



GARLAND

AGENDA

CITY COUNCIL WORK SESSION

**City of Garland
Council Chambers, City Hall
William E. Dollar Municipal Building
200 North Fifth Street
Garland, Texas
Monday, October 17, 2022
6:00 p.m.**

DEFINITIONS:

Written Briefing: Items that generally do not require a presentation or discussion by the staff or Council. On these items the staff is seeking direction from the Council or providing information in a written format.

Verbal Briefing: These items do not require written background information or are an update on items previously discussed by the Council.

One or more members of the City Council may participate in the meeting remotely. A quorum, including the presiding officer, will be present at the aforementioned meeting location.

NOTICE: The City Council may recess from the open session and convene in a closed executive session if the discussion of any of the listed agenda items concerns one or more of the following matters:

(1) Pending/contemplated litigation, settlement offer(s), and matters concerning privileged and unprivileged client information deemed confidential by Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct. Sec. 551.071, Tex. Gov't Code.

(2) The purchase, exchange, lease or value of real property, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.072, Tex. Gov't Code.

(3) A contract for a prospective gift or donation to the City, if the deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. Sec. 551.073, Tex. Gov't Code.

(4) Personnel matters involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee or to hear a complaint against an officer or employee. Sec. 551.074, Tex. Gov't Code.

(5) The deployment, or specific occasions for implementation of security personnel or devices. Sec. 551.076, Tex. Gov't Code.

(6) Discussions or deliberations regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City and with which the City is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business prospect of the sort described in this provision. Sec. 551.087, Tex. Gov't Code.

(7) Discussions, deliberations, votes, or other final action on matters related to the City's competitive activity, including information that would, if disclosed, give advantage to competitors or prospective competitors and is reasonably related to one or more of the following categories of information:

- generation unit specific and portfolio fixed and variable costs, including forecasts of those costs, capital improvement plans for generation units, and generation unit operating characteristics and outage scheduling;
- bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies;
- effective fuel and purchased power agreements and fuel transportation arrangements and contracts;
- risk management information, contracts, and strategies, including fuel hedging and storage;
- plans, studies, proposals, and analyses for system improvements, additions, or sales, other than transmission and distribution system improvements inside the service area for

- which the public power utility is the sole certificated retail provider; and
- customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies. Sec. 551.086; Tex. Gov't Code; Sec. 552.133, Tex. Gov't Code]

1. Public Comments on Work Session Items

Persons who desire to address the City Council on any item on the Work Session agenda are allowed three minutes to speak. Speakers are taken only at the beginning of the meeting, other than invited testimony.

Speakers are grouped by Work Session item and will be taken in the order of the Work Session agenda. Speakers must submit to the City Secretary a completed speaker's card before the beginning of the meeting. Speaker cards will not be accepted after the Mayor calls the meeting to order. Speaker cards are available in the lobby, at the visitor's side of the Work Session Room, and from members of staff.

Speakers are limited to addressing items on the Work Session agenda – any item relating to a Regular Session agenda item should be addressed at the Regular Session and any item not on an agenda may be addressed during the open microphone at the end of the Regular Session.

2. Consider the Consent Agenda

A member of the City Council may ask for discussion or further information on an item posted as a consent agenda item on the next Regular Meeting of the City Council. The Council Member may also ask that an item on the posted consent agenda be pulled from the consent agenda and considered for a vote separate from consent agenda items on the regular agenda. All discussions or deliberations on this portion of the work session agenda are limited to posted agenda items and may not include a new or unposted subject matter.

3. Written Briefings:

a. COVID-19 Briefing

Staff will provide an update to Council and ask for direction, if needed, on various matters related to COVID-19 and actions being taken by the City.

b. 2023 Low Income Housing Tax Credit Application Process

In keeping with the policy set last year, Council is requested not to accept any new Low Income Housing Tax Credit (LIHTC) applications and requests for issuance of Resolutions of Support for 9% LIHTC developments for the 2023 application.

c. 2022 Capital Improvement Program (CIP) Budget Amendment No. 2

Council is requested to approve the CIP Budget Amendment No. 2 to appropriate \$60,002,860 for the installation of new generation resources at the Olinger Power Station. This item will be scheduled for formal consideration at the October 18, 2022 Regular Meeting.

d. Interlocal Agreement and Payment Authorization for Multi-Disciplinary Behavioral Health Response Team

Garland Health Department staff recommends approval of the Interlocal Agreement Second Amendment with Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") to continue the Multi-Disciplinary Behavioral Health Response Team, which provides social work services to benefit all Garland residents.

e. Agreement for the Provision of Temporary Electric Distribution Service

Council is requested to approve the agreement for the provision of temporary electric distribution service with Digital Garland Ferris, L.P. This item will be scheduled for formal consideration at the October 18, 2022 Regular Meeting.

4. Verbal Briefings:

a. Transportation, Infrastructure and Mobility Committee Report

Council Member Dylan Hedrick, Chair of the Transportation, Infrastructure and Mobility Committee, will provide a committee report on the following items:

- *Flood Prone Properties Buyout Program Ordinance and Operating Guidelines*

b. Consider GCACI Hotel Occupancy Tax Revenue Budget, Sub-grant Recipients and Hotel Occupancy Tax Program Management Agreement

Council is requested to approve the 2022-2023 budget of the Garland Cultural Arts Commission Inc., sub-grant recipients and authorize the City Manager's execution of the "Hotel Occupancy Tax Program Management Agreement" between the City of Garland and the GCACI. This item is scheduled for formal consideration at the October 18, 2022 Regular Meeting.

5. Announce Future Agenda Items

A member of the City Council, with a second by another member, or the Mayor alone, may ask that an item be placed on a future agenda of the City Council or a committee of the City Council. No substantive discussion of that item will take place at this time.

6. Council will move into Executive Session

**EXECUTIVE SESSION
AGENDA**

NOTICE: The City Council may recess from the open session and convene in a closed executive session if the discussion of any of the listed agenda items concerns one or more of the following matters:

The City Council will adjourn into executive session pursuant to Sections 551.072, 551.086, and 551.071 of the Texas Government Code to deliberate or discuss:

- (1) The purchase, exchange, lease, or value of real property located within the City in the vicinity of East Centerville Road and East Kingsley Road (551.072), and attorney/client matters concerning privileged and unprivileged client information related to the same (551.071);**
- (2) The purchase, exchange, lease, or value of real property located within the City in the vicinity of East Avenue B and South 1st Street (551.072), and attorney/client matters concerning privileged and unprivileged client information related to the same (551.071);**
- (3) Economic development matters related to commercial or financial information that the City has received from one or more business prospects that the City seeks to have locate, stay, or expand in or near the territory of the City and with which the City is conducting economic development negotiations (551.087), and the purchase, exchange, lease, or value of real property located within the City in the vicinity of IH635 and South Garland Avenue (551.072), and attorney/client matters concerning privileged and unprivileged client information related to the same (551.071);**
- (4) Attorney/client matters concerning privileged and unprivileged client information related to pending litigation (551.071); and**
- (5) Attorney/client matters concerning privileged and unprivileged client information related to legal requirements of zoning procedures and hearings (551.071).**

7. Adjourn



**GARLAND
CITY COUNCIL ITEM SUMMARY SHEET**

City Council Work Session Agenda

3. a.

Meeting Date: October 17, 2022

Item Title: COVID-19 Briefing

Summary of Request/Problem

Staff will provide an update to Council and ask for direction, if needed, on various matters related to COVID-19 and actions being taken by the City.

Recommendation/Action Requested and Justification

Council discussion.

Attachments

CCWS COVID Update



COVID-19 UPDATE

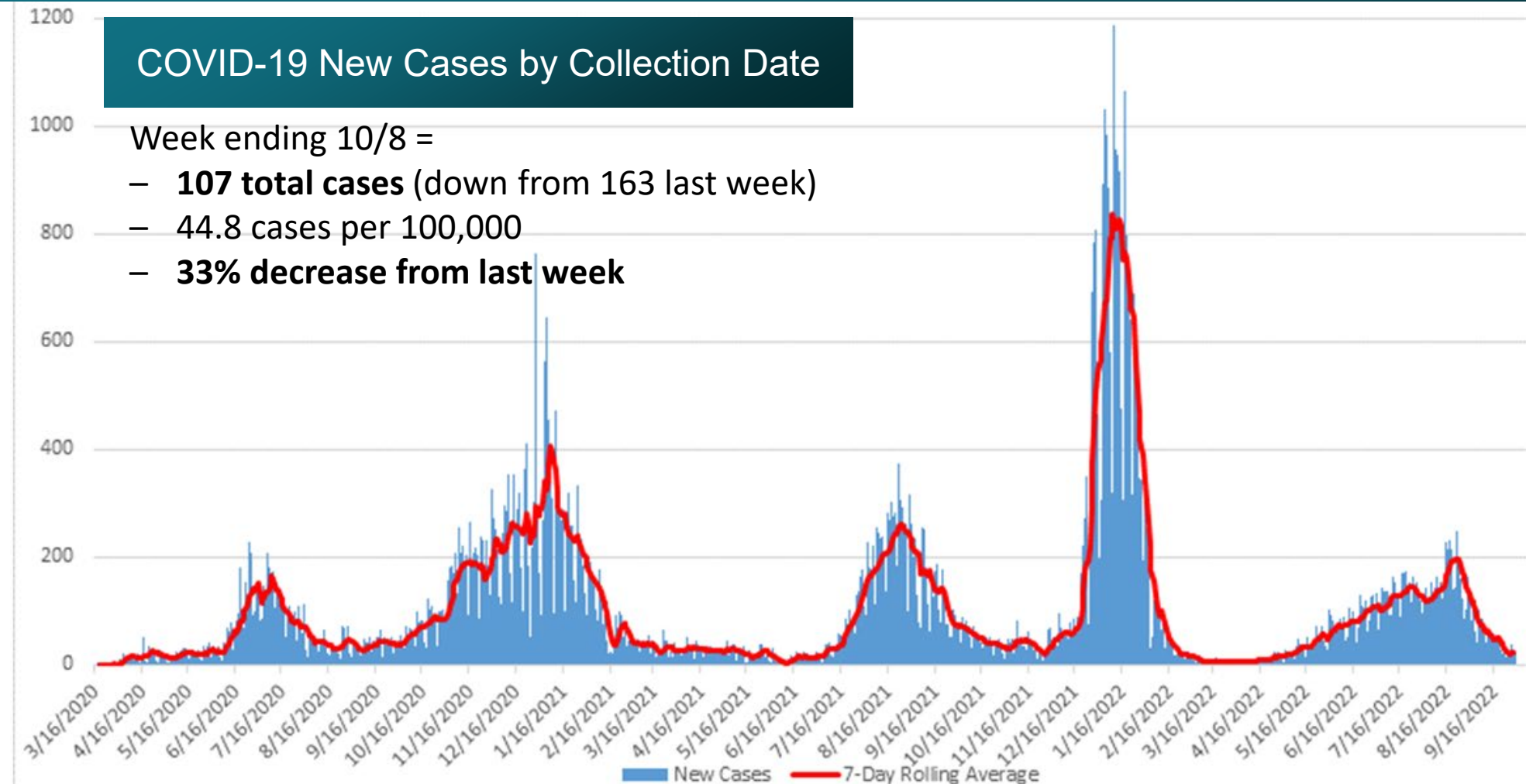
City Council Work Session
October 17, 2022

