Exhibit 7 – Promissory Note

6.4 Amending. This Agreement may be amended only by mutual written agreement of the Parties. Notwithstanding the foregoing, any amendments required by law, regulation, or order ("Law") or by Claim Administrator or the Blue Cross and Blue Shield Association may be implemented by Claim Administrator upon sixty (60) calendar days' prior notice to Employer or such time period as may be required by law. Amendments required by Law shall be effective retroactively, if applicable, as of the date required by such Law. If Employer objects to such amendment within thirty (30) days of receipt of notice of such amendment, the Parties shall then engage in good faith negotiations to amend the amendment. If the Parties cannot agree on terms of the amendment in a satisfactory manner, either Party shall be allowed to proceed to dispute resolution, as set forth in Section 4.

6.5 Severability; Enforcement; Force Majeure; Survival. Should any provision(s) contained in this Agreement be held to be invalid, illegal, or otherwise unenforceable, the remaining provisions of the Agreement shall be construed in their entirety as if separate and apart from the invalid, illegal or unenforceable provision(s) unless such construction were to materially change the terms and conditions of this Agreement.

Any delay or inconsistency by either Party in the enforcement of any part of this Agreement shall not constitute a waiver by that Party of any rights with respect to the enforcement of any part of this Agreement at any future date nor shall it limit any remedies which may be sought in any action to enforce any provision of this Agreement.

Neither Party shall be liable for any failure to Timely perform its obligations under this Agreement if prevented from doing so by a cause or causes beyond its commercially reasonable control including, but not limited to, acts of God or nature, fires, floods, storms, earthquakes, riots, strikes, wars, terrorism, cybersecurity crimes, or restraints of government.

Certain provisions of this Agreement survive expiration or termination of the Agreement, whether expressly or by their nature. These include, but are not limited to, the following: Section 1 "Claim Administrator Responsibilities"; Section 2 "Employer Responsibilities"; Section 3 "Confidential Data, Information and Records"; Section 4 "Litigation, Legal Provisions, Errors and Dispute Resolution" (for acts or omissions occurring during the term of the Agreement or under Section 8 of Exhibit 2); and Section 8 of Exhibit 2 "Financial Obligations Upon Agreement Termination".

- 6.6 Notice Of Annual Meeting.** Employer is hereby notified that it is a member of Health Care Service Corporation ("HCSC"), a Mutual Legal Reserve Company, and is entitled to vote either in person, by its designated representative, or by proxy at all meetings of members of said Company, consistent with HCSC bylaws. The annual meeting is scheduled to be held at its principal office at 300 East Randolph Street, Chicago, Illinois each year on the last Tuesday in October at 12:30 P.M. For purposes of this Section, the term "member" means the group, trust, association, or other entity with which this Agreement has been entered. It does not include Covered Employees or Covered Persons under the Plan. Employer is also hereby notified that, from time to time, Claim Administrator pays indemnification or advances expenses to a director, officer, employee, or agent consistent with HCSC's bylaws then in force and as otherwise required by applicable law.

SECTION 7: DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth in this Section 7, unless otherwise provided in the Agreement.

- 7.1 "Administrative Fee"** means the monthly service charge and the deferred Administrative Fees described in Sections 6 and 8 of Exhibit 2 that are required by Claim Administrator for the administrative services performed under this Agreement. The Administrative Fee(s) is set forth in the Fee Schedule and Sections 6 and 8 of Exhibit 2.
- 7.2 "Allowable Amount"** means the maximum amount determined by Claim Administrator to be eligible for consideration of payment for a Covered Service in accordance with the type of medical benefits coverage(s) elected on the most current ASO BPA.
- a. *For Medical Covered Services.*** The Allowable Amount means:
- i. *For Network Providers.*** For a Provider who has a written agreement with Claim Administrator or another Blue Cross and/or Blue Shield Plan to provide care to a Covered Person at the time Covered Services for medical benefits are rendered ("Network Provider"), the contracting Allowable Amount is based on the terms of the Network Provider's contract and the payment methodology in effect on the date of the Covered Service. The payment methodology used may include diagnosis-related groups (DRG), fee schedule, package pricing, global pricing, per diems, case-rates, discounts, or other payment methodologies.
 - ii. *For Non-Network Providers.*** For a Provider who does not have a written agreement with Claim Administrator or another Blue Cross and/or Blue Shield Plan to provide care to a Covered Person at the time Covered Services for medical benefits are rendered ("Non-Network Provider"), the Allowable Amount will be the lesser of:
 1. the Non-Network Provider's Claim Charge, or;
 2. Claim Administrator's Non-Contracting Allowable Amount. Except as otherwise provided in this section ii, the Non-Contracting Allowable Amount is developed from base Medicare reimbursements adjusted by a predetermined factor established by Claim Administrator. Such factor shall be not less than 75% and will exclude any Medicare adjustment(s) which is/are based on information on the Claim.

When a Medicare reimbursement rate is not available or is unable to be determined based on the information submitted on a Claim, the non-contracting Allowable Amount for Non-Network Providers will represent an average contract rate in aggregate for Network Providers adjusted by a predetermined factor established by Claim Administrator. Such factor shall be not less than 75% and shall be updated not less than every two years.

Claim Administrator will utilize the same Claim processing rules and/or edits that it utilizes in processing Network Provider Claims for processing Claims submitted by Non-Network Providers which may also alter the Allowable Amount for a particular Covered Service. In the event Claim Administrator does not have any Claim edits or rules, Claim Administrator may utilize the Medicare claim rules or edits that are used by Medicare in processing the Claims. The Allowable Amount will not include any additional payments that may be permitted under the Medicare laws or regulations which are not directly attributable to a specific Claim, including, but not limited to, disproportionate share and graduate medical education payments.

Any change to the Medicare reimbursement amount will be implemented by Claim Administrator within ninety (90) days after the effective date that such change is implemented by the Centers for Medicaid and Medicare Services, or its successor.

The non-contracting Allowable Amount does not equate to the Provider's Claim Charge and Covered Persons receiving Covered Services from a Non-Network Provider will be responsible for the difference between the non-contracting Allowable Amount and the Non-Network Provider's Claim Charge, and this difference may be considerable. To find out Claim Administrator's non-contracting Allowable Amount for a particular Covered Service, Covered Persons may call customer service at the number on the back of Claim Administrator-issued identification card.

- iii. **For multiple surgeries.** The Allowable Amount for Covered Services for all surgical procedures performed on the same Covered Person on the same day will be the amount for the single procedure with the highest Allowable Amount plus a determined percentage of the Allowable Amount for each of the other Covered Service procedures performed.
- iv. **For procedures, services, or supplies provided to Medicare recipients.** The Allowable Amount will not exceed Medicare's limiting charge.
- b. **For Prescription Drug Covered Services.** For a Provider which has a written agreement with Claim Administrator, a Blue Cross and/or Blue Shield Plan or the entity chosen by Claim Administrator to administer its prescription drug program, to provide prescription drug services to a Covered Person at the time Covered Services under the prescription drug benefit are rendered ("Participating Prescription Drug Provider"), the lesser of such Provider's Claim Charge or the cost agreed upon by the Participating Prescription Drug Provider. The Allowable Amount for a Provider which does not have a written agreement with Claim Administrator, a Blue Cross and/or Blue Shield Plan or the entity chosen by Claim Administrator to administer its prescription drug program, to provide prescription drug services to a Covered Person at the time Covered Services for prescription drug benefits are rendered ("Non-Network Provider Pharmacies") will be based on the lesser of the charge which the particular Non-Network Provider Pharmacy usually charges for Covered Services, or the amount Claim Administrator would reimburse Participating Prescription Drug Providers for the same service, minus 20% unless otherwise agreed upon by Claim Administrator and Employer.

7.3 "Business Confidential Information" means, but is not limited to, intellectual property, trade secrets, inventions, applications, tools, methodologies, software, operating manuals, technology, technical documentation, techniques, product or services specifications or strategies, operational plans and methods, automated claims processing systems, payment systems, membership systems, privacy and security measures, cost or pricing information (including but not limited to provider discounts and rates), business plans and strategies, company financial planning and financial data, prospect and customer lists, contracts, vendor and supplier lists and information, symbols, trademarks, service marks, designs, copyrights, know-how, data, databases, processes, plans, procedures, and any other information developed, acquired or owned by Claim Administrator, its subsidiaries and affiliates, and its contracted vendors, including information acquired from other Blue Cross and/or Blue Shield licensees through Inter-Plan arrangements,

that reasonably should be understood to be confidential, whether developed or acquired before or after the Effective Date of this Agreement. Business Confidential Information also includes modifications, enhancements, derivatives, and improvements of the Business Confidential Information described in the preceding sentence.

- 7.4 **“Claim”** means a properly completed notification in a form acceptable to Claim Administrator, including but not limited to, form and content required by applicable law, that service has been rendered or furnished to a Covered Person. This notification must set forth in full the details of such service including, but not limited to, the Covered Person’s name, age, sex, and identification number, the name and address of the Provider, a specific itemized statement of the service rendered or furnished (including appropriate codes), the date of service, applicable diagnosis (including appropriate codes), the Claim Charge, and any other information which Claim Administrator may request in connection for such service.
- 7.5 **“Claim Charge”** means the amount which appears on a Claim as the Provider’s regular charge for service rendered to a patient, without further adjustment or reduction.
- 7.6 **“Claim Payment”** means the benefit calculated by Claim Administrator, plus any related Surcharges, upon submission of a Claim, in accordance with the benefits specified in the Plan for which Claim Administrator has agreed to provide administrative services. All Claim Payments shall be calculated on the basis of the Provider’s Allowable Amount, in accordance with the benefit coverage(s) elected on the most current ASO BPA, for Covered Services rendered to the Covered Person. The term “Claim Payment” also includes Employer’s share of Alternative Provider Compensation Arrangement Payments, whether billed to Employer as part of a Claim or billed separately, as described in the definition of “Alternative Provider Compensation Arrangement Payments.”
- 7.7 **“Coinsurance”** means a percentage of an eligible expense that a Covered Person is required to pay toward a Covered Service.
- 7.8 **“Copayment”** means a specified dollar amount that a Covered Person is required to pay toward a Covered Service.
- 7.9 **“Covered Employee”** shall have the same meaning as defined in Employer’s Plan to the extent consistent with the applicable ASO BPA.
- 7.10 **“Covered Person”** shall have the same meaning as defined in Employer’s Plan to the extent consistent with the applicable ASO BPA.
- 7.11 **“Covered Service”** means a service or supply specified in the Plan for which benefits will be provided and for which Claim Administrator has agreed to provide administrative services under this Agreement.
- 7.12 **“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.
- 7.13 **“Fee Schedule”** means the fees and charges specified in the initial ASO BPA, including but not limited to, the Administrative Fee and other service charges; or subsequent fees and charges set forth in a subsequent ASO BPA as replacement or supplement to the initial ASO BPA. The Fee Schedule shall be applicable to the Fee Schedule Period therein, except that any item of the Fee Schedule may be changed in accordance with Exhibit 2.
- 7.14 **“Fee Schedule Period”** means the period of time indicated in the Fee Schedule of the most current ASO BPA.
- 7.15 **“HIPAA”** means the Health Insurance Portability and Accountability Act and its implementing regulations (45 C.F.R. Parts 160-164) and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and its implementing regulations, each as amended, and their respective implementing regulations, as issued and amended by the Secretary of Health and Human Services (all the foregoing, collectively “HIPAA”).
- 7.16 **“Home Health Agency”** means a business that provides Home Health Care and is licensed, approved, or certified by the appropriate agency of the state in which it is located or is certified by Medicare as a supplier of Home Health Care.
- 7.17 **“Home Health Care”** means the health care services for which benefits are provided under the Plan when such services are provided during a visit by a Home Health Agency to patients confined at home due to a sickness or injury requiring skilled health services on an intermittent, part-time basis.
- 7.18 **“Hospital”** means a duly licensed institution for the care of the sick which provides service under the care of a Physician including the regular provision of bedside nursing by registered nurses. It does not mean

health resorts, rest homes, nursing homes, skilled nursing facilities, convalescent homes, custodial homes of the aged, or similar institutions.