Garland Impacts

COVID-19 New Cases by Collection Date

Week ending 10/8 =

- **107 total cases** (down from 163 last week)
- 44.8 cases per 100,000
- **33% decrease from last week**



Total Confirmed*

70,591

Total Recovered

69,524

Total Deaths

791

Active Cases

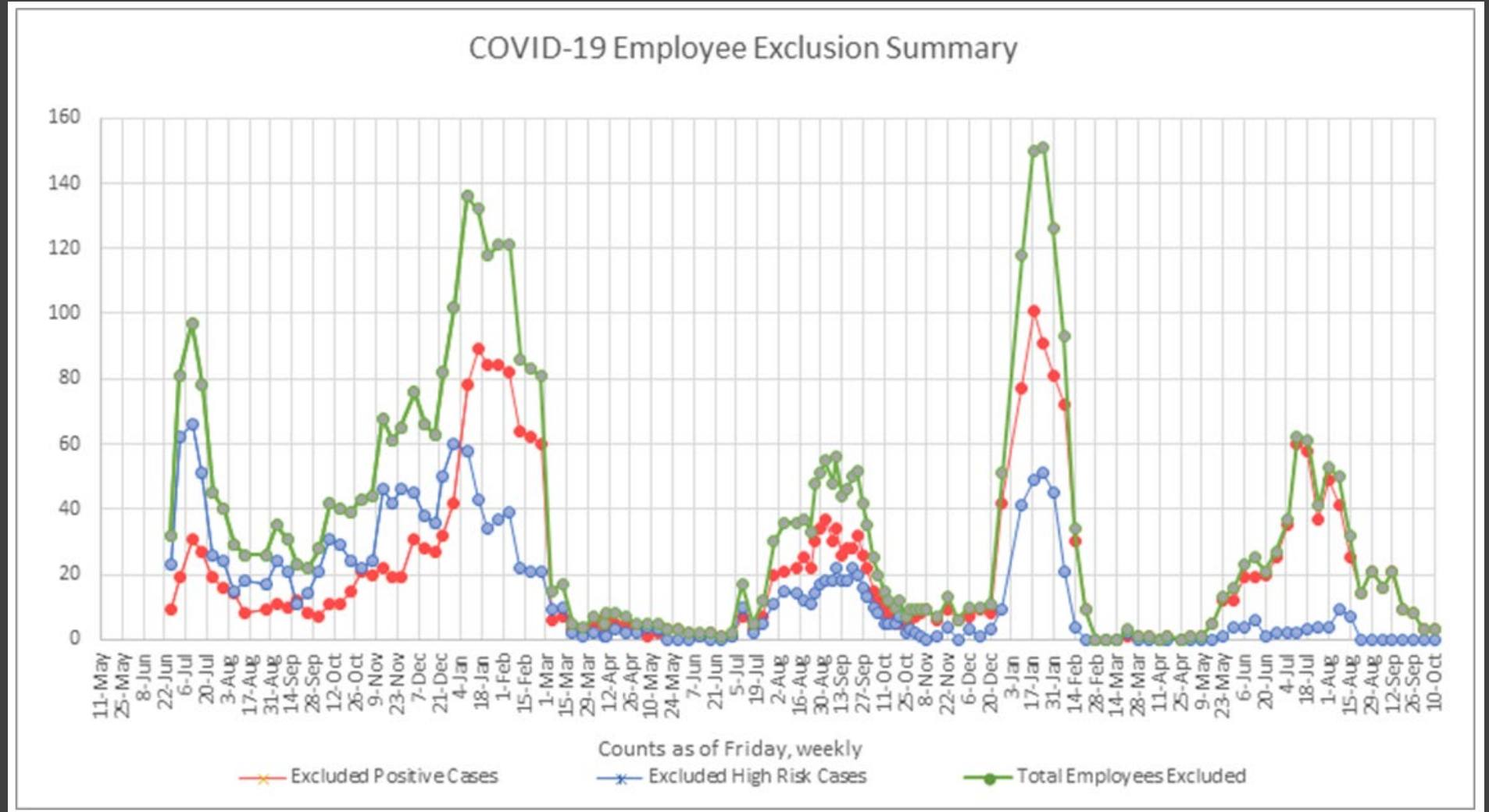
282

* Total Confirmed case count for the week ending 10/1 SHOULD have read 70,484 (the case count for the week was inadvertently added twice to the slide for **Total Confirmed** cases – * reflects corrected number

COVID-19 Staff Impacts

3 COG employees excluded for week ending 10/8/22

Total
Recovered
995
All
Departments



Garland Vaccinations Administered

Doses thru 9/10/22

Moderna Doses – Initial Series	38,935
Moderna Boosters	708
Pfizer Doses – Initial Series	12,393
Pfizer Boosters	403
Single Doses (Initial + Booster)	895
Novavax – Initial Series	8
Total	53,342
Doses Administered Week Ending 10/8	103

Hospitalized COVID Patients and Percent COVID Patients to All Hospital Patients Dallas County

10/11/22 Numbers

90

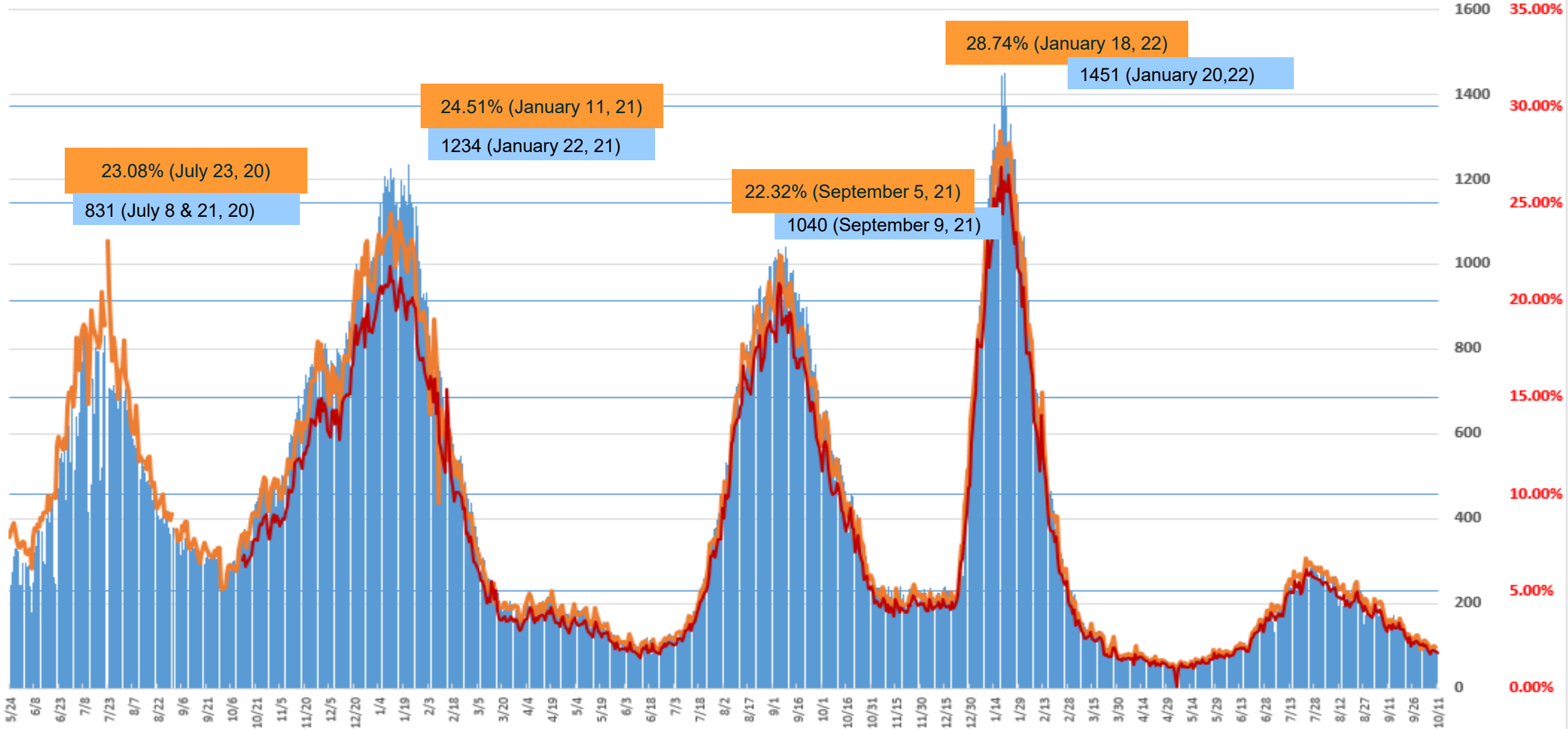
2.04%

1.84%

COVID-19 Patients Hospitalized

% OF ALL INPATIENTS with COVID

% of Hospital Capacity with Confirmed COVID





QUESTIONS



GARLAND POLICY REPORT

City Council Work Session Agenda

3. b.