- 7.19** “**Inpatient**” means the Covered Person is a registered room and board patient and treated as such in a health care facility.
- 7.20** “**Network**” means identified Providers, including Physicians, other professional health care Providers, Hospitals, ancillary Providers, and other health care facilities, that have entered into agreements with Claim Administrator (and, in some instances, with other participating Blue Cross and/or Blue Shield Plans) for participation in a participating provider option and/or point-of-service managed care health benefits coverage program(s), if applicable to the Plan under this Agreement.
- 7.21** “**Outpatient**” means a Covered Person’s receiving of treatment while not an Inpatient. Services considered Outpatient include, but are not limited to, services in an emergency room regardless of whether the Covered Person is subsequently registered as an Inpatient in a health care facility.
- 7.22** “**Overpayment**” means a payment to a Provider or a Covered Person that was more than it should have been based on the Plan’s benefit design and Claim Administrator’s or other Blue Cross and/or Blue Shield companies’ Provider contracts and policies, or a payment that was made in error, including but not limited to, Provider’s unsupported billing practices.
- 7.23** “**Physician**” means a physician duly licensed to practice medicine in all of its branches recognized by applicable state law.
- 7.24** “**Plan**” means, as applied to this Agreement, the separate self-insured group health plan as defined by Section 160.103 of HIPAA.
- 7.25** “**Primary Care Physician**” means a Physician who is a Network Provider at the time Covered Services are rendered under Claim Administrator’s point-of-service managed care health benefits coverage program, if applicable to the Plan under this Agreement, and who is selected by or assigned to a Covered Person to coordinate and arrange for the Covered Person’s medical care and who approves and makes medically appropriate referrals for any non-primary care Physician services and who provides medical care within the scope of a license permitting him/her to legally practice medicine in the recognized areas of pediatrics, obstetrics and gynecology, internal medicine, and family practice.
- 7.26** “**Provider**” means any Hospital, health care facility, laboratory, person, or entity duly licensed to render Covered Services to a Covered Person or any other provider of medical or dental services, products, or supplies which are Covered Services.
- 7.27** “**Reminder Notice**” means a notice sent when monthly charges have not been paid within 20 (twenty) days.
- 7.28** “**Supplemental Charge**” means a fee or charge payable to Claim Administrator by Employer in addition to the fees and charges set forth in the Fee Schedule. A Supplemental Charge may be applied for any customized reports, forms, or other materials or for any additional services or supplies not documented in the applicable Fee Schedule. Such services and/or supplies and any applicable Supplemental Charge(s) are to be agreed upon by the parties in advance.
- 7.29** “**Surcharges**” means local, state, or federal taxes, surcharges or other fees or amounts, including, but not limited to, Blue Cross Blue Shield Global Core Access Vendor, paid by Claim Administrator which are imposed upon or resulting from this Agreement, or are otherwise payable by or through Claim Administrator. Upon request, Employer shall furnish to Claim Administrator in a Timely manner all information necessary for the calculation or administration of any Surcharges. Surcharges may or may not be related to a particular claim for benefits.
- 7.30** “**Timely**” means the following:
- a. With respect to all payments due Claim Administrator by Employer under this Agreement, within twenty (20) calendar days of notification to Employer by Claim Administrator; or
 - b. With respect to all information due Claim Administrator by Employer concerning Covered Persons, within thirty-one (31) calendar days of a Covered Person’s effective date of coverage or change in coverage status under the Plan; or
 - c. With respect to all Plan information due Claim Administrator by Employer, upon the effective date of this Agreement and at least ninety (90) calendar days prior to the effective date of change or amendment to the Plan thereafter.

**EXHIBIT 1
CLAIM ADMINISTRATOR SERVICES**

- **ALTERNATIVE PROVIDER COMPENSATION ARRANGEMENTS**
Employer agrees to participate in Alternative Provider Compensation Arrangements as applicable based on Covered Person criteria established by Claim Administrator.
- **CLAIMS ADJUDICATION**
Determination of payment levels of Claims according to Employer's directions on applicable benefit plan terms and design, including determination of pre-service or prior authorization of services. Employer agrees that Claim Administrator will apply Claim Administrator's standard medical and utilization management criteria and policies and Coordination of Benefits ("COB") processes for self-funded customers, unless otherwise provided on the ASO BPA.
- **EXPLANATION OF BENEFITS ("EOB")**
Preparation of EOBs.
- **CLAIMS/MEMBERSHIP INQUIRIES**
Providing responses to inquiries — written, phone or in-person — related to membership, benefits, and Claim Payment, or Claim denial.
- **ENROLLMENT SERVICE**
Upon Employer request, assist Employer, in accordance with Claim Administrator's standard procedures, when scheduled in advance based on staffing availability, in initial enrollment activities, including education of Covered Persons about benefits, the enrollment process, selection of health care Providers and how to file a Claim for benefits; issue Claim submission instructions on behalf of Employer to health care Providers who render services to Covered Persons.
- **DISABLED DEPENDENT CERTIFICATION**
Certify the disabled status of any dependent children of Covered Persons, based on Claim Administrator's review of information provided by Employer, the Covered Person, or the dependent's medical Provider(s), following the rules as indicated on the most current ASO BPA, for purposes of administering the Employer's age limit for eligibility.
- **CLIENT SERVICES AND MATERIALS**
Provision of those items as elected by Employer from listing below:
 - a. **Enrollment Materials.** Claim Administrator's Marketing Administration Division will provide implementation materials during the enrollment process; any custom designed materials may be subject to Supplemental Charge.
 - b. **Standard Identification Cards.** Prepare identification cards appropriate to health benefit Plan coverage(s) selected.
 - c. **Standard Provider Directories.** Access to Network Provider directories and periodic updates to such, if applicable to the health benefit Plan coverage(s) under the Agreement.
 - d. **Customer Service.** Access to a toll-free customer service telephone number.
 - e. **Medical Prior-Authorization Service Telephone Number.** For those services determined by Employer and provided in writing to Claim Administrator that require prior authorization, advance Claim Administrator review of medical necessity, based on Claim Administrator's standard medical and utilization management criteria and policies, of such services covered under the Plan; access to toll-free medical prior authorization service telephone number for Covered Persons and their health care Providers to call for assistance.
- **INTERNAL APPEALS**
Determination of properly filed internal appeal requests received by Claim Administrator from a Covered Person or a Covered Person's authorized representative.

- **MEMBERSHIP**
Using membership information provided to Claim Administrator by Employer to make claim and appeal determinations and for other purposes as described in the Agreement.
- **STANDARD REPORTS**
Make available Claim data, Claim settlements (as outlined in Exhibit 2, Section 6), and periodic reports in Claim Administrator's standard format(s) in accordance with Claim Administrator's standard reporting processes at no additional charge. Any additional reports required by Employer must be mutually agreed upon by the Parties in writing prior to their development and may be subject to a Supplemental Charge.
- **STOP LOSS COORDINATION**
Coordinate all necessary reporting, tracking, notification and other similar financial and/or administrative services pursuant to settlements under stop loss policy(ies) purchased (or proposed to be purchased) from Claim Administrator in conjunction with the Agreement.
- **REPORTING SERVICES**
Preparation and filing of annual Internal Revenue Service ("IRS") 1099 forms for the reporting of payments to health care Providers who render services to Covered Persons and who are reimbursed under the Plan for those services.
- **ACTUARIAL AND UNDERWRITING**
Provide Claims projections and pricing of administrative services and stop-loss coverage.
- **FRAUD DETECTION AND PREVENTION**
Identify and investigate suspected fraudulent activity by Providers and/or Covered Persons and if the Employer is a target of a pattern of fraudulent or abusive activities inform Employer of findings and proof of fraud applying Claim Administrator's standard processes; address any related recovery litigation as set forth in Exhibit 6.
- **EMPLOYER PORTAL (currently called "BLUE ACCESS® FOR EMPLOYERS")**
Provide Employer with an on-line resource that allows employer the ability to perform a variety of plan administrative functions, currently managing membership and enrollment, inquiring about claims status, generating reports, and receiving billing information. Functions may be changed or added as they become available.
- **MEMBER PORTAL (currently called "BLUE ACCESS® FOR MEMBERS")**
Provide Member with an on-line resource that allows individuals access to information about their healthcare coverage and benefits, currently verifying the status of finalized claims, receiving email notifications, accessing health and wellness information, verifying dependents coverage, finding in network providers and taking a health risk assessment. Information may be changed or added as it becomes available.
- **PROVIDER NETWORK(S)**
If applicable to the health benefit Plan coverage(s) under the Agreement, establish, arrange, and maintain a Network(s) through contractual arrangements with Providers.
- **MSP INFORMATION REPORTING**
Pursuant to Exhibit 3, Section 7 entitled "Medicare Secondary Payer Information Reporting", reporting preparation and filing as required of Claim Administrator as Responsible Reporting Entity ("RRE") for the Plan as that term is defined in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.
- **UNCASHED FUNDS**
Regarding outstanding funds that are or become "stale" (over three hundred and sixty-five (365) days old), Claim Administrator will issue notification letters to payees and upon completion of notification process, reissue such funds to payees based upon payee response, if any. When fund reissuance is not possible and unless stated otherwise in the Agreement, Claim Administrator will remit such funds to Employer, less any amount(s) owed to Claim Administrator from such funds, in accordance with Claim Administrator's established procedures, for disposition by Employer as may be required under applicable law. If requested by Employer via prior written notice as required by Claim Administrator, Claim Administrator will escheat such funds on behalf of Employer, less any amount(s) owed by payees to Claim Administrator, from such

funds, to the state of payee's last known address in accordance with Claim Administrator's established procedures and/or the applicable state's unclaimed property law.

- **ADDITIONAL SERVICES NOT SPECIFIED**

Claim Administrator may provide additional services not specified in the Agreement; such services will be mutually agreed upon between the Parties in writing prior to their performance and may be subject to Supplemental Charge.

- **ACTIVITIES THAT ARE NOT CONSIDERED SERVICES**

“Services” under Exhibit 1 do not include providing Employer with software, facilities, phone systems, computers, database or information management, quality or security services, and the term “Services” does not include backroom operations such as support functions.

- **DOCUMENTATION PREPARATION**

Upon Employer request, draft and prepare Summary Plan Description(s) and/or benefit booklets for Employer review, approval, and adoption. As a group health plan sponsor, Employer remains responsible for the accuracy and compliance with applicable legal requirements with respect to all documentation associated with its group health plan.

- **EXTERNAL REVIEW COORDINATION**

Claim Administrator will coordinate external reviews of certain adverse benefit determinations for Employer as described and for the fee set forth in the most current ASO BPA and/or this Agreement. Claim Administrator's coordination includes reviewing external review requests to assess whether they meet eligibility requirements, referring requests to IROs, and reversing the Plan's determinations if so indicated by the IRO. External reviews shall be performed by an IRO and not Claim Administrator. Amounts received by Claim Administrator and IROs may be revised from time to time and may be paid each time an external review is undertaken.

- **WELLBEING MANAGEMENT**

Provide a program that may include holistic health care management, which may include behavioral health care management, utilization management, maternity management, and 24/7 nurseline, and access to Well onTarget® digital tools and resources as determined by Employer and agreed to by Claim Administrator. Audits relating to Wellbeing Management shall be subject to Claim Administrator's then current external clinical audit policy and procedures, a copy of which shall be furnished to Employer upon request to Claim Administrator.

- **MASSACHUSETTS STATEMENTS OF CREDITABLE COVERAGE AND ELECTRONIC REPORTING**

At the written direction of Employer, issuance of written statements of creditable coverage and related electronic reporting to the Massachusetts Department of Revenue with respect to Covered Persons subject to the Massachusetts Health Care Reform Act.

- **VIRTUAL VISITS PROGRAM MANAGEMENT**

Provide or arrange for a program that allows Covered Persons to access benefits for certain Covered Services remotely from virtual visit participating Providers via i) interactive audio communication (via telephone or similar technology) and/or ii) interactive audio/video examination and communication (via online portal, mobile app, or similar technology), where available.

- **SUMMARY OF BENEFITS AND COVERAGE (“SBC”)**

Create SBCs for benefits Claim Administrator administers under this Agreement and provide SBCs to Employer and Covered Persons as described in the ASO BPA.

**EXHIBIT 2
FEE SCHEDULE AND FINANCIAL TERMS**

SECTION 1: FEE SCHEDULE

Service charges and other service specifications applicable to the Agreement are set forth in the Fee Schedule section of the most current ASO BPA. They are to apply for the period(s) of time indicated therein and shall continue in full force and effect until the earlier of: i) the end of the Fee Schedule Period noted on such ASO BPA; ii) the date a Fee Schedule is amended or replaced in its entirety by the execution of a subsequent ASO BPA; or iii) the date the Agreement is terminated.

Inter-Plan Arrangement Fees:

- i. **BlueCard® Program/Network Access Fees* (as Applicable):** Additional information is available upon request; included in the Claim Charge, if applicable.
- ii. **Negotiated Arrangement/Custom Fees (as Applicable):** Additional information is available upon request; included in the medical Administrative Fee(s) noted in the ASO BPA and in any Termination (Run-Out) Administrative Fee(s) noted in the ASO BPA calculated on the basis of such medical Administrative Fee(s).
- iii. **For Non-Participating Healthcare Providers Outside Claim Administrator's Service Area/processing fees (as applicable):** Additional information is available upon request; included in the medical Administrative Fee(s) noted in the ASO BPA and in any Termination (Run-Out) Administrative Fee(s) noted in the ASO BPA calculated on the basis of such medical Administrative Fee(s).

**If applicable, such fees may not exceed the lesser of the applicable annual percentage of the discount (dependent upon group size) permitted under the BlueCard Program or two thousand dollars (\$2,000) per Claim.*

SECTION 2: EXHIBIT DEFINITIONS

Other definitions applicable to this Exhibit are contained in Section 7 DEFINITIONS of the Agreement.

- 2.1 **"Employer Payment"** means the amount owed or payable to Claim Administrator by Employer for a given Employer Payment Period in accordance with Section 5 of this Exhibit which is the sum of Projected Claim Funding payments plus applicable service charges incurred during that Employer Payment Period.
- 2.2 **"Employer Payment Method"** means the method elected in the Fee Schedule specifications of the most current ASO BPA by which Employer Payments will be made.
- 2.3 **"Employer Payment Period"** means the time period indicated in the Fee Schedule specifications of the most current ASO BPA.
- 2.4 **"Medicare Secondary Payer ("MSP")"** means those provisions of the Social Security Act set forth in 42 U.S.C. §1395 y (b), and the implementing regulations set forth in 42 C.F.R. Part 411, as amended, which regulate the manner in which certain employers may offer group health care coverage to Medicare-eligible employees, their spouses and, in some cases, dependent children. (See Exhibit 3 Section 7 titled "Medicare Secondary Payer Information Reporting.")
- 2.5 **"Projected Claim Funding"** means the monthly portion of the annual projected claims multiplied by the Aggregate Claim Liability Factor set forth in the Exhibit to the Blue Balance FundedSM Stop Loss Coverage Policy. The Projected Claim Funding is calculated by Claim Administrator based on Employer-specific demographics and projected Claims, interest earnings and utilization.
- 2.6 **"Run-Off Claim"** means a Claim incurred prior to the termination of the Agreement that is submitted for payment during the Run-Off Period.
- 2.7 **"Run-Off Period"** means the time period immediately following termination of the Agreement, indicated in the Fee Schedule specifications of the most current ASO BPA, during which Claim Administrator will accept Run-Off Claims submitted for payment.
- 2.8 **"Termination (Run-Out) Administrative Fee"** means the consideration that is owed by Employer to Claim Administrator for any services that may be performed by Claim Administrator during the Run-Off Period

The Termination (Run-Out) Administrative Fee is included in the monthly Administrative Fee as indicated in the Fee Schedule specifications of the most current ASO BPA.

SECTION 3: COMPENSATION TO CLAIM ADMINISTRATOR

- 3.1 Intent of Service Charges.** Employer will pay service charges to Claim Administrator, in accordance with the Fee Schedule specifications of the most current ASO BPA, as compensation for the processing of Claims and administrative and other services provided to Employer.
- 3.2 Determining Service Charges.** The service charges, which are for the Fee Schedule Period indicated in the Fee Schedule specifications of the most current ASO BPA, have been determined in accordance with Claim Administrator's current regulatory status and Employer's existing benefit program.
- 3.3 Changing Service Charges.** Such service charges shall be subject to change by Claim Administrator as follows:
- a. At the end of the Fee Schedule Period indicated in the Fee Schedule specifications of the most current ASO BPA, provided that sixty (60) days prior written notice is given by Claim Administrator;
 - b. On the effective date of any changes or benefit variances in the Plan, its administration by Employer, or the level of benefit valuation which would increase Claim Administrator's cost of administration;
 - c. On any date changes imposed by governmental entities increase expenses incurred by Claim Administrator, provided that such increases shall be limited to an amount sufficient to recover such increase in expenses;
 - d. On any date that the actual number of Covered Employees (in total, by product or by benefit plan), the single/family mix, or the Medicare/Non-Medicare mix varies +/- ten percent (10%) from Claim Administrator's projections;
 - e. The information upon which Claim Administrator's projections were based (e.g., benefit levels, census/demographics, producer/broker fees) becomes outdated or inaccurate; or
 - f. On any date an affiliate, subsidiary, or other business entity is added or dropped by Employer.
- 3.4 Service Charges.** Employer will Timely pay Claim Administrator the Termination (Run-Out) Administrative Fee.
- 3.5 Additional Service Charges.** In addition to the amounts due and payable each month in accordance with the Fee Schedule specifications of the most current ASO BPA, Claim Administrator may charge Employer for:
- a. Any applicable Supplemental Charge(s);
 - b. Reasonable fees for the reproduction or return of Claim records requested by Employer, a governmental agency or pursuant to a court order; and/or
 - c. Any other fees that may be assessed by third parties for services rendered to Employer, a portion of which may be retained by Claim Administrator as compensation for Claim Administrator's support of such services; and/or
 - d. Any other fees for services mutually agreed upon by the Parties in writing.
- 3.6 Effect of Plan Enrollment.** Administrative Fees will be paid based upon information Claim Administrator receives regarding current Plan enrollment as of the first day of each month. Appropriate adjustments will be made for enrollment variances or corrections.
- 3.7 Timely Payment.** Performance of all duties and obligations of Claim Administrator under the Agreement are contingent upon the Timely payment of any amount owed Claim Administrator by Employer.

SECTION 4: CLAIM PAYMENTS

- 4.1 Claim Administrator's Payment.** Upon receipt of a Claim, Claim Administrator will make a Claim Payment provided that all payments due Claim Administrator under the terms of the Agreement are paid when due.

- 4.2 **Employer's Liability.** Any reasonable determination by Claim Administrator in adjudicating a Claim under the Agreement that a Covered Person is entitled to a Claim Payment is conclusive evidence of the liability of Employer to Claim Administrator for such Claim Payment pursuant to Section 6 below titled "Claim Settlements."
- 4.3 **Covered Person's Certain Liability.** Under certain circumstances, if Claim Administrator pays the healthcare Provider amounts that are the responsibility of the Covered Person under this Agreement, Claim Administrator may collect such amounts from the Covered Person.
- 4.4 **Cessation of Claim Payments.** If Employer has failed to pay when due any amount owed Claim Administrator, Claim Administrator shall be under no obligation to make any further Claim Payments until such default is cured.

SECTION 5: EMPLOYER PAYMENT

- 5.1 **Intent.** In consideration of Claim Administrator's obligations as set forth in the Agreement and at the end of each Employer Payment Period, Employer shall pay to Claim Administrator or shall provide access for Claim Administrator to obtain, Employer Payment amount due for that Employer Payment Period.
- 5.2 **Confirmation Or Notification Of Amount Due And Payment Due Date.** Employer shall confirm with Claim Administrator or Claim Administrator shall notify Employer's financial division, of Employer Payment for each Employer Payment Period and when such payment is due. Confirmation or notification shall be in accordance with Employer Payment Method elected in the Fee Schedule specifications of the most current ASO BPA and the following:
- a. **If Employer Payment Method Is By Check,** Claim Administrator shall issue Employer a settlement statement which will include Claim Administrator's mailing address for check remittance and the date payment is due.
 - b. **If Employer Payment Method Is Other Than Check,** Employer shall confirm on-line the amount due by accessing Claim Administrator's "Blue Access for Employers" (as provided in Exhibit 1); or Claim Administrator shall advise Employer by email or facsimile (at an email address or facsimile number to be furnished by Employer prior to the effective date of the Agreement) or by such other method mutually agreed to by the Parties, of the amount due.
 - c. Employer Payment must be made or obtained within forty-eight (48) hours of confirmation by Employer or Employer's notification by Claim Administrator. If any day on which an Employer payment is due is a holiday, such payment will be made or obtained on the next business day.
- 5.3 **Float Compensation.** When Claim Administrator obtains the Employer Payment as set forth in this section, this payment will be transferred to designated bank accounts maintained by Claim Administrator and titled in Claim Administrator's name. Claim Administrator will retain any interest derived from such bank account ("Float Compensation") beginning on the date Claim Administrator receives Employer Payment through the plan year and ending on the date of the Final Settlement. Claim Administrator, at its discretion, may use the Float to offset bank charges and other reasonable administrative expenses incurred by Claim Administrator in performing its duties under this Agreement.
- 5.4 **Late Payments.** Late payments are subject to the penalties outlined in Section 7.3 of this Exhibit.

SECTION 6: CLAIM SETTLEMENTS

- 6.1 **Determining What Employer Owes.** A Claim settlement shall be determined for each Claim settlement period indicated in the Fee Schedule specifications of the most current ASO BPA. The Claim settlement shall reflect the sum of the following:
- a. Claim Payments paid by Claim Administrator in the particular Claim settlement period.
 - b. Claim Payments paid by Claim Administrator in prior Claim settlement periods that have not been included in a prior Claim settlement.

- c. The Administrative Fees and credits, Surcharges, and other applicable service charges as indicated in the Fee Schedule specifications of the most current ASO BPA of the Agreement and any applicable Supplemental Charge(s).

The sum of a., b., and c. above shall be referred to as the "Claim Settlement Total."

- 6.2 **Reserves.** Except at termination, a monthly percentage of the Projected Claim Funding as determined by Claim Administrator designated as the "Reserve" will be held by Claim Administrator to account for an estimate of claims incurred prior to the end of but not paid during the Claim settlement period. If Claim Administrator changes the amount of the Reserve, the changed amount will be funded at the time of the Claim settlement by the Projected Claim Funding payments made by Employer during the particular Claim settlement period.
- 6.3 **Employer Underpayment.** If, within the Claim settlement period, the Claim Settlement Total exceeds the sum of the Projected Claim Funding payments made by Employer Projected Claim Funding payments, and the Reserves (including any adjustments in Reserves required by Section 6.2 where an increase of the Reserves could result in a reduction of the Claim settlement), Claim Administration will advance the difference to Employer in accordance with the terms and conditions set forth in Exhibit 7, and Employer agreed to repay any such advance upon demand by Claim Administrator in accordance with the Employer Payment Method. The costs may be reimbursed by Aggregate Stop Loss, if applicable. Except at termination, the Claim settlement will be determined within ninety (90) days from the last day of the Claim settlement period. Claim Administrator will notify Employer in writing of the results of the Claim settlement.
- 6.4 **Employer Overpayment.** If, within the Claim settlement period, the sum of the Projected Claim Funding payments made by Employer and the Reserves (including any adjustments in Reserves required by Section 6.2 where an increase of the Reserves could result in a reduction of the Claim settlement) exceeds the Claim Payments described in Section 6.1(a.) and (b.) above, not including Claim Payments covered under the Individual (Specific) Stop Loss Insurance, a "Surplus" exists. Claim Administrator will retain a percentage of the Surplus as a deferred Administrative Fee.

Employer acknowledges that the percentage of any Surplus that Claim Administrator will retain in relation to Employer and its group health plan has been disclosed in Claim Administrator's proposal to Employer and such disclosure of the percentage of the Surplus is incorporated into this Agreement.

For the remainder of any Surplus, Claim Administrator may, at its option, pay such difference to Employer, apply the difference against amounts then owed Claim Administrator by Employer or authorize a reduction equal to such difference from the next Claim Settlement Total due Claim Administrator from Employer.

SECTION 7: LATE PAYMENTS AND REMEDIES

- 7.1 **When Employer Fails To Pay.** If Employer fails to pay when due any amount required to be paid to Claim Administrator under the Agreement, and such default is not cured within ten (10) days of the due date, a Reminder Notice will be sent to the Employer via email. If payment is not received within ten (10) days of the date the Reminder Notice is sent, Claim Administrator reserves the right to consider the Employer delinquent. If defaults are not cured following notice via email to Employer, Claim Administrator may, at its option:
 - a. Suspend Claim Payments; or
 - b. Terminate the Agreement as of the effective date specified in such notice.
- 7.2 **When Claim Administrator Fails To Timely Notify.** Pursuant to Section 6.5 "Severability; Enforcement; Force Majeure; Survival" of the Agreement, Claim Administrator's failure to provide Employer with Timely notice of any amount due hereunder shall not be considered a waiver of payment of any amount which may otherwise be due hereunder from Employer.
- 7.3 **Late Charge.** If Employer fails to make any payment required by the Agreement on a Timely basis, Claim Administrator, at its option, may assess a daily charge for the late remittance from the due date of any amount(s) payable to Claim Administrator by Employer. This daily charge shall be an amount equal to the amount resulting from multiplying the amount due times the lesser of:
 - a. The rate of .0329% per day which equates to an amount of twelve percent (12%) per annum; or
 - b. The maximum rate permitted by state law.

- 7.4 **Insolvency.** In addition, if Employer becomes insolvent, however evidenced, or is in default of its obligation to make any Employer Payment as provided hereunder, or if any other default hereunder has occurred and is continuing, then any indebtedness of Claim Administrator to Employer (including any and all contractual obligations of Claim Administrator to Employer) may be offset and/or recouped and applied toward the payment of Employer's obligations hereunder, whether or not such obligations, or any part thereof, shall then be due Employer.