Meeting Date: October 17, 2022
Item Title: 2023 Low Income Housing Tax Credit Application Process
Submitted By: Mona Woodard, Neighborhood Services Administrator
Strategic Focus Areas: Vibrant Neighborhoods and Commercial Centers

ISSUE

The 9% Low-Income Housing Tax Credit (LIHTC) Application process through the Texas Department of Housing and Community Affairs is underway for the 2023 application cycle.

With seventeen (17) existing or recently approved LIHTC properties offering 2,325 units, Garland has the highest density of approved LIHTC properties per 1,000 population among surrounding cities. The two most recently approved LIHTC projects (Embree Eastside and The Reserve at Shiloh) are still moving through the development process. Based largely on these factors, City Council opted not to support any of last year's LIHTC applications.

Given this density, the fact that the two most recently approved LIHTC projects have yet to be completed, the availability of other types of affordable housing tools, and the extent of work required by developers to apply, staff recommends that the City Council not accept new LIHTC applications and requests for issuance of new Resolutions of Support for the 2023 application cycle.

RECOMMENDATION

Staff recommends that the City Council not accept any new LIHTC applications and requests for issuance of Resolutions of Support for 9% LIHTC developments for the 2023 application cycle.

BACKGROUND

The Low Income Housing Tax Credit (LIHTC) program is a federal resource for creating affordable housing in the United States. It is one of many affordable housing tools available to the Garland community, including HOME Fund projects, GHFC partnership projects, Public Facilities Corporation projects, and other multifamily redevelopment initiatives. The LIHTC tax credits are an attractive housing development tool for developers, as credits provide a dollar-for-dollar reduction in a taxpayer's federal income tax. In contrast, a tax deduction only provides a reduction in taxable income.

The Texas Department of Housing and Community Affairs (TDHCA) is the only entity in the

State of Texas authorized to allocate tax credits under this program. Therefore, TDHCA must develop a plan for selecting eligible developments; this plan is known as the Qualified Allocation Plan and Rules (QAP). The QAP is revised annually and signed by the Governor. The deadline for potential new applications to be submitted is March 1, 2023. This is a highly competitive process; the QAP outlines and assigns points to each application section. Proposed developments are ranked according to the number of points obtained. Developers receive additional application points when City approved Resolutions of Support are included with the application submission.

Two LIHTC projects have recently been awarded tax credits by TDHCA and are still moving through the development process in Garland. Once completed, these two projects will add 213 housing units to the Garland community. The current projects underway are Embree Eastside by Palladium Developers, located at 563 Davidson Drive, and the Reserve at Shiloh by MVAH Development, located at 1102 N. Shiloh Road. With the completion of these projects, Garland will have the highest density of LIHTC units per capita in the surrounding area.

In addition to these LIHTC projects, The City of Garland and the Garland Housing Finance Corporation (GHFC) have greatly expanded their partnership to address affordable housing needs. For example, home repair and Code Cares programs have been expanded to keep residents in their homes, more HOME Infill projects are underway, the City has initiated a Public Facilities Corporation project, and GHFC continues to develop partnerships with affordable housing developers to bring multifamily housing to the City outside of the LIHTC 9% competitive program.

Finally, it is important to note that the application process is extensive and includes fees of \$10.00 per unit. As a result, developers have already begun exploring possible 2023 LIHTC projects in Garland and are reaching out with questions about this year's application process and opportunities. If City Council concurs, staff recommends not accepting LIHTC applications for the 2023 application cycle.

Attachments

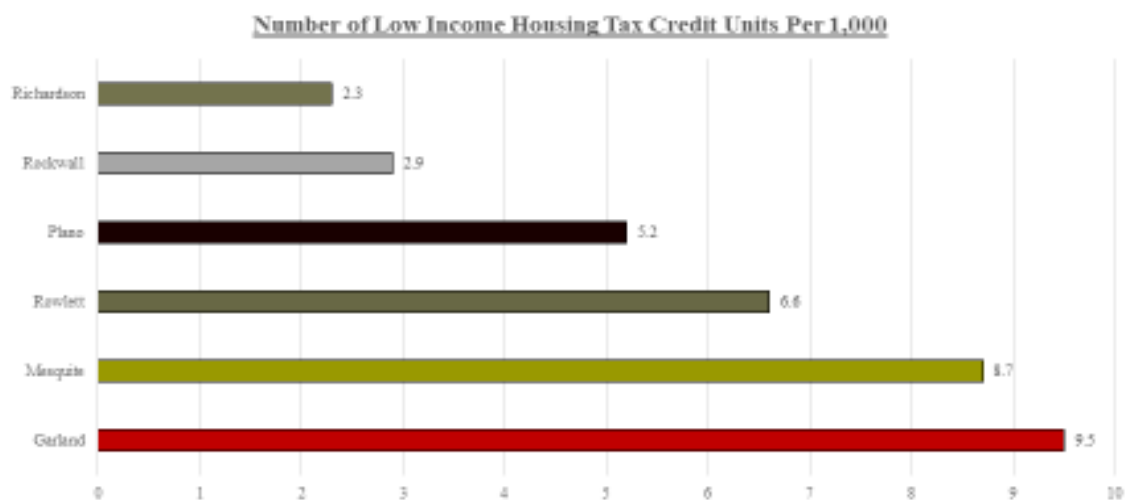
Garland LIHTC Projects

9% LIHTC Properties in the Surrounding Area

City	2020 Population	LIHTC Properties	LIHTC Units	LIHTC Units per 1,000 Population
Garland	246,018	17	2,325	9.5
Mesquite	150,108	7	1,301	8.7
Rowlett	73,270	3	486	6.6
Plano	285,494	9	1,479	5.2
Rockwall	47,516	1	139	2.9
Richardson	119,469	3	270	2.3

5

Number of Low Income Housing Tax Credit Units per 1,000 Persons



6



GARLAND POLICY REPORT

City Council Work Session Agenda

3. c.

Meeting Date: October 17, 2022
Item Title: 2022 Capital Improvement Program Budget Amendment No. 2
Submitted By: Allyson Bell Steadman, Budget Director
Strategic Focus Areas: Sound Governance and Finances

ISSUE

Amend the 2022 Capital Improvement Program (CIP) to appropriate \$60,002,860 for the installation of new generation resources at the Olinger Power Station.

OPTIONS

- A. Approve CIP Budget Amendment No. 2 as proposed.
- B. Do not approve CIP Budget Amendment No. 2.

RECOMMENDATION

Option (A) - Approve CIP Budget Amendment No. 2 as proposed. This item will be scheduled for formal consideration at the October 18, 2022 Regular Meeting.

BACKGROUND

At the October 10, 2022, Executive Session, Garland Power & Light (GP&L) briefed Council on a plan to install additional generating units at the Olinger Power Station. Due to the age and increasing reliability issues of the existing GP&L natural gas-fired generation fleet, GP&L is requesting approval for the purchase and associated engineering, permitting, and construction of two (2) Dynamis DT35 Package Turbine Generators at the Olinger Power Station. These resources will provide a total of 69MW of quick-start generation capacity to the GP&L generation fleet to be used to serve the energy and ancillary services needs of GP&L customers. Approval of this CIP amendment would allow for an operational target date prior to the summer of 2024. The cost is anticipated to be \$52,176,400 plus a 15% contingency of \$7,826,460, for a total request of \$60,002,860.

CONSIDERATION

Staff seeks the Council's approval to increase Electric's 2022 CIP appropriation by \$60,002,860. The City will issue Commercial Paper as expenditures are incurred in the Electric Production Program, and at a future date, Revenue Bonds will be issued to refinance the outstanding Commercial Paper.



GARLAND POLICY REPORT

City Council Work Session Agenda

3. d.

Meeting Date: October 17, 2022
Item Title: Interlocal Agreement and Payment Authorization for Multi-Disciplinary Behavioral Health Response Team
Submitted By: Mistie Gardner, Emergency Management Director
Strategic Focus Areas: Safe Community
Customer-Focused City Services

ISSUE

Departments who interact with the public daily often find out about situations and special circumstances where residents need additional support or resources which are outside of the scope of service for that department. Providing social work services for residents through the Multi-Disciplinary Behavioral Health Response Team has helped the City of Garland fill this capability gap. With this program, staff are able to identify core issues causing a situation, identify support services and facilitate long term solutions to meet the needs of resident's who may not otherwise have access to these resources. Without this program, some of the identified needs could go unmet.

OPTIONS

Options for council include approving continuation of the Multi-Disciplinary Behavioral Health Response Team via Interlocal Agreement with Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") or termination of the existing agreement, which unfortunately would stop the program.

RECOMMENDATION

Garland Health Department staff recommends approval of the Interlocal Agreement Second Amendment with Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") to continue the Multi-Disciplinary Behavioral Health Response Team, which provides social work services to benefit all garland residents.

BACKGROUND

Historically, Garland Fire Department had an Interlocal Agreement with Biotel as their Medical Control, which as a secondary resource provided some very limited social work services.