SECTION 8: FINANCIAL OBLIGATIONS UPON AGREEMENT TERMINATION

- 8.1 **Run-Off Claims.** Employer hereby acknowledges that on the date of termination of the Agreement in accordance with the provisions of either Section 7 of this Exhibit or Section 6 of the Agreement, or on the date which Employer terminates a part of the population of Covered Employees, there may be an undetermined but substantial number of Claims for services rendered or furnished prior to that date which have not been submitted to Claim Administrator for reimbursement and also an undetermined but substantial number of Claims submitted for reimbursement which have not been paid by Claim Administrator ("Run-Off Claims"). Employer shall be responsible for all Run-Off Claims, whether or not such Claims have been submitted, or whether or not Claim Payments for such Claims have been made by Claim Administrator, as of the date of termination or termination of Covered Employees but not the Agreement, including, but not limited to, Claim Payments made in accordance with MSP laws and these Claims will be accounted for as part of the final settlement as described in Section 8.3.
- 8.2 **Corresponding Employer Payments.** In consideration of Claim Administrator's continuing to make Claim Payments in accordance with Section 4 of this Exhibit for Run-Off Claims, Employer shall continue to make Employer Payments for all such Claims paid by Claim Administrator up to the final settlement outlined below.
- 8.3 **Final Settlement.** A final settlement shall be made within ninety (90) days after the last day of the Run-Off Period. This final settlement shall compare the sum of the Employer Payments and the Reserves held from the prior Claim settlement period, against the Claim Payments described in Section 6.1(a.) and (b.) above for all Run-Off Claims paid up to the date of the final settlement, not including Claim Payments covered under the Individual (Specific) Stop Loss Insurance. The difference shall be paid or applied as set forth in Section 6 of this Exhibit. However, if the sum of the Employer Payments and Reserves exceed the Claim Payments described in Sections 6.1(a.) and (b.) above for all Run-Off Claims paid up to the final settlement, not including Claim Payments covered under the Individual (Specific) Stop Loss Insurance, a Surplus exists. Claim Administrator will retain a percentage of the Surplus as a deferred Administrative Fee.
- Employer acknowledges that the percentage of any Surplus that Claim Administrator will retain in relation to Employer and its group health plan has been disclosed in Claim Administrator's proposal to Employer and such disclosure of the percentage of the Surplus is incorporated into this Agreement.
- For the remainder of any Surplus, Claim Administrator shall pay such difference to Employer after applying the difference against amounts, if any, then owed to Claim Administrator by Employer. After the final settlement, Claim Administrator shall be released from any further liability for Claim Payments and Claim adjustments under this Agreement. Further, after the final settlement, any refunds resulting from Claim adjustments or recoveries for Overpayments, including, but not limited to, subrogation or litigation activities, regardless of when such adjustments or recoveries occurred shall be retained by Claim Administrator and Employer shall have no liability for any charges associated with any adjustments.
- 8.4 **Uncashed Funds.** As of the date of termination of the Agreement and during the Run-Off Period, any outstanding funds that are or become "stale" (over 365 days old), less any amount(s) owed by payees to Claim Administrator from such funds, will be escheated by Claim Administrator on Employer's behalf to the state of payee's last known address in accordance with Claim Administrator's established procedures and/or the applicable state's unclaimed property law.

**EXHIBIT 3
NOTICES/REQUIRED DISCLOSURES**

SECTION 1: PAYMENT OF CLAIMS AND ASSIGNMENT OF BENEFITS

- 1.1 Claim Payment.** All payments by Claim Administrator for the benefit of any Covered Person may be made directly to any Provider furnishing Covered Services for which such payments are due, and Claim Administrator is authorized by such Covered Person to make such payments directly to such Providers. However, Claim Administrator reserves the right to pay any benefits that are payable under the terms of the Plan directly to the Covered Person or to the Provider furnishing Covered Services at Claim Administrator's option and in its sole discretion. Claim Administrator's decision to pay a Provider directly is not intended to waive and shall not constitute a waiver of the prohibition on assignment described in Section 1.3, below. All benefits payable to the Covered Person that remain unpaid at the time of the death of the Covered Person will be paid to the estate of the Covered Person.
- 1.2 Claim Dispute.** Once Covered Services are rendered by a Provider, the Covered Person has no right to request Claim Administrator not to pay the Claim submitted by such Provider and no such request by a Covered Person or his agent will be given effect. Furthermore, Claim Administrator will have no liability to the Covered Person or any other person because of its rejection of such request.
- 1.3 Invalidity Of Assignments.** Neither coverage under the Plan nor a Covered Person's claims or rights under the Plan, including but not limited to claims for payment of benefits, are assignable in whole or in part to any person or entity at any time, and any such assignments shall be considered void. Coverage under the Plan is expressly non-assignable and non-transferable and will be forfeited if a Covered Person attempts to assign or transfer coverage or aids or attempts to aid any other person in fraudulently obtaining coverage under the Plan. If Claim Administrator makes payment because of a person's wrongful use of the identification card of a Covered Person, such payment will be considered a proper payment and Claim Administrator will have no obligation to pursue recovery of such payment however, once the invalid assignment or transfer has been identified and Claim Administrator has acknowledged the situation, Claim Administrator will pursue recoveries as described in Section 4.2 of the Agreement.

SECTION 2: COVERED PERSON/PROVIDER RELATIONSHIP

- 2.1 Relationship To A Provider.** The choice of a Provider is solely the choice of the Covered Person and Claim Administrator will not interfere with the Covered Person's relationship with any Provider. Each Provider provides Covered Services only to Covered Persons and does not otherwise interact with or provide any services to Employer (except to the extent Employer is a Covered Person) or the Plan.
- 2.2 Claim Administrator's Role.** It is expressly understood that Claim Administrator does not itself undertake to furnish Hospital, medical or dental service, but acts solely to make Claim Payments to a Provider for the Covered Services received by Covered Persons. Claim Administrator is not in any event liable for any act or omission of any Provider or the agent or employee of such Provider, including, but not limited to, the failure or refusal to render services to a Covered Person. Professional services that can only be legally performed by a Provider are not provided by Claim Administrator. Any contractual relationship between a Provider and Claim Administrator shall not be construed to mean that Claim Administrator is providing professional service nor that any Provider is a subcontractor of Claim Administrator with respect to any aspect of this Agreement. Any reference or statement by Claim Administrator to a Provider shall in no way be construed as a representation, recommendation, referral, inference, or other statement by Claim Administrator as to the ability or quality, positive or negative, of such Provider.
- 2.3 Physician Ratings and Rankings.** Employer acknowledges that Claim Administrator may, in accordance with and subject to all applicable laws and regulations, utilize nationally recognized standards and guidelines to rate and rank certain Physicians, and may publish and make available to Employer and Covered Persons certain Physician-specific information that includes, and is not limited to, ratings, rankings, and other comparisons of a Physician's performance against certain standards, measures and other physicians, and that Claim Administrator may publish and/or share such information with Employer, Covered Persons and other third parties. Notwithstanding this or any other provisions of this Agreement to

the contrary, in no event shall any reference or statement by Claim Administrator about a Physician or Provider be construed as a recommendation or referral to such Physician or Provider, or as a guarantee as to future services provided by any Physician or Provider or the anticipated outcome of such services.

2.4 **If Point-Of-Service Coverage Applies.** If coverage under a Network point-of-service managed care health benefits program is applicable to the Plan under the Agreement, the following apply:

a. Physician Selection.

A Covered Person shall be entitled to select a Primary Care Physician through the Plan to act as the Covered Person's principal care giver and to provide or arrange for the provision of medical care.

b. Changing Physician Selection.

Both the Covered Person and the Primary Care Physician may request a change from one Primary Care Physician to another by notifying Claim Administrator of the desire to change; provided, however, such a request by a Primary Care Physician shall not be based upon the type, amount or cost of services required by the Covered Person or the physical condition of the Covered Person except where reasonably necessary to provide optimal medical care.

SECTION 3: LIMITED BENEFITS FOR NON-NETWORK PROVIDERS

Regarding any comprehensive major medical coverage with access to Network Providers elected on the most current ASO BPA. Employer acknowledges that when Covered Persons elect to utilize the services of a non-Network Provider for a Covered Service in non-emergency situations, benefit payments to such non-Network Provider are not based upon the amount billed. Non Network Providers may bill the Plan's Covered Person for any amount up to the difference between the billed charge and the amount the Claim Administrator has paid for the Plan's portion of the bill. For more detailed information regarding benefit payments for Network and Non-Network Providers, please see the definition of Allowable Amount in Section 7 Definitions of this Agreement. A Covered Person may obtain further information about the Network status of Providers and information on out-of-pocket expenses by calling the toll-free number on their identification card or by accessing online tools and services such as Blue Access for Members or Provider Finder.

SECTION 4: CLAIM ADMINISTRATOR'S SEPARATE FINANCIAL ARRANGEMENTS WITH PRESCRIPTION DRUG PROVIDERS

4.1 All amounts payable to Claim Administrator by Employer for Claim Payments provided by Claim Administrator under the pharmacy benefit and applicable service charges pursuant to the terms of the Agreement and all required deductible and Coinsurance amounts under the Agreement shall be calculated on the basis of the Allowable Amount or the agreed upon cost between the Participating Prescription Drug Provider, and Claim Administrator, whichever is less.

4.2 Claim Administrator hereby informs Employer and all Covered Persons that it has contracts, either directly or indirectly, with Participating Prescription Drug Providers for the provision of, and payment for, prescription drug services to all persons entitled to prescription drug benefits under individual certificates, group health insurance policies and contracts to which Claim Administrator is a party, including the Covered Persons under the Agreement, and that pursuant to Claim Administrator's contracts with Participating Prescription Drug Providers, under certain circumstances described therein, Claim Administrator may receive payments, discounts and/or other allowances for prescription drugs dispensed to Covered Persons under the Agreement. Actual Network savings achieved for Covered Persons will vary. Some rates are currently based on benchmark prices including, but not limited to, Wholesale Acquisition Cost ("WAC"), Average Sales Price ("ASP") and Average Wholesale Price ("AWP"), which are determined by third parties and are subject to change.

4.3 Employer understands that Claim Administrator may receive such payments, discounts and/or other allowances during the term of the Agreement. Neither Employer nor Covered Persons hereunder are

entitled to receive any portion of any such payments, discounts and/or other allowances except as such items may be indirectly or directly reflected in the service charges specified in the Agreement. The drug fees/discounts that Claim Administrator has negotiated with Prime Therapeutics LLC (“Prime”) through the Pharmacy Benefit Management (“PBM”) Agreement, will be used to calculate Covered Persons deductibles and Coinsurance for both retail and mail/specialty. Except for mail/specialty drugs, the PBM Agreement requires that the fees/discounts, payments and/or other allowances that Prime has negotiated with pharmacies (or other suppliers) are passed through to Claim Administrator. For the administrative services that Prime provides as part of the mail order and specialty pharmacy program, Prime may keep as its fee a portion of the discounts and/or other allowances that it has negotiated with the mail-order and/or specialty pharmacy. Claim Administrator pays a fee to Prime for pharmacy benefit services, which may be included in the Administrative Fee charged by Claim Administrator to Employer. A portion of Prime's PBM fees are tied to certain performance standards, including, but not limited to, Claims processing, customer service response, and mail-order processing.

- 4.4 The amounts received by Prime from Claim Administrator, pharmacies, manufacturers or other third parties may be revised from time to time. Some of the amounts received by Prime may be charged each time a claim is processed (or, in some instances, requested to be processed) through Prime and/or each time a prescription is filled, and include, but are not limited to, administrative fees charged by Prime to Claim Administrator (as described above), administrative fees charged by Prime to pharmacies, and administrative fees charged by Prime to pharmaceutical manufacturers. Currently, none of these fees will be passed on to Employer as expenses, or accrue to the benefit of Employer, unless otherwise specifically set forth in the Agreement.

SECTION 5: CLAIM ADMINISTRATOR'S SEPARATE FINANCIAL ARRANGEMENTS WITH PHARMACY BENEFIT MANAGERS

- 5.1 Claim Administrator hereby informs Employer and all Covered Persons that it owns a significant portion of the equity of Prime and that Claim Administrator has entered into one or more agreements with Prime or other entities (collectively referred to as “Pharmacy Benefit Managers”), for the provision of, and payment for, prescription drug benefits to all persons entitled to prescription drug benefits under individual certificates, group health insurance policies and contracts to which Claim Administrator is a party, including the Covered Persons under the Agreement. Pharmacy Benefit Managers have agreements with pharmaceutical manufacturers to receive rebates for using their products. In addition, the mail-order pharmacy and specialty pharmacy shall be operated through a third party, which may be an affiliate of or partially owned by Prime Therapeutics, LLC.
- 5.2 The Pharmacy Benefit Manager(s) (“PBM”) negotiates rebate contracts with pharmaceutical manufacturers and has agreed to provide rebates made available pursuant to such contracts to Claim Administrator under the PBM's agreement with Claim Administrator. Claim Administrator may also negotiate rebate contracts with pharmaceutical manufacturers. This negotiation is conducted by the PBM (or Claim Administrator, as applicable) for the benefit of Claim Administrator and not for the benefit of Employer or Covered Persons. The PBM collects the rebates from the pharmaceutical manufacturers, for drugs covered under both the prescription drug program and medical benefit, and forwards the entire amount collected to Claim Administrator (other than any interest or late fees earned on rebates received from manufacturers, which the PBM retains). PBM may contract with pharmaceutical manufacturers through a group purchasing organization and, in such case, rebates collected by PBM and paid to Claim Administrator will be net of any fee the group purchasing organization may retain for its role in securing rebates. The Claim Administrator will retain those rebates which will offset a portion of the administrative expenses when setting the Administrative Fee. The offset will be based on the average rebates projected for all Blue Balance Funded groups during the contract period. The projected rebates will be based on past rebates and expected changes to them as well as demographics and prescription drug utilization. Employer acknowledges that it and its group health plan have no right to the rebates, payments, discounts and/or other allowances retained by Claim Administrator and expressly consent to Claim Administrator's retention of all such rebates, payments, discounts and/or other allowances.