However, when the Medical Control entity had to change, the Fire Department lost all access to the social work services. Garland Health Department worked with Garland Fire to establish a program with Biotel through interlocal agreement for the sole purpose of providing dedicated social work services to residents who could be referred by all departments, especially those who make frequent contact with citizens and through such contact identify unmet needs. In September 2021, this lead to the Garland Health Department entering into an Interlocal Agreement with Dallas County Hospital District d/b/a Parkland Health & Hospital System ("Parkland") for the purpose of providing social work services through the Multi-Disciplinary Behavioral Health Response Team. The team takes referrals from all departments for the purpose of finding long-term solutions to unique citizen needs. The goal is to work with residents who are typically under-served or who normally do not have access to programs and resources. The program has been incredibly successful in helping meet community needs identified by many departments; but to date the service is most often utilized by Fire/EMS, Police, Emergency Management and Code. If personnel from a Garland department identify a citizen who has a unique resource need outside of that department's scope, those cases can be referred to the social worker who will work directly with the resident to find resources, work through complicated systems like Medicare/Medicaid, obtain appropriate long-term placement for health issues, etc. The main focus of the program is to find and facilitate long-term solutions to unique needs in the community in order to provide the best possible outcome for residents.

CONSIDERATION

Approving the recommended action to execute the Interlocal Agreement Second Amendment will allow for the Multi-Disciplinary Behavioral Health Response Team to continue to serve Garland residents for the second year. The cost of the program is \$125,832, paid in monthly increments throughout the program term of October 1, 2022, to September 30, 2023.

Attachments

2nd Amendment to Interlocal Agreement

Original Interlocal Agreement executed 2021

SECOND AMENDMENT TO INTERLOCAL AGREEMENT

This Second Amendment is entered into by and between The City of Garland, Texas ("City") and the Dallas County Hospital District d/b/a Parkland Health, formerly Parkland Health & Hospital System ("Parkland").

WHEREAS Parkland and City are parties to that certain Interlocal Agreement, which was dated to be effective as of October 1, 2021, (the "Agreement"); and

WHEREAS the Agreement was amended pursuant to agreement of the parties via an Amendment to Interlocal Agreement, which was dated to be effective as of October 1, 2021 (the "Amendment"); and

WHEREAS Parkland and City wish to further amend such Agreement in the manner which is more fully set forth below; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, Parkland and City hereby agree as follows:

1. The term of the Agreement shall be extended for an additional twelve (12) month period, through September 30, 2023.
2. Total payments by the CITY during the term October 1, 2022 through September 30, 2023 shall be One Hundred Twenty-Five Thousand Eight Hundred ThirtyTwo Dollars (\$125,832). Payments shall be made in twelve (12) monthly payments in the amount of Ten Thousand Four Hundred Eighty-Six Dollars (\$10,486) and shall be made payable within thirty (30) days of receipt of invoice.
3. This Second Amendment is effective as of the 1st day of October 2022.
4. In the event the grant(s) funding this Program are not renewed and/or state or federal funds are not made available to fund this Program, the City may terminate the Program effective June 30, 2023, by giving Parkland ninety (90) days' notice;
5. Except as modified by this Second Amendment, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by their respective duly authorized representatives.

**Dallas County Hospital District d/b/a
Parkland Health**

The City of Garland, Texas

By: _____

By: _____

Name: Richard Humphrey

Name: _____

Title: EVP & Chief Financial Officer

Title: _____

Date: _____

Date: _____

INTERLOCAL AGREEMENT

This Agreement is made and entered into by and between the DALLAS COUNTY HOSPITAL DISTRICT d/b/a PARKLAND HEALTH & HOSPITAL SYSTEM, a political subdivision of the State of Texas, located in Dallas County, Texas, ("PARKLAND") and the CITY OF GARLAND, TEXAS, a home rule municipality, located in Dallas County, Texas ("CITY") (collectively, the "Parties").

WITNESSETH

WHEREAS, the Interlocal Cooperation Act, Chapter 791, V.T.C.A., Texas Government Code provides authorization for any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, PARKLAND and the CITY are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this Agreement, and have entered into this Agreement by action of its governing body in the appropriate manner prescribed by law; and

WHEREAS, PARKLAND provides biomedical on-line supervision pre-hospital emergency medical control services known as the BioTel/EMS System, which is staffed by physicians, paramedics, registered nurses, licensed social workers and clerical staff, and was created on July 1, 1980, to provide medical control for paramedics in the field via radio and telemetered patient data; and

WHEREAS, PARKLAND is a participant in Social Services designed to assist local public safety departments to focus more on acute public safety and emergency medical response rather than emergency mental health service delivery or social service resource connection for routine low acuity or primary care services; and

WHEREAS, the CITY and PARKLAND wish to develop a coordinated approach to persons experiencing behavioral and physical health resource connection and case management needs in their region; and

WHEREAS, PARKLAND desires to contract with the CITY and the CITY desires to purchase from PARKLAND the BioTel/EMS System social work support for public safety services; and

WHEREAS, both PARKLAND and the CITY represent to one another that each respective party has the authority to enter into this Agreement and perform the obligations and duties stated herein; and

NOW THEREFORE, PARKLAND and the CITY hereby enter into this Interlocal Agreement in considerations of the aforementioned recitals, and for the mutual considerations stated herein:

I.
DESCRIPTION OF SERVICES

1.01 For the consideration hereinafter agreed to be paid to PARKLAND by the CITY, PARKLAND shall provide licensed master social work (LMSW) (1.0 FTE) services for the CITY's health department hereinafter called the "Services."

1.02 The Services are to be performed according to acceptable standard professional practices and to conform to the Scope of Services attached hereto as Exhibit A.

II.
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996
(HIPAA)

2.01 The term Protected Health Information (hereinafter "PHI") shall have the same meaning as set forth in 45 C.F.R. 160.103. Except as is permitted by applicable law and to satisfy the requirements of this Agreement, PARKLAND agrees that it will not use or disclose PHI it obtains from the CITY for any purpose. However, the Parties agree that PARKLAND will receive PHI from the CITY for treatment purposes as described in this Agreement and that such PHI will no longer be considered the CITY's PHI once it has been received by PARKLAND for these treatment purposes. Any PHI the CITY provides PARKLAND for treatment purposes shall thereafter belong to PARKLAND.

2.02 As this Agreement is subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), , the administrative regulations and/or guidance which have issued or may in the future be issued pursuant to HIPAA, including but not limited to the Department of Health and Human Services regulations on privacy and security, and Texas state laws pertaining to medical privacy (collectively, "Privacy Laws"), the Parties agree to comply with all Privacy Laws that are applicable to this Agreement and to execute the Business Associate Addendum attached to this Agreement.

III.
COORDINATION

3.01 All Services under this Agreement shall be coordinated under and performed in accordance with the Agreement and the Scope of Services to the reasonable satisfaction of the Director of Health of the CITY, or his/her designated representative, hereinafter called "Director." The Director shall have authority to approve payment for Services that have been properly provided in accordance with the terms of this Agreement. If at any time PARKLAND fails to properly furnish all or a portion of the Services called for by this Agreement, the CITY is authorized to withhold payment of funds associated with the Services not properly performed hereunder until any deficiency has been, if possible, cured. It is further agreed between PARKLAND and the CITY that should any dispute or questions arise respecting the reasonableness of the withheld amount of payment attributable to PARKLAND's failure to fully perform, the Parties agree to meet and make a good faith effort to resolve the dispute. Prior to

the CITY withholding any payment pursuant to this provision, the CITY must provide PARKLAND with notice of any deficiencies and provide PARKLAND ten (10) business days to remedy any deficiencies. The CITY will release any withheld funds associated with the Services not properly performed once the deficiencies are remedied.

IV. TERM

4.01 The initial term of this Agreement shall commence on October 1, 2021, and terminate on September 30, 2022, unless sooner terminated in accordance with the provisions of this Agreement. The Parties may renew the Agreement for successive twenty-four (24) month periods upon the same terms and conditions as set forth in this Agreement by jointly executing written notice of the intent to renew. The Parties shall indicate in the written renewal agreement the agreed-upon amount of consideration for that particular renewal period.

V. PAYMENT

5.01 The Agreement's initial term is one (1) year. Total payments by the CITY during the Agreement's initial term shall be One hundred twenty-one thousand seven hundred forty-seven dollars (\$121,747). The initial Payment shall be made upon execution of this Agreement.

5.02 Upon renewal, CITY shall pay PARKLAND the mutually agreed upon renewal fee within sixty (60) days of both parties' executing the notice of intent to renew.

VI. INDEPENDENT CONTRACTOR

6.01 PARKLAND's status and the status of all social workers performing work related to this Agreement shall be that of an Independent Contractor and not any of the following: an agent; servant; employee; member of CITY's workforce; or representative of the CITY in the performance of these Services. No term or provision of this Agreement or act of PARKLAND or the CITY under this Agreement shall be construed as changing that status.

VII. INDEMNIFICATION

7.01 PARKLAND, to the extent permitted by the laws of the State of Texas, shall indemnify, defend and hold harmless the CITY and all of its officers, agents and employees from any suits, actions or claims whatsoever that might arise on account of any injury or damage received or sustained by any person or property as a result of PARKLAND's conduct of any activity or operation in connection with PARKLAND's use of the BioTel/EMS System. To the extent permitted by law, PARKLAND shall pay any judgment, together with costs, including but not limited to litigation expenses and reasonable attorney's fees, which may be obtained against the CITY, or any of its officers, agents or employees as a result of such injury or damage.

7.02 The CITY shall give PARKLAND prompt notice of any matter covered by Section 7.01 above, and shall forward to PARKLAND every demand, notice, summons, or process received in any claim or legal proceeding covered by Section 7.01 above.