- 5.3 Employer acknowledges that the estimated amount of rebates that Claim Administrator expects to retain in relation to Employer and its group health plan has been disclosed in Claim Administrator's proposal to Employer and such disclosure of the estimated rebates is incorporated into this Agreement. Employer understands that Claim Administrator may receive such rebates during the term of the Agreement. Neither Employer nor Covered Persons hereunder are entitled to receive any portion of any such rebates except as such items may be indirectly or directly reflected in the service changes specified in the Agreement.
- 5.4 As of the Effective Date, the maximum that a PBM has disclosed to Claim Administrator that the PBM will receive from any pharmaceutical manufacturer for manufacturer administrative fees is five and a half percent (5.5%) of the Wholesale Acquisition Cost ("WAC") for all products of such manufacturer dispensed during any given calendar year to members of Claim Administrator and to members of the other Blue Cross and/or Blue Shield operating divisions of Health Care Service Corporation or for which Claims are submitted to PBM at Claim Administrator's Request; provided, however, that Claim Administrator will advise Employer if such maximum has changed.

SECTION 6: CLAIM ADMINISTRATOR'S SEPARATE FINANCIAL ARRANGEMENTS WITH PROVIDERS

- 6.1 All amounts payable to Claim Administrator by Employer for Claim Payments provided by Claim Administrator and applicable service charges pursuant to the terms of the Agreement and all required deductible and Coinsurance amounts under the Agreement shall be calculated on the basis of the Provider's Eligible Charge or Provider's Claim Charge less the ADP, for Covered Services rendered to a Covered Person, irrespective of any separate financial arrangement between any Administrator Provider or Employer and Claim Administrator.
- 6.2 Employer acknowledges that Claim Administrator has contracts with certain Providers ("Administrator Providers") for the provision of, and payment for, health care services to all persons entitled to health care benefits under individual certificates, agreements and contracts to which Claim Administrator is a party, including the Covered Persons under the Agreement, and that pursuant to Claim Administrator's contracts with Administrator Providers, under certain circumstances described therein, Claim Administrator may receive substantial payments from Administrator Providers with respect to services rendered to all such persons for which Claim Administrator was obligated to pay Administrator Providers, or Claim Administrator may pay Administrator Providers less than their Claim Charges for services, by discounts or otherwise, or may receive from Administrator Providers other allowances under Claim Administrator's contracts with them. Employer acknowledges that in negotiating the service charges set forth in the Agreement, it has taken into consideration that Claim Administrator may receive such payments, discounts and/or other allowances during the term of the Agreement and that the service charges specified in the Agreement reflect the amount of additional consideration expected to be received by Claim Administrator in the form of such payments, discounts or allowances. Neither Employer nor Covered Persons hereunder are entitled to receive any portion of any such payments, discounts and/or other allowances in excess of the ADP as part of any Claim settlement or otherwise except as such items may be indirectly or directly reflected in the service charges specified in the Agreement.
- 6.3 Claim Administrator's compensation for its services under the Agreement shall include the difference between the Claim Payments reimbursed to Claim Administrator by Employer under the Agreement and the net amounts paid to Providers by Claim Administrator after giving effect to Claim Administrator's separate financial arrangements with Providers.

SECTION 7: MEDICARE SECONDARY PAYER INFORMATION REPORTING

- 7.1 For the purposes of mandatory reporting requirements for group health plan ("GHP") arrangements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (P.L. 110-173), Claim Administrator shall serve as the Responsible Reporting Entity ("RRE") and shall report information to the CMS about individuals enrolled in the GHP who are also covered by Medicare so that CMS and Claim Administrator can effectively coordinate health care payments consistent with the MSP rules. Employer hereby authorizes and directs Claim Administrator to disclose to CMS, periodically, information pertaining

to Medicare-eligible Covered Persons under the Plan. So that Claim Administrator may make accurate primary/secondary MSP determinations. Employer agrees to Timely and accurately respond to Claim Administrator's requests for information.

- 7.2 It shall be Employer's responsibility to notify Claim Administrator promptly as may be required for such continuing accuracy, of any change in the number of individuals employed by Employer or status of its employees that might affect the order of payment under the MSP statute, such as information regarding working-aged persons who retire and changes in the number of individuals employed by Employer that place it in, or take it out of, the scope of the MSP statute. Employer's failure to provide accurate and timely information in response to Claim Administrator's request may impact Claim payments.
- 7.3 **Disclosure Statement:** Employer acknowledges that Claim Administrator has furnished it with a copy of a pamphlet titled "Information Regarding the Medicare Secondary Payer Statute" (also referred to as the "Disclosure Statement"), prepared by the Blue Cross and Blue Shield Association and reviewed by CMS, which administers Medicare.
- 7.4 Notwithstanding any other provision herein, in instances where the Employer has carved out prescription drug coverage administration to an entity other than Claim Administrator, Claim Administrator shall not serve as the RRE for prescription drug coverage under the Plan.

SECTION 8: REIMBURSEMENT PROVISION

Applicable only if this service is elected in the Fee Schedule specifications of the most current Exhibit 4 - ASO BPA

- 8.1 If a Covered Person incurs expenses for sickness or injury that occurred due to the negligence of a third party and benefits are provided for Covered Services described in the Plan, the following provisions will apply:
- a. Claim Administrator on behalf of Employer has the right to reimbursement for all benefits Claim Administrator provided from any and all damages collected from the third party for those same expenses whether by action at law, settlement, or compromise, by the Covered Person, the Covered Person's parents or guardians, if the Covered Person is a minor, or the Covered Person's legal representative as a result of that sickness or injury, in the amount of the Provider's Allowable Amount for Covered Services for which Claim Administrator has provided benefits to the Covered Person applicable to the Covered Person's Claim or Claims.
 - b. Claim Administrator is assigned the right to recover from the third party, or the third party's insurer, to the extent of the benefits Claim Administrator provided for that sickness or injury.
- 8.2 Claim Administrator shall have the right to first reimbursement out of all funds the Covered Person, the Covered Person's parents or guardians if the Covered Person is a minor, or the Covered Person's legal representative, is or was able to obtain for the same expenses for which Claim Administrator has provided benefits as a result of that sickness or injury. The Covered Person is required to furnish any information or assistance or provide any documents that Claim Administrator may reasonably require in order to obtain its rights under this provision. This provision applies whether or not the third party admits liability.

SECTION 9: REPLACEMENT COVERAGE

A Covered Person may, under certain circumstances, as specified below, apply for, and obtain replacement coverage, subject to the replacement coverage's applicable terms and conditions. The replacement coverage will be that which is offered by Claim Administrator, or, if Covered Person does not reside in Claim Administrator's service area, by the Host Blue(s) whose service area covers the geographic area in which the Covered Person resides. The circumstances mentioned above may arise from involuntary termination of Covered Person's health coverage sponsored by Employer but solely as a result of a reduction in force, plan/office closing(s) or group health plan termination (in whole or in part), or when a Covered Person approaches the age of Medicare eligibility. If the Covered Person does not reside in Claim Administrator's service area, Claim Administrator may facilitate a Covered Person's right to apply for and obtain such replacement coverage, subject to applicable eligibility requirements, from

the Host Blue in which the Covered Person resides. To do this, Claim Administrator or Host Blue may communicate directly with the Covered Persons to provide resources and replacement coverage options available to them. Claim Administrator's provision of information about replacement coverage is not part of the Services provided to Employer under the Agreement, and neither Employer nor the Plan has any responsibility for replacement coverage information provided by Claim Administrator in accordance with this Section 9.

SAMPLE

**EXHIBIT 4
ASO BPA**

SAMPLE

EXHIBIT 5
BLUE CROSS BLUE SHIELD ASSOCIATION DISCLOSURES AND PROVISIONS

SECTION 1: INTER-PLAN ARRANGEMENT DEFINITIONS

Other definitions applicable to this Exhibit are contained in Section 7 DEFINITIONS of the Agreement.

- 1.1 “Accountable Care Organization”** means a group of healthcare Providers who agree to deliver coordinated care and meet performance benchmarks for quality and affordability in order to manage the total cost of care for their member populations.
- 1.2 “Alternative Provider Compensation Arrangements”** means the arrangements described in the definition of “Alternative Provider Compensation Arrangement Payments.”
- 1.3 “Alternative Provider Compensation Arrangement Payments”** means a payment Claim Administrator makes to Network Providers for any services, including but not limited to, any capitation payments, performance-based payments, Care Coordination payments, Value-Based Program payments, Accountable Care Organization payments, Global Payments/Total Cost of Care payments, Patient-Centered Medical Homes payments, Provider Incentives or other incentives or bonus payments, Shared Savings payments, and any other alternative funding arrangement payments as described in Claim Administrator’s arrangement with the Network Provider, all as further described in Section 3.4 of this Exhibit. If the actual amount of an Alternative Provider Compensation Arrangement Payment (for purposes of this Section 1.3, a “Payment”) is not known at the time Claim Administrator bills Employer under this Agreement, then Claim Administrator may bill Employer in advance for expected Payments to Network Providers (the “Expected Payments”). Such Expected Payments will be calculated for each member in each specific Alternative Provider Compensation Arrangement on a per member per month (“PMPM”) basis or on another agreed upon compensation mechanism between Participating Healthcare Provider and Claim Administrator, in the same manner as methodologies described in Section 3.4 of this Exhibit. Where such Alternative Provider Compensation Arrangements include a PMPM Payment structure, the calculation of the Expected Payments will be made using (i) the estimated number of members involved in a particular Arrangement (as of the end of the month preceding the calculation), and (ii) the estimated Payments for all such Covered Persons, unless an alternate calculation method is used (in the same manner as described in Section 3.4 of this Exhibit. Expected Payment may vary from Member to Member. For the purposes of this Section 1.3, a “Member” means all of the members in a health benefit plan insured or administered by Claim Administrator, including but not limited to Employer’s Covered Persons. Employer will be billed for its share of the Expected Payment, calculated based on (i) the number of Employer’s Covered Persons participating (or expected to participate) in an Alternative Provider Compensation Arrangement per month and/or (ii) the number and/or cost of the Covered Services received (or expected to be received) by Employer’s Covered Persons per month. Any difference (surplus or deficit) between the Expected Payments and actual Payments will be factored into Claim Administrator’s calculation of future Expected Payments. Interest on such difference (surplus or deficit) will be credited (or charged) to Employer and included in the calculation of future Expected Payments. Claim Administrator may recalculate the PMPM amounts and any other applicable expected Payments or charges from time to time in a manner consistent with this Agreement. In the case of any modification to the PMPM or Expected Payments, Claim Administrator shall inform Employer of such modifications. Thereafter, Employer will be deemed to have approved the modifications, which will become part of this Agreement.
- 1.4 “Blue Cross Blue Shield Global Core Access Vendor Fees”** means the charges to Claim Administrator for the transaction fees through Blue Cross Blue Shield Global Core which are payable to the medical assistance vendor for assisting Covered Persons traveling or living outside of the United States, Puerto Rico, and U.S. Virgin Islands to obtain medical services.
- 1.5 “Care Coordination”** means organized, information-driven patient care activities intended to facilitate the appropriate responses to Covered Person’s healthcare needs across the continuum of care.
- 1.6 “Care Coordinator”** means an individual within a Provider organization who facilitates Care Coordination for patients.
- 1.7 “Care Coordinator Fee”** means a fixed amount paid by a BlueCross and/or Blue Shield Plan to Providers periodically for Care Coordination under a Value-Based Program.

- 1.8 **“Global Payment/Total Cost of Care”** means a payment methodology that is defined at the patient level and accounts for either all patient care or for a specific group of services delivered to the patient such as Outpatient, Physician, ancillary, Hospital services, and prescription drugs.
- 1.9 **“Host Blue”** means a local Blue Cross and/or Blue Shield licensee outside the geographic area that Claim Administrator serves.
- 1.10 **“Negotiated Arrangement”** means an agreement negotiated between one or more Blue Cross and/or Blue Shield Plans for any national account that is not delivered through the BlueCard Program.
- 1.11 **“Non-Participating Healthcare Provider”** means a healthcare Provider that does not have a contractual agreement with a Host Blue.
- 1.12 **“Participating Healthcare Provider”** means a healthcare Provider that has a contractual agreement with a Host Blue.
- 1.13 **“Patient-Centered Medical Home”** means a model of care in which each patient has an ongoing relationship with a Primary Care Physician who coordinates a team to take collective responsibility for patient care and, when appropriate, arranges for care with other qualified Physicians.
- 1.14 **“Provider Incentive”** means an additional amount of compensation paid to a healthcare Provider by a Blue Cross and/or Blue Shield Plan, based on the Provider’s compliance with, or participation in, agreed-upon procedural and/or outcome measures, joint-initiatives, including but not limited to any measures or initiatives related to a particular population of Covered Persons.
- 1.15 **“Shared Savings”** means a payment mechanism in which the Provider and the Blue Cross and/or Blue Shield Plan share cost savings achieved against a target cost budget based upon-agreed upon terms and may include downside risk.
- 1.16 **“Value-Based Program”** means a payment arrangement and/or a Care Coordination model facilitated through one or more Providers that may utilize one (1) or more of the following metrics: (i) Covered Person health outcomes; (ii) Covered Person Care Coordination; (iii) quality of Covered Services; (iv) cost of Covered Services; (v) Covered Person access; (vi) Covered Person experience with a Provider; or (vii) joint initiatives to increase collaboration in the provision of Covered Services to Covered Persons, and which payment arrangement is reflected in one (1) or more Provider payments, including but not limited to Alternative Provider Compensation Arrangement Payments.

SECTION 2: ADMINISTRATIVE SERVICES ONLY

Claim Administrator provides administrative Claims payment services only as set forth in this Agreement and does not assume any financial risk or obligation with respect to Claims.

SECTION 3: DISCLOSURES IN ACCOUNT CONTRACTS

Employer, on behalf of itself and its Covered Persons, hereby expressly acknowledges its understanding that this Agreement constitutes a contract solely between Employer and Claim Administrator, which is an independent corporation operating under a license from the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the “Association”), permitting Claim Administrator to use the Blue Cross and/or Blue Shield Service Mark in the State of Texas, and that Claim Administrator is not contracting as the agent of the Association. Employer on behalf of itself and its Covered Persons further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than Claim Administrator and that no person, entity, or organization other than Claim Administrator shall be held accountable or liable to Employer for any of Claim Administrator’s obligations to Employer created under this Agreement. This subsection shall not create any additional obligations whatsoever on the part of Claim Administrator other than those obligations created under other provisions of this Agreement.

SECTION 4: INTER-PLAN ARRANGEMENTS

4.1 Out-of-Area Services

Claim Administrator has a variety of relationships with other Blue Cross and/or Blue Shield licensees referred to generally as “Inter-Plan Arrangements.” These Inter-Plan Arrangements operate under rules and procedures issued by the Association. Whenever Covered Persons access healthcare services outside the geographic area Claim Administrator serves, the Claim for those services may be processed through one of these Inter-Plan Arrangements. The Inter-Plan Arrangements are described generally below. Claim Administrator’s services under this Agreement are governed by and subject to the Inter-Plan Arrangements rules in effect during the term of this Agreement, and a Host Blue is neither the agent nor the subcontractor of Claim Administrator. Typically, when accessing care outside the geographic area Claim Administrator serves, Covered Persons obtain care from Participating Healthcare Providers. In some instances, Covered Persons may obtain care from Non-Participating Healthcare Providers. Claim Administrator remains responsible for fulfilling its contractual obligations to Employer. Claim Administrator’s payment practices in both instances are described below. This disclosure describes how Claims are administered for Inter-Plan Arrangements and the fees that are charged in connection with the Inter-Plan Arrangements. Dental care benefits, when paid as stand-alone benefits, and prescription drug benefits or vision care benefits that may be administered by a third party contracted by Claim Administrator to provide the specific service or services, are not processed through Inter-Plan Arrangements.

4.2 BlueCard® Program

The BlueCard® Program is an Inter-Plan Arrangement. Under this Arrangement, when Covered Persons access Covered Services within the geographic area served by a Host Blue, the Host Blue will be responsible for contracting and handling all interactions with its Participating Healthcare Providers. The financial terms of the BlueCard Program are described generally below. Individual circumstances may arise that are not directly covered by this description; however, in those instances, Claim Administrator’s action will be consistent with the spirit of this description.

a. Liability Calculation Method – In General

(1) Covered Person Liability Calculation.

Unless subject to a fixed dollar Copayment, the calculation of the Covered Person’s liability on Claims for Covered Services will be based on the lower of the Participating Healthcare Provider’s billed charges for Covered Services or the negotiated price made available to Claim Administrator by the Host Blue.

(2) Employer’s Liability Calculation.

The calculation of Employer’s liability on Claims for Covered Services processed through the BlueCard Program will be based on the negotiated price made available to Claim Administrator by the Host Blue. Sometimes, this negotiated price may, for a particular service or services, exceed the billed charge in accordance with how the Host Blue has negotiated with its Participating Healthcare Provider(s) for specific healthcare services. In cases where the negotiated price exceeds the billed charge, Employer may be liable for the excess amount even when the Covered Person’s deductible has not been satisfied. This excess amount reflects an amount that may be necessary to secure (a) the Provider’s participation in the Network and/or (b) the overall discount negotiated by the Host Blue. In such a case, the entire contracted price is paid to the Provider, even when the contracted price is greater than the billed charge.

b. Claims Pricing

Host Blues determine a negotiated price, which is reflected in the terms of each Host Blue’s Provider contracts. The negotiated price made available to Claim Administrator by the Host Blue may be represented by one of the following:

(1) An actual price. An actual price is a negotiated rate of payment in effect at the time a Claim is processed without any other increases or decreases; or

(2) An estimated price. An estimated price is a negotiated rate of payment in effect at the time a Claim is processed, reduced, or increased by a percentage to take into account certain payments negotiated with the Provider and other Claim- and non-Claim-related transactions. Such transactions may include, but are not limited to, anti-fraud and abuse recoveries, Provider refunds not applied on a Claim-specific basis, retrospective settlements, and performance-related bonuses or incentives; or

- (3) An average price. An average price is a percentage of billed charges for Covered Services in effect at the time a Claim is processed representing the aggregate payments negotiated by the Host Blue with all of its healthcare Providers or a similar classification of its Providers and other Claim- and non-Claim-related transactions. Such transactions may include the same ones as noted above for an estimated price.

The Host Blue determines whether it will use an actual, estimated or an average price. The use of estimated or average pricing may result in a difference (positive or negative) between the price Employer pays on a specific Claim and the actual amount the Host Blue pays to the Provider. However, the BlueCard Program requires that the amount paid by the Covered Person and Employer is a final price; no future price adjustment will result in increases or decreases to the pricing of past Claims. Any positive or negative differences in estimated or average pricing are accounted for through variance accounts maintained by the Host Blue and are incorporated into future Claim prices. As a result, the amounts charged to Employer will be adjusted in a following year, as necessary, to account for over- or under-estimation of the past years' prices. The Host Blue will not receive compensation from how the estimated price or average price methods, described above, are calculated. Because all amounts paid are final, neither positive variance account amounts (funds available to be paid in the following year), nor negative variance amounts (the funds needed to be received in the following year), are due to or from Employer. If Employer terminates, Employer will not receive a refund or charge from the variance account. Variance account balances are small amounts relative to the overall paid Claims amounts and will be liquidated/drawn down over time. The timeframe for the liquidation depends on variables, including, but not limited to, overall volume/number of Claims processed and variance account balance. Variance account balances may earn interest at the federal funds or similar rate. Host Blues may retain interest earned on funds held in variance accounts.

c. BlueCard Program Fees and Compensation

Employer understands and agrees to reimburse Claim Administrator for certain fees and compensation which Claim Administrator is obligated under the BlueCard Program to pay to the Host Blues, to the Association, and/or to vendors of the BlueCard Program-related services. The specific BlueCard Program fees and compensation that are charged to Employer are set forth in the most current ASO BPA. The specific BlueCard Program fees and compensation may be revised from time to time as described in Section 4.9 below.

Claim Administrator will charge these fees as follows:

- (1) BlueCard Program Access Fees
- (2) How the BlueCard Program Access Fee Affects Employer

When Claim Administrator is charged a BlueCard Program access fee, Claim Administrator may pass the charge along to Employer as a Claim expense or as a separate amount. The access fee will not exceed \$2,000 for any Claim. If Claim Administrator receives an access fee credit, Claim Administrator will give Employer a Claim expense credit or a separate credit. Instances may occur in which the Claim payment is zero or Claim Administrator pays only a small amount because the amounts eligible for payment were applied to patient cost sharing (such as a deductible or coinsurance). In these instances, Claim Administrator will pay the Host Blue's access fee and pass it along to Employer as stated above even though Employer paid little or had no Claim liability.

4.3 Negotiated Arrangements

With respect to one or more Host Plans, instead of using the BlueCard Program, Claim Administrator may process Employer's Covered Persons' Claims for Covered Services through a Negotiated Arrangement. Pursuant to such a Negotiated Arrangements, the Host Blue(s) has/have agreed to provide, on Claim Administrator's behalf, Claim Payments and certain administrative services for those Covered Persons of Employer receiving Covered Services in the state and/or service area of the Host Blue(s). Pursuant to the agreement between Claim Administrator and the Host Blue(s), Claim Administrator has agreed to reimburse each Host Blue for all Claim Payments made on Claim Administrator's behalf for those Covered Persons of Employer receiving Covered Services in the state and/or service area of such Host Blue. In addition, if Claim Administrator and Employer have agreed that (a) Host Blue(s) shall make available (a) custom

healthcare Provider Network(s) in connection with this Agreement, then the terms and conditions set forth in Claim Administrator's Negotiated Arrangement(s) for national accounts with such Host Blue(s) shall apply. These include the provisions governing the processing and payment of claims when Covered Persons access such networks. In negotiating such arrangement(s), Claim Administrator is not acting on behalf of or as an agent for Employer, Employer's Plan or Employer's Covered Persons.

a. Covered Person And Employer Liability Calculation

Covered Person liability calculation will be based on the lower of either billed charges for Covered Services or negotiated price (refer to the description of negotiated price under Section 4.2.a., BlueCard Program) that the Host Blue makes available to Claim Administrator and that allows Employer's Covered Persons access to negotiated participation agreement Networks of specified Participating Healthcare Providers outside of Claim Administrator's service area. Employer's liability calculation will be based on the negotiated price (refer to the description of negotiated price under Section 4.2.a, BlueCard Program).

Employer acknowledges that pursuant to the Host Blue's contracts with Host Blues' Participating Healthcare Providers, under certain circumstances described therein, the Host Blue (i) may receive substantial payment from Host Blues' Participating Healthcare Providers with respect to services rendered to such Covered Persons for which the Host Blue was initially obligated to pay the Host Blues' Participating Healthcare Providers, (ii) may pay Host Blues' Participating Healthcare Providers more or less than their billed charges for services, by discounts or otherwise, or (iii) may receive from Host Blues' Participating Healthcare Providers other allowances under the Host Blue's contracts with them. One example of this is quality improvement programs/payments. If charged by the Host Blue to Claim Administrator, Employer shall reimburse Claim Administrator for any payments made to the Host Blue, unless otherwise set forth in the Agreement's Fee Schedule, including "Claim-like" charges, which are those charges for payments to Host Blues' Participating Healthcare Providers on other than a fee for services basis which include, but are not limited to, incentive payments. Employer acknowledges that, in negotiating the Administrative Fee set forth in the Agreement's Fee Schedule, it has taken into consideration that, among other things, the Host Blue may receive such payments, discounts and/or other allowances during the term of its agreement with Claim Administrator. Further, all amounts payable by Covered Person and Employer shall be calculated on the basis described in this subsection, irrespective of any separate financial arrangement between the Host Blue's Participating Healthcare Provider that rendered the applicable Covered Service and the Host Blue other than the negotiated price as described in this subsection.

b. Fees And Compensation

Employer understands and agrees to reimburse Claim Administrator for certain fees and compensation which Claim Administrator is obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blues, to the Association, and/or to vendors of Inter-Plan Arrangement-related services. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as described in Section 4.9 below. In addition, the participation agreement with the Host Blue may provide that Claim Administrator must pay an administrative and/or a network access fee to the Host Blue, and Employer further agrees to reimburse Claim Administrator for any such applicable administrative and/or network access fees. The specific fees and compensation that are charged to Employer under Negotiated Arrangements are set forth in the most current ASO BPA.

4.4 Special Cases: Value-Based Programs

a. Value-Based Programs Overview

Employer's Covered Persons may access Covered Services from Providers that participate in a Host Blue's Value-Based Program. Value-Based Programs may be delivered either through the BlueCard Program or a Negotiated Arrangement. These Value-Based Programs may include, but are not limited to, Accountable Care Organizations, Global Payment/Total Cost of Care arrangements, Patient Centered Medical Home, and Shared Savings arrangements.

b. Value-Based Programs Under The BlueCard Program

(1) Value-Based Programs Administration

Under Value-Based Programs, a Host Blue may pay Providers for reaching agreed-upon cost/quality goals in the following ways: retrospective settlements, Provider Incentives, a share of target savings, Care Coordinator Fees and/or other allowed amounts. The Host Blue may pass these Provider payments to Claim Administrator, which Claim Administrator will pass on to Employer in the form of either an amount included in the price of the Claim or an amount charged separately in addition to the Claim.

When such amounts are included in the price of the Claim, the Claim may be billed using one of the following pricing methods, as determined by a Host Blue:

- a) **Actual Pricing:** The charge to accounts for Value-Based Programs incentives/Shared Savings settlements is part of the Claim. These charges are passed to Employer via an enhanced Provider fee schedule.
- b) **Supplemental Factor:** The charge to accounts for Value-Based Programs incentives/Shared Savings settlements is a supplemental amount that is included in the Claim as an amount based on a specified supplemental factor (e.g., a small percentage increase in the claim amount). The supplemental factor may be adjusted from time to time. This pricing method may be used only for non-attributed Value-Based Programs.