7.03 PARKLAND shall not be obligated to indemnify, defend or hold harmless the CITY or any of its officers, agents, or employees when the injury or damage to a person or property is caused by the negligence of the CITY, its officers, agents or employees. In the event of joint and concurrent negligence of PARKLAND and the CITY, responsibility and indemnity, if any, shall be apportioned in accordance with the laws of the State of Texas.

7.04 The CITY, to the extent permitted by the laws of the State of Texas, shall indemnify, defend and hold harmless PARKLAND and all of its officers, agents and employees from any suits, actions or claims whatsoever that might arise on account of any injury or damage received or sustained by any person or property as a result of the CITY's conduct of any activity or operation in connection with the CITY's use of the BioTel/EMS System. To the extent permitted by law, the CITY shall pay any judgment, together with costs, including but not limited to litigation expenses and reasonable attorney's fees, which may be obtained against PARKLAND, or any of its officers, agents or employees as a result of such injury or damage.

7.05 PARKLAND shall give the CITY prompt notice of any matter covered by Subsection VII.4 above, and shall promptly forward to the CITY every demand, notice, summons, or process received in any claim or legal proceeding covered by Section 7.04 above.

7.06 The CITY shall not be obligated to indemnify, defend or hold harmless PARKLAND or any of its officers, agents, or employees when the injury or damage to a person or property is caused by the negligence of PARKLAND, its officers, agents or employees. In the event of joint and concurrent negligence of the CITY and PARKLAND, responsibility and indemnity, if any, shall be apportioned in accordance with the laws of the State of Texas.

7.07 No part of this Agreement shall be interpreted to constitute a waiver of any defense of the Parties available to the CITY and PARKLAND under Texas law and the immunities or limits of liability granted to PARKLAND or the CITY under the Texas Torts Claim Act or elsewhere in Texas law.

7.08 The provisions of this section are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

VIII. TERMINATION

8.01 The CITY may, at its option and without prejudice to any other remedy it may be entitled at law or in equity, or elsewhere under this Agreement, terminate further work under this Agreement, in whole or in part by giving at least one hundred eighty (180) days prior written notice thereof to PARKLAND, with the understanding that all Services being terminated shall cease upon the date specified in such notice. The CITY shall compensate PARKLAND in accordance with the terms of this Agreement for the Services properly performed prior to the

date specified in such notice, following inspection and acceptance of same by the CITY's Director. PARKLAND shall not, however, be entitled to lost or anticipated profits should the CITY choose to exercise its option to terminate.

8.02 PARKLAND may, at its option and without prejudice to any other remedy it may be entitled at law or in equity, or elsewhere under this Agreement, terminate further work under this Agreement, in whole or in part by giving at least one hundred eighty (180) days prior written notice thereof to the CITY, with the understanding that all Services being terminated shall cease upon the date specified in such notice.

IX. NOTICES

9.01 All notices, communications and reports under this Agreement shall be mailed or delivered to the respective Parties as follows:

To: Dallas County Hospital District
d/b/a Parkland Health & Hospital System
5200 Harry Hines Blvd.
Dallas, Texas 75235
Attention: EVP & Chief Nursing Officer

With copy to: Dallas County Hospital District
d/b/a Parkland Health & Hospital System
5200 Harry Hines Blvd.
Dallas, Texas 75235
Attention: General Counsel, Legal Affairs

To: The City of Garland, Texas
1720 Commerce St.
Garland, Texas 75040
Attention: Health Administrator, Health Department

X. MISCELLANEOUS

9.01 This Agreement is entered into subject to the Charter and ordinances of the CITY, as amended, and applicable Texas State and Federal laws. The provisions of this Agreement shall be construed in accordance with the laws and court decisions of the State of Texas; and exclusive venue for any litigation that may be filed by either party hereto in connection with this Agreement shall be in Dallas County, Texas.

9.02 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be

considered as if such invalid, illegal or unenforceable provision has never been contained in this Agreement.

9.03 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

9.04 This Agreement can be revised at any time by mutual consent of the Parties and shall be revised by written amendment(s) to this Agreement and signed by both Parties. No oral modifications can be made to this Agreement.

9.05 The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

9.06 This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters in this Agreement.

9.07 **Right to Audit.** PARKLAND shall keep true, complete, and accurate books and records of all costs for which it seeks reimbursement from the City under this Agreement. The City shall have the right, upon reasonable notice and during business hours, to audit those books and records and to obtain copies of those books and records at the expense of the City.

**Dallas County Hospital District d/b/a
Parkland Health & Hospital System**

By: Richard Humphrey
Richard Humphrey (Aug 23, 2021 09:37 CDT)

Name: Richard Humphrey

Title: EVP & Chief Financial Officer

Date: Aug 23, 2021

The City of Garland, Texas

By: D Beeler

Name: Diane Beeler

Title: Director of Health

Date: 9/15/21

Exhibit A
Scope of Services for Public Safety Licensed Master Social Work Services

1. Background

The Garland Health Department Social Worker program provides a holistic approach to the mental and physical health needs of the citizens of Garland eight (8) hours per day Monday through Friday. The team is comprised of distinct but integrated components including license master level social worker (LMSW) or a license clinical social worker (LCSW). The primary role of the social worker is to provide a coordinated approach to persons struggling to appropriately and effectively access mental, physical and behavioral health care services. Citizens can be identified through 911 use or persons referred by community stake holders or public safety officers. Garland citizens can also be identified through the Parkland Health and Hospital System Community Oriented Primary Care, Parkland Acute Response Clinic, Parkland Emergency Department or acute hospital admission. Engagement with the Garland Health Department Social Worker will be limited to the citizens of the city of Garland. Expansion of the services of the Garland Health Department Social Worker program to residence outside of Garland city limits is up to the discretion of both Garland Health Department leadership and BioTel leadership. The Garland Health Department and Social Worker program will assist will resource connection and for all referred citizens, but in the event that a referral comes from outside of Dallas County, connection to the Parkland Health and Hospital system may be limited.

The overarching goal of the Garland Health Department Social Worker program is the improvement of citizen's overall health and well-being, the decrease in over-utilization of scarce EMS and law enforcement resources for lower acuity, non-medical or criminal justice needs, the connection of citizens to the appropriate level of physical health and psychiatric care and the maintenance of their overall wellbeing through the coordination and connection to ongoing service providers. By utilizing a partnership between an LMSW and emergency medical services, the Garland Health Department Social Worker program increases the ability of law enforcement and EMS to focus on providing acute medical services and addressing community safety needs while providing an avenue for first responders to refer citizens for more intensive evaluation and service coordination. The Garland Health Department Social Worker program will ensure continuity of care following intervention in the community, hospital transport or emergency detention, and provide prevention and intervention services. The Garland Health Department Social Worker program is a referral based, follow up, and homeless outreach program and is not intended to serve as a primary response team to emergency 911 calls for behavioral health, mental health or emergency medical services.

2. Staffing

- A. 1 full time (1.0 FTE) Licensed Master Level Social Worker (LMSW) employed by Parkland will provide coverage Monday through Friday from 8:00 AM- 4:30 PM to the Garland Health Department.
 - i. If additional hours of coverage are needed then the option of PRN BioTel LMSW can be utilized if available at an additional cost per hour at the Parkland overtime rate.
- B. Any changes to the schedule will need to be discussed and agreed upon with BioTel leadership team.

3. Roles and Responsibilities

- A. The LMSW primary role is the identification and connection to community resources. They are uniquely suited to assess citizens for biopsychosocial needs and coordinate efforts to gain scheduled routine access to care and decrease the dependence on 911 for those services.
- B. The LMSW is responsible for assessment of citizens with mental, behavioral or physical health needs, recommendation of appropriate community resources for mitigation and management of those needs.
- C. The LMSW is responsible for maintaining documentation in regards to care plans for identified citizens in the mutually agreed upon care record, Parkland's EPIC EHR system.
- D. The LMSW is also uniquely suited to address issues related to both medical and behavioral health service coordination; social determinants of health, de-escalation and mediation in families and individuals. The LMSW is responsible for knowledge of both medical and behavioral health resources in the community and the ability to successfully connect people with complex needs to those resources.

- E. The LMSW will be directly supervised by BioTel Social Work leadership. Any changes or additions to roles and responsibilities will be discussed and approved through BioTel Leadership chain of command.

4. Additional Services

- A. Periodic meetings, at least quarterly, will be attempted to be scheduled between Garland's Health Administer and Parkland BioTel representatives to assess the program and services provided and recommended improvements.
- B. LMSW can assist with the coordination and development of education related to their area of expertise for City of Garland Public Safety workers. This could include education on working with vulnerable or at-risk populations, mental or behavioral health issues, continuum of care issues, cultural sensitivity or other areas identified by city leadership.

**Business Associate Addendum
to
Interlocal Agreement**

This Business Associate Addendum to the Interlocal Agreement (the “Addendum”) is entered into by and between the City of Garland, Texas, a home rule municipality (“Business Associate”) and the Dallas County Hospital District d/b/a Parkland Health & Hospital System, (“Covered Entity”).

RECITALS

This Addendum is made and entered into contemporaneously with the Interlocal Agreement by and between Business Associate and Covered Entity for the provision of public safety LCSW services (the “Services”) .

Under the Interlocal Agreement (the “Agreement”), Business Associate may perform or assist in performing a function or activity on behalf of Covered Entity that involves the Use and/or Disclosure of Protected Health Information (as defined in 45 C.F.R. 160.103 and as may be amended from time to time (“PHI”)).

The Parties desire that the Agreement to include certain requirements regarding the Use and/or Disclosure of PHI as required by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); any and all regulations promulgated thereunder including the standards for privacy of individually identifiable health information at 45 C.F.R. Parts 160 and 164 (“Privacy Rule”) and the standards for the security of electronic protected health information at 45 C.F.R. Parts 160, 162, and 164 (“Security Rule”) (collectively, the Privacy Rule and the Security Rule are referred to herein as the “HIPAA Rules”); any applicable state law or regulation; and the Health Information Technology for Economic and Clinical Health Act (“HITECH”) provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”).