When such amounts are billed separately from the price of the Claim, they may be billed as Per Member Per Month (“PMPM”) billings for Value-Based Programs incentives/Shared Savings settlements to accounts outside of the Claim system. Claim Administrator will pass these Host Blue charges directly through to Employer as a separately identified amount on the group billings. The amounts used to calculate either the supplemental factors for estimated pricing or PMPM billings are fixed amounts that are estimated to be necessary to finance the cost of a particular Value-Based Program. Because amounts are estimates, there may be positive or negative differences based on actual experience, and such differences will be accounted for in a variance account maintained by the Host Blue (in the same manner as described in the BlueCard Claim pricing section above) until the end of the applicable Value-Based Program payment and/or reconciliation measurement period. The amounts needed to fund a Value-Based Program may be changed before the end of the measurement period if it is determined that amounts being collected are projected to exceed the amount necessary to fund the program or if they are projected to be insufficient to fund the program. At the end of the Value-Based Program payment and/or reconciliation measurement period for these arrangements, Host Blues will take one of the following actions:

- a) Use any surplus in funds in the variance account to fund Value-Based Program payments or reconciliation amounts in the next measurement period.
- b) Address any deficit in funds in the variance account through an adjustment to the PMPM billing amount or the reconciliation billing amount for the next measurement period.

The Host Blue will not receive compensation resulting from how estimated average or PMPM price methods, described above, are calculated. If Employer terminates, Employer will not receive a refund or charge from the variance account. This is because any resulting surpluses or deficits would be eventually exhausted through prospective adjustment to the settlement billings in the case of Value-Based Programs. The measurement period for determining these surpluses or deficits may differ from the term of this Agreement. Variance account balances are small amounts relative to the overall paid Claims amounts and will be liquidated/drawn down over time. The timeframe for the liquidation depends on variables, including, but not limited to, overall volume/number of Claims processed and variance account balance. Variance account balances may earn interest, and interest is earned at the federal funds or similar rate. Host Blues may retain interest earned on funds in variance accounts. Note: Covered Persons will not bear any portion of the cost of Value-Based Programs except when a Host Blue uses either average pricing or actual pricing to pay Providers under Value-Based Programs.

(2) **Care Coordinator Fees**

Host Blues may also bill Claim Administrator for Care Coordinator Fees for Provider services which Claim Administrator will pass onto Employer as follows:

- a) PMPM billings; or
- b) Individual Claim billings through applicable Care Coordination codes from the most current editions of either *Current Procedural Terminology* ("CPT") published by the American Medical Association ("AMA") or *Healthcare Common Procedure Coding System* ("HCPCS") published by the US CMS.

As part of this Agreement, Claim Administrator and Employer will not impose Covered Person cost sharing for Care Coordinator Fees.

c. Value-Based Programs Under Negotiated Arrangements

If Claim Administrator has entered into a Negotiated Arrangement with a Host Blue to provide Value-Based Programs to Employer's Covered Persons, Claim Administrator will follow the same procedures for Value-Based Programs administration and Care Coordinator Fees as noted in BlueCard Program section.

4.5 Return Of Overpayments

Recoveries from a Host Blue or its Participating Healthcare Providers and Non-Participating Healthcare Providers can arise in several ways, including, but not limited to, anti-fraud and abuse recoveries, healthcare Provider/Hospital bill audits, credit balance audits, utilization review refunds, and unsolicited refunds. Recoveries will be applied, in general, on either a claim-by-claim or prospective basis. In some cases, the Host Blue will engage a third party to assist in identification or collection of recovery amounts. The fees of such a third party may be charged to Employer. Unless otherwise agreed to by the Host Blue, for retroactive cancellations of membership, Claim Administrator may request the Host Blue to provide full refunds from Participating Healthcare Providers for a period of only one year after the date of the Inter-Plan financial settlement process for the original Claim. For Care Coordinator Fees associated with Value-Based Programs, Claim Administrator may request such refunds for a period of only up to ninety (90) days from the termination notice transaction on the payment innovations delivery platform. In some cases, recovery of Claim Payments associated with a retroactive cancellation may not be possible if, as an example, the recovery (a) conflicts with the Host Blue's state law or healthcare Provider contracts, (b) would result from Shared Savings and/or Provider Incentive arrangements, or (c) would jeopardize the Host Blue's relationship with its Participating Healthcare Providers, notwithstanding to the contrary any other provision of this Agreement.

4.6 Inter-Plan Arrangements: Federal/State Taxes/Surcharges/Fees

In some instances, federal or state laws or regulations may impose a surcharge, tax or other fee that applies to self-funded accounts. If applicable, Claim Administrator will charge any such surcharge, tax or other fee to Employer, which will be Employer's liability.

4.7 Non-Participating Healthcare Providers Outside Claim Administrator's Service Area

a. Covered Person Liability Calculation

(1) General

When Covered Services are provided outside of Claim Administrator's service area by Non-Participating Healthcare Providers, the amount(s) a Covered Person pays for such services will be calculated using the methodology described in the Agreement for Non-Network Providers located inside our service area. The Covered Person may be responsible for the difference between the amount that the Non-Participating Healthcare Provider bills and the payment Claim Administrator will make for the Covered Services as set forth in this paragraph.

(2) Exceptions

In some exception cases, Claim Administrator may, but is not required to, negotiate a payment with such Non-Participating Healthcare Provider on an exception basis. If a negotiated payment is not available, then Claim Administrator may make a payment based on the lesser of:

- a. the amount calculated using the methodology described in Section 4.7(a)(1) above; or

- b. the following:
 - i. for professional Providers, an amount equal to the greater of the minimum amount required in the methodology described in the Agreement for Non-Network Providers located inside our service area; or an amount based on publicly available provider reimbursement data for the same or similar professional services, adjusted for geographical differences where applicable, or
 - ii. for Hospital or facility Providers, an amount equal to the greater of the minimum amount required in the methodology described in the Agreement for Non-Network Providers located inside our service area; or an amount based on publicly available data reflecting the approximate costs that Hospitals or facilities have incurred historically to provide the same or similar service, adjusted for geographical differences where applicable, plus a margin factor for the Hospital or facility.

In these situations, a Covered Person may be liable for the difference between the amount that the Non-Participating Healthcare Provider bills and the payment Claim Administrator will make for the Covered Services as set forth in this paragraph.

b. Fees And Compensation

Employer understands and agrees to reimburse Claim Administrator for certain fees and compensation which Claim Administrator is obligated under applicable Inter-Plan Arrangements requirements to pay to the Host Blues, to the Association, and/or to vendors of Inter-Plan Arrangements related services. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided in Section 4.9 below.

4.8 Blue Cross Blue Shield Global Core[®]

a. General Information

If Covered Persons are outside the United States, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands (hereinafter: "BlueCard Service Area"), the Covered Persons may be able to take advantage of Blue Cross Blue Shield Global Core when accessing Covered Services. Blue Cross Blue Shield Global Core is unlike the BlueCard Program available in the BlueCard Service Area in certain ways. For instance, although Blue Cross Blue Shield Global Core assists Covered Persons with accessing a network of Inpatient, Outpatient and professional Providers, the network is not served by a Host Blue. As such, when Covered Persons receive care from Providers outside the BlueCard Service Area, the Covered Persons will typically have to pay the Providers and submit the Claims themselves to obtain reimbursement for these services.

(1) Inpatient Services

In most cases, if Covered Persons contact the service center for assistance, Hospitals will not require Covered Persons to pay for covered Inpatient services, except for their cost-share amounts/deductibles, Coinsurance, etc. In such cases, the Hospital will submit the Covered Person's Claims to the service center to initiate Claims processing. However, if the Covered Person paid in full at the time of service, the Covered Person must submit a Claim to obtain reimbursement for Covered Services. Covered Persons must contact Claim Administrator to obtain preauthorization/precertification for non-emergency Inpatient services, if Employer's Plan requires preauthorization or precertification for such services.

(2) Outpatient Services

Physicians, urgent care centers and other Outpatient Providers located outside the BlueCard Service Area will typically require Covered Persons to pay in full at the time of service. Covered Persons must submit a Claim to obtain reimbursement for Covered Services.

(3) Submitting a Blue Cross Blue Shield Global Core Claim

When Covered Persons pay for Covered Services outside the BlueCard Service Area, they must submit a Claim to obtain reimbursement. For institutional and professional Claims, Covered Persons should complete a Blue Cross Blue Shield Global Core International

Claim form and send the Claim form with the Provider's itemized bill(s) to the service center address on the form to initiate Claims processing. The Claim form is available from Claim Administrator, the service center or online at www.bcbsglobalcore.com. If Covered Persons need assistance with their Claim submissions, they should call the service center at 1.800.810.BLUE (2583) or call collect at 1.804.673.1177, 24 hours a day, seven days a week.

b. *Blue Cross Blue Shield Global Core Program-Related Fees*

Employer understands and agrees to reimburse Claim Administrator for certain fees and compensation which Claim Administrator is obligated under applicable Inter-Plan Arrangement requirements to pay to the Host Blues, to the Association and/or to vendors of Inter-Plan Arrangement-related services. Fees and compensation under applicable Inter-Plan Arrangements may be revised from time to time as provided for in Section 4.9 below.

4.9 *Modifications Or Changes To Inter-Plan Arrangement Fees Or Compensation*

Modifications or changes to Inter-Plan Arrangement fees are generally made effective Jan. 1 of the calendar year, but they may occur at any time during the year. In the case of any such modifications or changes, Claim Administrator shall provide Employer with at least thirty (30) days' advance written notice of any modification or change to such Inter-Plan Arrangement fees or compensation describing the change and the effective date thereof and Employer's right to terminate this Agreement without penalty by giving written notice of termination before the effective date of the change, which notice will be effective in accordance with Section 6.1(a) of the Agreement. If Employer fails to respond to the notice and does not terminate this Agreement during the notice period, Employer will be deemed to have approved the proposed changes, and Claim Administrator will then allow such modifications to become part of this Agreement.

EXHIBIT 6
RECOVERY LITIGATION AUTHORIZATION

Employer hereby acknowledges and agrees that Claim Administrator may, at its election, pursue claims of Employer and/or the Plan, which are related to claims that Claim Administrator pursues on its own behalf, subject to the following terms and conditions:

1. Claim Administrator shall have the right to select and retain legal counsel.
2. Any lawsuit filed or arbitration initiated by Claim Administrator will be done in the name of Claim Administrator for its own benefit, as well as on behalf of Employer and possibly other parties. Claim Administrator will not cause any litigation to be filed or arbitration to be initiated in the name of Employer and/or the Plan without Employer's express advance consent. With such permission, any such litigation can be filed or arbitration initiated in the name of Employer and/or the Plan with attorneys identified as counsel for Employer or in the name of two or more parties, including Employer and Claim Administrator, with attorneys identified as counsel for Employer, Claim Administrator and possibly other parties.
3. The Parties agree to cooperate with each other in pursuit of recovery efforts pursuant to the provisions of this Exhibit.
4. Claim Administrator shall control any recovery strategy and decisions, including decisions to mediate, arbitrate or litigate.
5. Claim Administrator shall have the exclusive right to approve any and all settlements of any claims being mediated, arbitrated, or litigated.
6. Claim Administrator shall have the right to assign claims belonging to Employer and/or the Plan to a third party for the purpose of allowing the third party to pursue the claims on Employer's behalf via mediation, arbitration, or litigation. If such an assignment is made, the rights and obligations of Claim Administrator in this Exhibit 6 shall become the rights and obligations of the third party for purposes of the assigned claims only.
7. Any and all recoveries, net of all investigative and other expenses relating to the recovery made through any means pursuant to the provisions of this Exhibit, including any costs of settlement, mediation, arbitration, litigation or trial including attorney's fees, will be prorated based upon each party's percentage interest in the recoverable compensatory monetary damages, which allocation shall be done by Claim Administrator on any reasonable basis it deems appropriate.
8. Any and all information, documents, communications, or correspondence provided to or obtained by attorneys from either party, as well as communications, correspondence, conclusions, and reports by or between attorneys and either party, shall be and are intended to remain privileged and confidential. Each party intends that the attorney-client and work product privileges shall apply to all information, documents, communications, correspondence, conclusions and reports to the full extent allowed by state or federal law. Claim Administrator shall be permitted to make such disclosures of such privileged and confidential information to law enforcement authorities as it deems necessary or appropriate in its sole discretion. Employer shall not waive the attorney-client privilege or otherwise disclose privileged or confidential information received in connection with the provisions of this Exhibit or cooperative efforts pursuant to the provisions of this Exhibit without the express written consent of Claim Administrator.
9. The discharge of attorneys by one party shall not disqualify or otherwise ethically prohibit the attorneys from continuing to represent the other party pursuant to the provisions of this Exhibit.
10. Nothing in the provisions of this Exhibit shall require Claim Administrator to assert any claims on behalf of Employer and/or the Plan.
11. Nothing in the provisions of this Exhibit and nothing in attorneys' statements to either party and/or the Plan will be construed as a promise or guarantee about the outcome of any particular litigation, mediation, arbitration, or settlement negotiation; therefore, Employer acknowledges that the efforts of Claim Administrator may not result in recovery or in full recovery in any particular case.
12. The terms and conditions described herein shall survive the expiration or termination of the Agreement; however, nothing herein shall require Claim Administrator to assert any claims on Employer's and/or the Plan's behalf following the termination of the Agreement. If the Agreement is terminated after Claim

Administrator has asserted a claim on behalf of Employer and/or the Plan but before any recovery, Claim Administrator may in its sole discretion continue to pursue the claim or discontinue the claim.

13. If Employer should desire to participate in a class or multi-district settlement rather than defer to Claim Administrator, Employer may revoke the grant of authority established herein for that specific matter by affirmatively opting into a class settlement and by notifying Claim Administrator of its decision in writing, immediately upon making such determination as provided for under Section 4.8 Notice and Satisfaction of the Agreement.
14. Employer further acknowledges and agrees that, unless it notifies Claim Administrator to the contrary in writing as provided for under Section 4.8 Notice and Satisfaction of the Agreement, it consents to the terms and conditions of this Exhibit and authorizes Claim Administrator, on behalf of Employer and/or the Plan, consistent with Section 2 above, to:
 - a. Pursue, without advance notice to Employer, claims that Claim Administrator pursues on its own behalf in class action litigation, federal multi-district litigation, private lien resolution programs, or otherwise, including, but not limited to, antitrust, fraud, unfair and deceptive business, or trade practice claims pursuant to and in accordance with the provisions of this Exhibit effective immediately;
 - b. Opt out of any class action settlement or keep Employer and/or the Plan in the class, if Claim Administrator reasonably determines that it should do so;
 - c. Investigate and pursue recovery of monies unlawfully, illegally, or wrongfully obtained from the Plan.
15. Employer further acknowledges and agrees that Claim Administrator's decision to pursue recovery in connection with particular claims shall be in Claim Administrator's sole discretion and Claim Administrator does not enter into this undertaking as a fiduciary of the Plan or its Covered Persons, but only in connection with its undertaking to pursue recovery of claims of Employer and/or the Plan when, as, and if, Claim Administrator determines that such claims may be pursued in the common interest of the parties.
16. Employer is responsible for ensuring that the terms of its health benefit plan are consistent with the terms of this Exhibit.
17. The Parties agree in the event that the language in the Agreement shall be in conflict with this Exhibit, the provisions of this Exhibit shall prevail with respect to the subject matter hereof.

**EXHIBIT 7
PROMISSORY NOTE**

For value received, the Employer (the "**Borrower**") promises to pay to the order of the Claim Administrator (the "**Lender**"), the aggregate unpaid principal balance of each advance (an "Advance" and collectively the "Advances") made on or after the effective date of this Agreement by the Lender to the Borrower (or made by payment by the Lender to a third party for the Borrower's benefit), upon demand by the Lender. Such Advances shall only constitute sums advanced by the Lender for the benefit of the Borrower in connection with the payment of ordinary operating expenses of Borrower's Plans, including the payment of benefits in accordance with the terms of such Plans, or for a purpose incidental to the ordinary operation and administration of such Plans.

The Lender agrees that there will be no interest or other fee charged to the Borrower in relation to these Advances, and any lien rights or other security interests the Lender holds with respect to the Borrower's property shall not secure the Lender's right to receive the aggregate unpaid principal balance of the Advances under this Promissory Note from the Borrower. The Lender agrees that it shall waive its right to seek repayment of any Advance hereunder if the Lender does not make a demand for payment hereunder within 210 days after the last day of the plan year of the Borrower in which such Advance was made by the Lender.

This Promissory Note shall bind the Borrower, its successors and assigns, and shall inure to the benefit of the Lender, its successors and assigns.

This Promissory Note shall be effective as of the date of each Advance made by the Lender to the Borrower hereunder, and also shall apply to any Advance made on or after the effective date of this Agreement.

RESOLUTION NO. 2024-105

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO MULTIPLE CONTRACTS FOR EMPLOYEE BENEFITS; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, RFP 2024-011 went out May 8, 2024, with proposals due June 6, 2024. A total of 56 proposals were received for the various employee benefits coverages; and

WHEREAS, the City of Texas City's insurance consultants and broker, HUB International, scored the vendors and identified the finalists for consideration; and

WHEREAS, after careful review by the City's benefit and insurance brokers along with the Chief Financial Officer, Executive Director of Management Services, and the Director of Human Resources, it is recommended for approval to enter the following contracts for employee benefits:

- Medical: Blue Cross Blue Shield
- Dental: United Concordia
- Vision: VSP
- Life and Disability: Mutual of Omaha
- Health Savings Account (HSA)/Flexible Spending Account (FSA): WEX
- Employee Assistance Program (EAP): Deer Oaks

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the City Commission approves the contracts with the above companies.

SECTION 2: That the Mayor is hereby authorized to execute the contracts in the form attached hereto as **Exhibit "A"** and made a part hereof for all intents and purposes.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of September 2024.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(8) (d)

Meeting Date: 09/04/2024

AWARD RECOMMENDATION FOR RFP 2024-458 DISASTER RECOVERY CONSULTANT SERVICES

Submitted For: Gwynetheia Pope, Purchasing **Submitted By:** Gwynetheia Pope, Purchasing

Department: Purchasing

Information

ACTION REQUEST

AWARD RECOMMENDATION FOR RFP 2024-458 DISASTER RECOVERY CONSULTANT SERVICES

BACKGROUND (Brief Summary)

The objective of this Request for Proposals was to obtain a qualified firm to handle our Cost Recovery efforts with FEMA and TDEM on behalf of the City of Texas City. The project was released on 7/29/24 and opened publicly on 8/21 at 2pm. We received solicitation packages from five (5) qualified agencies. Each was scored on 5 major components by an Evaluation Committee of City employees.

RECOMMENDATION

The Purchasing Department recommends awarding the contract to Witt O'Brien's of Houston, Texas. Across the board with the committee, they scored the highest, offering the City years of experience in handling Disaster Recovery. The term of this agreement is for three (3) years, with two (2) one (1) year renewal options.

Fiscal Impact

Attachments

Award Recommendation
Resolution

CITY OF TEXAS CITY, TEXAS

PURCHASING DEPARTMENT • OFFICE: (409) 643-5950 • FAX: (409) 942-1073



Texas City
EST. 1911

Mayor:
Dedrick Johnson

Commissioners
Thelma Bowie
Abel Garza Jr.
DeAndre Knoxson
Keith Love
Chris Sharp
Jami Clark

To: Dedrick Johnson Sr., Mayor

From: Gwynetheia Shabazz Pope, Purchasing Coordinator

CC: Cynthia Rushing, Chief Financial Officer
Joe Tumbleson Jr., Emergency Manager & Homeland Security Director

Date: 08/27/2024

Re: Request for Proposals 2024-458 Disaster Recovery Consultant Services
Evaluation and Award Recommendation

Enclosed for your review and approval is the award recommendation for RFP 2024-458 Disaster Recovery Consultant Services.

HISTORY

The objective of the Request for Proposals was to obtain a qualified firm to handle our Cost Recovery efforts with FEMA and TDEM. We received solicitation packages from five (5) qualified agencies. Each were scored on 5 major components by an Evaluation Committee of City employees.

AWARD RECOMMENDATION

The Purchasing Department recommends awarding the contract to Witt O'Brien's. Across the board with the committee, they scored the highest, offering the City years of experience in handling Disaster Recovery.

Gwynetheia Shabazz Pope, CTPM, CTCM
Purchasing Coordinator

"QPS - Quality Public Service"

RESOLUTION NO. 2024-106

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH WITT O'BRIEN'S TO PROVIDE DISASTER RECOVERY CONSULTING SERVICES; AND PROVIDING THAT THIS RESOLUTION SHALL BECOME EFFECTIVE FROM AND AFTER ITS PASSAGE AND ADOPTION.

WHEREAS, the City of Texas City is seeking disaster recovery consulting services; and

WHEREAS, the City of Texas City sent our RFP 2024-458 for disaster recovery consulting services. The project was released on July 29, 2024, and opened publicly on August 21, 2024; and

WHEREAS, the Purchasing Department recommends awarding the contract to Witt O'Brien's. Across the board with the committee, they scored the highest, offering the City years of experience in handling Disaster Recovery. The term of this agreement is for three (3) years, with two (2) one (1) year renewal options.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF TEXAS CITY, TEXAS:

SECTION 1: That the City Commission awards RFP 2024-458 to Witt O'Brien's.

SECTION 2: That the Mayor is hereby authorized to execute the contracts in the form attached hereto as **Exhibit "A"** and made a part hereof for all intents and purposes.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and adoption.

PASSED AND ADOPTED this 4th day of September 2024.

Dedrick D. Johnson, Sr., Mayor
City of Texas City, Texas

ATTEST:

APPROVED AS TO FORM:

Rhomari D. Leigh
City Secretary

Kyle L. Dickson
City Attorney

CITY COMMISSION REGULAR MTG

(8) (e)

Meeting Date: 09/04/2024

Submitted By: Rhomari Leigh, City Secretary

Department: City Secretary

Information

ACTION REQUEST

Consider and take action on Resolution No. 2024-107, casting the City of Texas City Ballot for TML Region 14 Board Director. (Mayor's Office)

BACKGROUND (Brief Summary)

Previously, elections for regional directors were held at regional meetings. After changes to the TML Constitution were approved last year, these elections are now administered by TML centrally.

TML has 15 regions, and each has a seat on the Board. During even-numbered years, the even-numbered regions are up for election. Terms are two years, and new terms will begin on October 11, 2024, upon adjournment of the TML Annual Conference and end on November 13, 2026, upon adjournment of the TML Annual Conference.

RECOMMENDATION

It is the Mayor's recommendation to cast a ballot selection for Joe Zimmerman (Incumbent).

Fiscal Impact

Attachments

attachment



OFFICIAL BALLOT

Texas Municipal League (TML) Region 14 Director Election

This is the official ballot for the election of the Region 14 director of the TML Board of Directors. You received this ballot because you are the city's primary contact person with TML. Each TML member city is entitled to one vote, which vote must be cast by a majority vote of the city's governing body. Please record your city's choice by placing an "X" in the square beside the candidate's name or writing in the name of an eligible person in the space provided. You can only vote for one candidate.

The officials listed on this ballot have been nominated to serve a two-year term on the TML Board of Directors. A brief biography for each candidate is included after the ballot.

Ballots must reach the TML office by 5:00 p.m. Central Time on October 3, 2024. Ballots received after this date cannot be counted. **The ballot must be properly signed and mailed to: Rachael Pitts, Texas Municipal League, 1821 Rutherford Lane, Suite 400, Austin, TX 78754, or scanned and emailed to rpitts@tml.org. If the ballot is not signed, it will not be counted.**

Region 14 Director (select one)

Frank W. Robinson, Councilmember, Shenandoah

Joe Zimmerman, Mayor, Sugar Land (Incumbent)

Certificate

I certify that the vote cast above has been cast in accordance with the will of the majority of the governing body of the city named below.

Witness my hand, this _____ day of _____, 2024.

Signature of Authorized Official

Title

Printed Name of Authorized Official

Printed Name of City

Region 14 Director Candidate Biographies



Frank W. Robinson, Councilmember, Shenandoah

Frank W. Robinson, BA, MPA, ICMA-CM (Retired) is an elected member of the City of Shenandoah City Council and an accomplished public administrator. He holds a bachelor's degree from the University of North Texas and a Master of Public Administration degree from Sam Houston State University. After 38 years of public service, 29 of those years as a chief administrative officer and city manager in Texas and California, Mr. Robinson retired in 2017. Mr. Robinson began his public service career as a police officer in Denton, eventually receiving an appointment as chief of police in the City of West University Place before transitioning to city management. He is best known for his role in the development of The Woodlands downtown. Mr. Robinson served 14 years as the president and township manager for The Woodlands Township (formerly known as the Town Center Improvement District of Montgomery County). Mr. Robinson led the organization through visioning and goal setting to define the Township's vision and mission as a local government focused on creating public benefit. In 2020, Frank came out of retirement to assist the City of Conroe in the position of downtown manager and implemented the newly adopted *Downtown Conroe Development Plan* that promotes the historical preservation and economic development of downtown Conroe. Mr. Robinson successfully attracted new entertainment and dining venues to the downtown's central business district, brought in an estimated \$54 million in new development investment, and facilitated the recertification of Conroe as a Texas Main Street Community and receiving the coveted cultural district designation by the Texas Commission on the Arts. In January 2023, Mr. Robinson retired once again and was elected to the City of Shenandoah's City Council in May 2024. He remains an active member of the Texas City Managers Association.



Joe Zimmerman, Mayor, Sugar Land (Incumbent)

Mayor Zimmerman was elected the 10th mayor of Sugar Land on June 11, 2016, after serving four years as the at-large, position 2, city councilman. He is currently serving his fourth and final term as mayor. He serves on the Finance & Audit, Economic Development and Intergovernmental Relations Committees of the City of Sugar Land and is the City's representative on the HGAC Board and Transportation Policy Council. He is a past president of Texas Municipal League (TML) Region 14 and currently represents Region 14 on the TML Board of Directors. Mr. Zimmerman is a Senior Consultant for Halff Associates, Inc., a Texas-based civil engineering consulting firm founded in 1950. He has extensive business experience, having served in senior management positions in a number of different industries. Mr. Zimmerman earned his BSCE from the University of Houston, an MBA from Houston Baptist University, and is a licensed professional engineer in the State of Texas. He and his wife of 48 years, Nancy, have lived in Sugar Land since 1990 and are active members of Second Baptist Church Woodway. Their daughter, Allison, her husband Chris Wallace, granddaughter Emmy and grandson Campbell live in Houston.