NOW, THEREFORE, for and in consideration of the representations, warranties and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. **Terms Used.** Terms used, but not otherwise defined, in this Addendum, shall have the same meaning as those terms in the HIPAA Rules.
2. **Permitted Uses and Disclosures of PHI.** Except as otherwise limited in the Agreement or this Addendum, Business Associate may Use and/or Disclose PHI to perform the functions, activities, or services for or on behalf of Covered Entity as specified in the Agreement provided that such Use and/or Disclosure would not violate the HIPAA Rules if done by Covered Entity. All other Uses or Disclosures not authorized by the Agreement or this Addendum are prohibited.

3. Business Associate agrees to:

3.1. Not Use and/or Disclose PHI other than as permitted or required by the Agreement or this Addendum or as Required By Law.

3.2. Use appropriate safeguards to comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI and to implement and use appropriate safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of PHI and to prevent the Use and/or Disclosure of PHI other than as provided for by the Agreement or this Addendum.

3.3. Report to Covered Entity, through its Privacy Officer, any Use or Disclosure of PHI not provided for by the Agreement or this Addendum within three (3) business days of discovering the unauthorized Use or Disclosure. Additionally, within three (3) business days of discovery, Business Associate agrees to report any potential Breach of unsecured PHI as that term is defined in 45 CFR 164.402 and any successful Security Incident as that term is defined in 45 CFR 164.304. Unsuccessful Security Incidents shall be reported to Covered Entity only upon request. Business Associate shall permit Covered Entity to investigate any report submitted pursuant to this provision and shall allow Covered Entity to examine Business Associate's premises, records, and practices. In the event Covered Entity is required to provide notice to Individuals impacted by a Breach caused by Business Associate or its subcontractors and agents, Business Associate shall reimburse Covered Entity for the reasonable costs relating to the provision of such notice.

3.4. Ensure that all subcontractors and agents to whom it provides PHI received from, or created or received by, Business Associate on behalf of Covered Entity sign a business associate agreement meeting the requirements of 45 CFR 164.504 and agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate pursuant to this Addendum. This shall include, without limitation, ensuring that agents and subcontractors implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI created, received, maintained, stored, or transmitted on behalf of Covered Entity. Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of its subcontractors and agents as if the acts, failures or omissions were Business Associate's own acts, failures or omissions.

3.5. Provide access (at the request of, and in a reasonable time and manner designated by, Covered Entity) to PHI in a Designated Record Set in order to meet the requirements under 45 C.F.R. 164.524. In the event an Individual submits a request for access directly to Business Associate, Business Associate shall promptly forward the request to Covered Entity through its Privacy Officer. Business Associate is not required to provide access to PHI if it does not maintain a Designated Record Set on behalf of Covered Entity.

3.6. Make any amendment(s) (at the request of, and in a reasonable time and manner designated by, Covered Entity) to PHI in a Designated Record Set that Covered Entity directs pursuant to 45 C.F.R. 164.526. In the event an Individual submits a request for amendment directly to Business Associate, Business Associate shall promptly forward the request to Covered Entity

through its Privacy Officer. Business Associate is not required to amend PHI if it does not maintain a Designated Record Set on behalf of Covered Entity.

3.7. Make internal practices, books, and records relating to the Use and Disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of Health and Human Services or his/her designee (the “Secretary”), in a reasonable time and manner as designated by the Secretary, for the purposes of determining compliance with the Privacy Rule and this Addendum. Business Associate shall promptly notify Covered Entity of communications with the Secretary regarding PHI provided by or created by Covered Entity and shall provide Covered Entity with copies of any information Business Associate has made available under this provision. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by Business Associate or Covered Entity by virtue of this Addendum.

3.8. Document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 as may be amended from time to time, and incorporating exceptions to such accounting designated under the regulation. Accounting of disclosures shall be in accordance with the policies and procedures of the Covered Entity and shall be made within a reasonable time specified by Covered Entity. The first accounting in any 12 month period requested by an Individual shall be provided without charge; a reasonable charge may be made for subsequent accountings if Business Associate informs the Individual in advance of the fee and the Individual is afforded an opportunity to withdraw or modify the request. In addition, to the extent that Business Associate maintains PHI in an electronic health record, Business Associate agrees to account for all disclosures of electronic PHI upon request of an Individual for a period of at least three (3) years prior to the request (but no earlier than the Effective Date of this Addendum) as required by HITECH. Such accounting shall be directly to the Individual if requested by the Covered Entity.

3.9. Provide to Covered Entity, in a reasonable time and manner designated by Covered Entity, information collected in accordance with Section 3.8. of this Addendum, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

3.10. Ensure that all Uses and Disclosures of PHI are subject to the principle of “minimum necessary,” i.e., only PHI that is the minimum necessary to accomplish the intended purpose of the Use, Disclosure, or request may be Used or Disclosed.

3.11. Mitigate, to the extent practicable, any harmful effect of an unauthorized Use or Disclosure of PHI and any Breach or Security Incident by Business Associate or its subcontractors or agents of which Business Associate becomes aware.

3.12. Provide adequate training to members of its Workforce and to its subcontractors and agents regarding the requirements of the HIPAA Rules, HITECH, and this Addendum.

3.13. Provide Business Associate's policies and procedures for maintaining the confidentiality of records in a Designated Record Set as required by the Privacy Rule and this Addendum to Covered Entity at its request.

3.14. Comply with all applicable federal and state privacy and security requirements.

4. Covered Entity agrees to:

4.1. Provide Business Associate with its notice of privacy practices if a limitation in the notice of privacy practices may affect Business Associate's Use or Disclosure of PHI under the Agreement of this Addendum.

4.2. Provide Business Associate with any changes in, or revocation of, permission by an Individual to the Use and/or Disclosure of PHI, if such changes affect Business Associate's permitted or required Uses and/or Disclosures. Covered Entity will further notify Business Associate of any restriction on the Use and/or Disclosure of PHI agreed to by Covered Entity in accordance with the provisions of 45 CFR 164.522 and any restriction requested by an Individual that Covered Entity is required to comply with in accordance with the provisions of HITECH.

5. Specific Uses and Disclosures Permitted by Business Associate. Except as otherwise limited in the Agreement and this Addendum, Business Associate may:

5.1. Use or Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate provided that such Uses and Disclosures are required under state and federal laws, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached..

5.2. Use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. 164.504(e)(2)(i)(B).

6. **LIABILITY LIMITATIONS.** All Parties agree to be responsible for their own negligent acts or omissions or other tortious conduct in the course of performance of this Agreement, without waiving any sovereign immunity, governmental immunity or available defenses available to the Parties under Texas law. Nothing in this paragraph shall be construed to create or grant any rights, contractual or otherwise, in or to any third persons or entities. All Parties agree that any such liability or damages occurring during the performance of this Agreement caused by the joint or comparative negligence of the Parties, or their employees, agents or officers shall be determined in accordance with comparative responsibility laws of Texas.

7. **Term and Termination.**

7.1. **Term.** This Addendum shall be effective contemporaneously with the Interlocal Agreement and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed

or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such PHI, in accordance with Section 7.3 below.

7.2. Termination for Cause. Covered Entity may immediately terminate the Agreement and this Addendum if Covered Entity determines that Business Associate has breached a material term of this Addendum. Alternatively, the Covered Entity may choose, in its sole discretion, to: (i) provide the Business Associate written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within ten (10) days, Business Associate must cure said breach to the satisfaction of the Covered Entity within thirty (30) days from the date of the original notice. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of the underlying Agreement and this Addendum.

7.3. Effect of Termination.

7.3.1. Except as provided in paragraph 7.3.2 of this Section, upon termination of the Agreement or this Addendum, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This Section shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

7.3.2. In the event that Business Associate determines that return or destruction of the PHI is infeasible, Business Associate shall provide in writing to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual written agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

8. Rights to Proprietary Information; Injunctive Relief. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate. Business Associate understands and acknowledges that any disclosure or misappropriation of any of PHI in violation of this Addendum will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Covered Entity shall deem appropriate. Such right of Covered Entity is to be in addition to the remedies otherwise available to Covered Entity at law or in equity.

9. Miscellaneous.

9.1. **Amendment.** The Parties agree to take such action as is necessary to amend this Addendum from time to time to comply with the requirements of applicable federal or state laws or regulations governing the Use or Disclosure of Individually Identifiable Health Information.

9.2. **Survival.** The respective rights and obligations of Business Associate under Section 7 of this Addendum shall survive the termination of the Agreement and this Addendum.

9.3. **Interpretation.** Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA and HITECH. The provisions of this Addendum shall prevail over any provisions in the underlying Agreement that may conflict or appear inconsistent with any provision in this Addendum.

9.4. **No Third Party Beneficiary.** Nothing in this Addendum is intended, nor shall be deemed, to confer any benefits on any third party.

9.5. **Counterparts; Facsimiles.** This Addendum may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

9.6 **Supcedure.** In the event that any term or provision of any agreement between the Parties conflicts with a term or provision of this Addendum, this Addendum shall control.

IN WITNESS WHEREOF, the Parties hereto have caused this Addendum to be executed by their respective duly authorized representatives.

**Dallas County Hospital District d/b/a
Parkland Health & Hospital System**

By: Richard Humphrey
Richard Humphrey (Aug 23, 2021 09:37 CDT)

Name: Richard Humphrey

Title: EVP & Chief Financial Officer

Date: Aug 23, 2021

The City of Garland, Texas

By: D Beeler

Name: Diana Beeler

Title: Director of Health

Date: 9/15/21



GARLAND POLICY REPORT

City Council Work Session Agenda

3. e.

Meeting Date: October 17, 2022

Item Title: Agreement for the Provision of Temporary Electric Distribution Service

Submitted By: Darrell Cline, GP&L General Manager & CEO

Strategic Focus Areas:

ISSUE

Digital Garland Ferris, L.P. ("Digital") is requesting Garland Power and Light ("GP&L") construct facilities for the provision of temporary electric distribution service for construction and pre-occupancy testing of Digital's planned data center facilities. Digital will pay for the construction of the electric distribution facilities and temporary electric distribution service. In addition to the initial payment of \$410,000 for the installation of the distribution equipment and facilities, Digital will provide a parental guaranty as security for the provision of these services.

OPTIONS

1. Approve the agreement for the provision of temporary electric distribution service with Digital.
2. Do not approve the agreement for the provision of temporary electric distribution service with Digital.

RECOMMENDATION

Staff recommends Option 1 – Approve the agreement for the provision of temporary electric distribution service with Digital. This item will be scheduled for formal consideration at the October 18, 2022 Regular Meeting.

BACKGROUND

GP&L has been requested to provide temporary electric distribution power to Digital's 14.955-acre tract of land located at 1505 Ferris Road, Garland, Texas until the earlier of December 31, 2024, or the in-service date of Digital's electric substation providing permanent service to their property. The temporary electric distribution service will be for construction and pre-occupancy testing of Digital's planned data center facilities. Within fifteen (15) days of the effective date of the agreement for temporary distribution service, Digital will make an initial payment of \$410,000 for the construction of the electric distribution facilities. In addition to the initial payment, Digital will be responsible for any additional costs associated with the

construction of the electric distribution facilities and for the cost of power consumed. Digital will also provide a parental guaranty as security for the provision of these services.

CONSIDERATION

Staff seeks the Council's concurrence for authorizing the agreement for the provision of temporary electric distribution service with Digital.

Attachments

Agreement for Temporary Electric Service

AGREEMENT FOR CONSTRUCTION OF EQUIPMENT AND FACILITIES FOR THE PROVISION OF TEMPORARY ELECTRIC DISTRIBUTION SERVICE

This agreement ("Agreement") is made and entered into by and between the City of Garland, Texas ("City"), a home rule municipality with an electric department operating an electric utility system known as Garland Power & Light ("GP&L"), and Digital Garland Ferris, L.P., a Delaware limited partnership ("Developer"), herein collectively called "Parties" or individually called "Party".

WHEREAS, Developer has requested, at its sole cost, temporary electric distribution service for construction and pre-occupancy testing be provided by the City to the Property, as defined herein; and

WHEREAS, the City is willing to provide the Developer's requested temporary electric distribution service by procuring, constructing, and connecting the necessary equipment and facilities to the Developer's electric distribution facilities at the Property for the limited purpose of construction and testing; and

NOW THEREFORE, in consideration of the aforementioned recitals and the mutual covenants contained herein, the sufficiency of which is acknowledged, City and Developer hereby agree as follows:

- 1. Term.** This Agreement shall become effective on the "Effective Date" (as hereinafter provided) and is expressly contingent upon the execution of the Guaranty, executed by Digital Realty Trust, L.P. (hereinafter, "Guarantor") for the benefit of the City. This Agreement, once effective, shall continue until the earlier of December 31, 2024 or the in-service date of the Substation, as defined below. Additionally, the Parties agree that given the nature of this Agreement it may not be assigned or transferred; provided, however that Developer may assign this Agreement in connection with a merger or consolidation, or a sale of substantially all of the assets of Developer so long as the successor entity has a net worth of at least Two Hundred Million Dollars (\$200,000,000.00). Developer represents that it is the sole owner of the Property. Any attempted assignment or transfer by Developer that is not expressly permitted hereunder shall constitute a material breach and default of the Agreement unless the City agrees to such assignment or transfer in writing.
- 2. Equipment and Facilities.** The City shall extend and construct, at the sole cost of Developer, temporary electric distribution facilities for the provision of temporary electric distribution service for construction and pre-occupancy testing to a 14.955-acre tract of land located at 1505 Ferris Road, Garland, Texas and owned by Developer and more specifically described in the legal description set forth as Exhibit "A" hereto (hereinafter, the "Property"). The City will use commercially reasonable efforts to provide, but not to exceed, thirteen (13) MVA of temporary electric distribution service to the Property. Within fifteen (15) days following the Effective Date, Developer shall pay to the City FOUR HUNDRED TEN THOUSAND DOLLARS (\$410,000.00) for the installation of equipment and facilities as described in Exhibit "B" and generally below, including additional equipment or facilities needed to provide temporary electric distribution service to the Property (hereinafter, the "Equipment and Facilities"). This amount is the City's good faith estimate of the costs (based upon current market conditions) associated with the Equipment and Facilities required to be procured and constructed in order to service the Property solely for construction and pre-occupancy testing. Developer understands and agrees that it shall be solely responsible for all costs associated

with the Equipment and Facilities, including any additional costs, should the actual costs exceed the City's good faith estimate, provided, however, that Developer shall not be responsible for such excess costs caused by the grossly negligent or intentional acts or omissions of the City in constructing the Equipment and Facilities.

Circuit 1 (Exhibit B)

Developer will pay \$260,000.00 for the installation of:

- Feeder dips for circuits 1 & 2
- Primary metering equipment
- Feeder protection

Circuit 2 (Exhibit B)

Developer will pay \$150,000.00 for the installation of:

- 6,000 LF of #477 (primary cable)
- 3 new poles
- 1 air switch
- 14 steel davit arms

This will extend Firewheel-1 distribution feeder (FW-1) to the temporary electric distribution metering point.

Except as expressly provided to the contrary herein, if the actual costs incurred by the City to install the Equipment and Facilities exceed \$410,000.00, the Developer shall be responsible for reimbursing the City for such excess costs. Payment for such excess costs shall be made to the City within thirty (30) days of Developer's receipt of invoice. The Parties expressly agree that, irrespective of these payments, the City shall retain ownership of the Equipment and Facilities and that the payments set forth herein by Developer, do not grant Developer any rights, title or interest in or to the Equipment and Facilities, except that Developer shall have the right to use the electrical service provided by the Equipment and Facilities for the purposes of construction and preoccupancy testing activities at the Property. Developer shall discontinue temporary electric distribution service by the earlier of December 31, 2024, or the in-service date of Developer's 138/34.5kV electric substation providing permanent distribution service to the Property (hereinafter, the "Substation"). The City shall use commercially reasonable efforts to complete construction of the Equipment and Facilities on or before July 31, 2023.

3. **Temporary Electric Distribution Service.** At least fifteen (15) days prior to the in-service of the Equipment and Facilities, the City shall provide to Developer an all-in power cost rate based on the expected energy consumption for the remainder of the calendar quarter and subsequent calendar quarter (hereafter, the "Initial Pricing"). For each calendar quarter subsequent to the Initial Pricing period, the City shall provide to Developer at least fifteen (15) days prior to the start of the calendar quarter an all-in power cost rate based on the expected energy consumption for said calendar quarter. The Developer agrees to purchase electrical energy from the City at the all-in power cost rate set forth herein. Payment for electrical energy shall be made to the City within thirty (30) days of Developer's receipt of invoice. Failure to pay following thirty (30) days of Developer's receipt of invoice shall be considered a material breach of this Agreement and the City shall be permitted to discontinue service to the Property without further notice.
4. **Termination.** This Agreement may be terminated in writing by mutual agreement and consent of both Developer and the City. Additionally, either Party may terminate this

Agreement upon notice in writing if the other Party is in breach of any material obligation contained in this Agreement, which is not remedied (if the same is capable of being remedied) within thirty (30) days of written notice from the other Party to do so; provided, however, that Developer's failure to make the payment obligations set forth in Paragraphs 2 and 3 constitute a material breach and if such material breach is not remedied within three (3) business days of Developer's receipt of written notice of such Material Breach, the City may terminate this Agreement, effective immediately upon delivery of written notice of such termination to Developer. In the event that Developer terminates this Agreement other than for the City's material breach of its obligations under this Agreement, Developer understands and agrees that it shall be liable to the City for any costs incurred by the City in connection with the Equipment and Facilities, as well as the fees associated with any electric energy or service provided hereunder. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

5. **Indemnity.** Developer shall indemnify and hold City harmless from and against any and all damages, costs, injuries and claims arising from any activity, work or thing done, permitted or suffered by Developer, its employees, agents, independent contractors, invitees, or guests on the Property or within the Substation. Developer agrees to indemnify and hold City harmless from and against any and all damages, costs, injuries and claims arising from any breach or default in the performance of any obligation under the terms of this Agreement. Such indemnity shall include all damages, costs, injuries, claims, attorney's fees, expenses, and liabilities incurred in defending, settling, referring to legal counsel or considering any such claim whether or not a suit or arbitration claim has been initiated. The indemnification set forth in this paragraph shall survive the termination or expiration of this Agreement.
6. **Warranties.** **THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE GOODS AND SERVICES BEING PROVIDED UNDER THIS AGREEMENT, INCLUDING THE PROVISION OF ELECTRICAL ENERGY, ARE BEING OFFERED AND SOLD "AS IS" AND WITHOUT WARRANTY, EXPRESSED OR IMPLIED AND NO WARRANTY IS MADE, GIVEN OR INTENDED THAT SUCH UTILITY SERVICES WILL BE UNINTERRUPTED OR ADEQUATE, ARE FIT FOR A PARTICULAR USE OR PURPOSE, MERCHANTABILITY, POSSESS ANY PARTICULAR CHARACTERISTIC OR QUALITY, OR ARE FREE OF DEFECTS. THE CITY DOES NOT GUARANTEE OR WARRANT A CONTINUOUS OR INTERRUPTED SUPPLY OF ELECTRICAL ENERGY OR THAT THE VOLTAGE, WAVE FORM OR FREQUENCY OF THE ELCTRIC SUPPLY WILL NOT FLUCTUATE, WILL REMAIN UNCHANGED OR WILL BE SUITABLE OR ADEQUATE. THE CITY FURTHER STATES, AND DEVELOPER UNDERSTANDS AND AGREES THAT THE ELECTRIC ENERGY PROVIDED UNDER THIS AGREEMENT IS NOT INTENDED FOR OPERATIONAL USAGE ON THE PREMISES.**

DEVELOPER AGREES THAT THE CITY SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT OR REVENUE ARISING FROM THE PROVISION OF GOODS OR SERVICES UNDER THIS AGREEMENT EVEN IF THE CITY HAS BEEN ADVISED OF SUCH POSSIBILITY.

“DEVELOPER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET SEQ., BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, DEVELOPER VOLUNTARILY CONSENTS TO THIS WAIVER.”

IN NO EVENT SHALL DAMAGES TO DEVELOPER, WHETHER ARISING FROM BREACH OF AGREEMENT OR WARRANTY, BY TORT, STRICT LIABILITY OR OTHERWISE EXCEED THE AMOUNT ACTUALLY PAID BY DEVELOPER TO CITY UNDER THIS AGREEMENT.

- 7. Limitation of Liability. THE CITY SHALL NOT BE LIABLE FOR: (A) PERSONAL INJURIES (INCLUDING DEATH) TO ANY PERSON; (B) FOR ANY DAMAGES TO PROPERTY (REAL OR PERSONAL); OR (C) FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFIT OR REVENUE ARISING FROM THE PROVISION OF ELECTRIC SERVICE BY THE CITY (OR LACK THEREOF), EVEN IF THE CITY HAS BEEN ADVISED OF SUCH POSSIBILITY, REGARDLESS WHETHER SUCH INJURIES, DAMAGES OR LOSSES ARE DUE TO THE DELIVERY OF ELECTRIC SERVICE, THE MANNER OR MEANS OF DELIVERING ELECTRIC SERVICE, TO SERVICE INTERRUPTION OR DISRUPTION, TO THE FAILURE TO COMMENCE DELIVERY, OR TO FLUCTUATION IN VOLTAGE, WAVE FORM OR FREQUENCY, UNLESS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY. IN ANY EVENT, THE CITY’S LIABILITY SHALL BE LIMITED TO AND SHALL NOT EXCEED THE REASONABLE COST OF NECESSARY REPAIRS OF PHYSICAL DAMAGE TO THE ELECTRICAL FACILITIES OF THE CUSTOMER THAT WERE, AT THE TIME OF DAMAGE, PROPERLY EQUIPPED WITH THE PROTECTIVE SAFEGUARDS DESCRIBED, BELOW, PROVIDED SUCH DAMAGES WERE PROXIMATELY CAUSED BY THE SERVICES OR GOODS PROVIDED BY THE CITY. THE CITY SHALL NOT BE LIABLE FOR INJURIES, DAMAGES OR LOSSES OCCASIONED BY ACCIDENT, BREAKDOWN OF PLANT, LINES OR EQUIPMENT, PENDING LITIGATION, ACTS OF GOD, WAR, ACTS OF CIVIL DISOBEDIENCE OR TERRORISM, FIRE OR OTHER CASUALTY, SHORTAGE OF MATERIALS, ADVERSE WEATHER CONDITIONS, LABOR ACTION, STRIKES OR SIMILAR ACTS, MORATORIUMS, REGULATIONS OR ACTIONS BY GOVERNMENTAL AUTHORITIES, OR ANY OTHER CAUSE BEYOND THE REASONABLE CONTROL OF THE CITY. DEVELOPER SHALL BE RESPONSIBLE FOR INSTALLING AND MAINTAINING SUCH PROTECTIVE DEVICES AND EQUIPMENT AS MAY BE DESIRED, RECOMMENDED OR REQUIRED TO PROTECT THE DEVELOPER’S EQUIPMENT, PROPERTY, OR PROCESSES DURING ABNORMAL ELECTRIC SERVICE CONDITIONS OR THE FAILURE OF ALL OR A PART OF ELECTRIC SERVICE PROVIDED BY THE CITY. ALL WIRING AND OTHER ELECTRICAL EQUIPMENT FURNISHED BY THE DEVELOPER SHALL BE INSTALLED, OPERATED, AND MAINTAINED BY THE DEVELOPER AT ALL TIMES IN CONFORMITY WITH GOOD ELECTRICAL PRACTICES AND WITH THE REQUIREMENTS OF FEDERAL, STATE AND LOCAL LAW, REGULATIONS AND ORDERS INCLUDING, BUT NOT LIMITED TO, THE CODE OF ORDINANCES, AND GARLAND DEVELOPMENT CODE FOR THE CITY. THE ABOVE NOTWITHSTANDING, THE CITY SHALL NOT BE LIABLE FOR DAMAGES, INJURIES OR DEATH RESULTING FROM DEFECTS IN DEVELOPER’S WIRING OR FOR ELECTRIC CURRENT UPON THE DEVELOPER’S PREMISES. DEVELOPER SHALL INDEMNIFY THE CITY FROM ALL CLAIMS FOR INJURY, INCLUDING DEATH OR DAMAGE TO A PERSON OR PROPERTY OCCURRING ON THE DEVELOPER’S PREMISES.**

8. **Notices.** Any notice required or desired to be given from one Party to the other Party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such Party at the address hereinafter specified; or (iii) delivered to such Party by courier receipted delivery. Either Party may designate another address within the confines of the United States of America for notice, but until written notice of such change is actually received by the other Party, the last address of such Party designated for notice shall remain such Party's address for notice.

Address:

City of Garland:

Garland Power & Light
c/o GP&L General Manager
217 N. Fifth Street
Garland, TX 75040

Developer:

Digital Garland Ferris, L.P.
c/o Digital Realty Trust, L.P.
907 Security Row
Richardson, TX 75082
Attn: Design and Construction Group

Email copy to: jhubbard@digitalrealty.com

Digital Garland Ferris, L.P.
c/o Digital Realty Trust, L.P.
2323 Bryan Street, Suite 1800
Dallas, TX 75201
Attn: Legal Department

Email copy to: jbean@digitalrealty.com

9. **No Assignment.** Neither Party shall have the right to assign that Party's interest in this Agreement without the prior written consent of the other Party.
10. **Severability.** If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable. Provided, however, that if the illegality, invalidity or unenforceability of any term or terms renders the basic purposes of this Agreement illegal, invalid or unenforceable or otherwise materially and adversely affects the utility or financial parameters of this Agreement, then either City or Developer may, upon written notice to the other, terminate this Agreement and the Parties agree to enter into good faith negotiations to

replace this Agreement with an Agreement as similar to the terms and conditions of this Agreement as legally permissible.

11. **Waiver.** Either City or Developer shall have the right to waive its right to performance of the other Party's obligation under this Agreement, but such waiver shall be effective only if stated in writing and executed by the waiving Party. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.
12. **Governing Law and Venue.** This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Dallas County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Dallas County, Texas.
13. **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both Parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either Party.
14. **Binding Effect.** Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.
15. **Gender.** Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.
16. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all shall constitute but one and the same instrument.
17. **Force Majeure.** Parties agree that City shall not incur any liability to Developer if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its control and without negligence of City. Causes beyond City's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes. The City shall notify the Developer in writing within ten (10) business days of the date on which the City becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. In the event of a declared emergency by competent governmental authorities, the City by notice to the Developer, may suspend all or a portion of the Agreement.
18. **Entire Agreement.** It is understood and agreed that this Agreement contains the entire Agreement between the Parties regarding the subject matters set forth herein. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally and any written modification of this Agreement shall be effective only if executed by both Parties. The recitals contained

at the beginning of this Agreement are incorporated into the term and provisions of this Agreement.

- 19. Relationship of Parties.** The Parties acknowledge and agree that the services performed by the City, its employees, agents or sub-contractors shall be as an independent contractor and that nothing contained in this Agreement shall be deemed or construed by the Parties hereto to create the relationship of principal and agent or of partnership or of joint venture between the Parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the Parties other than the relationship of independent Parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.
- 20. Survival.** Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.

EXECUTED on the dates indicated below, but deemed to be effective as agreed to by both Parties on _____ (the "Effective Date").

CITY OF GARLAND:

By: _____

Name: _____

Title: _____

Date: _____

Digital Garland Ferris, L.P.,
a Delaware limited partnership

By; Digital Texas GP, LLC,
its general partner

By; Digital Realty Trust, L.P.,
its manager

By: Digital Realty Trust, Inc.,
its general partner

By: _____

Name: _____

Title: _____

Date: _____

GUARANTY

This GUARANTY (the "Guaranty") is made as of _____, 2022 by Digital Realty Trust, L.P., a Maryland Limited Partnership ("Guarantor"), for the benefit of City of Garland, Texas (the "Beneficiary"). Guarantor and the Beneficiary are sometimes collectively referred to herein as the "Parties."

RECITALS

A. A subsidiary of Guarantor, Digital Garland Ferris, L.P., a Delaware limited partnership (the "Company"), and the Beneficiary are entering into an Agreement for Construction of Equipment and Facilities for the Provision of Temporary Electric Distribution Service, dated ____ day of _____, 2022 (the "Agreement"), pursuant to which the Beneficiary is the "City" thereunder.

B. The Beneficiary's willingness to enter into the Agreement is conditioned upon the issuance by Guarantor of this Guaranty.

C. Guarantor is willing to issue this Guaranty on the terms and conditions set forth herein.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

SECTION 1. Definitions.

1.1 Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Agreement.

1.2 As used in this Guaranty, the following terms shall have the following meanings:

"Business Day" means a day of the year on which banks are not required or authorized by law to close in the State of Texas.

"Guaranteed Obligations" means any and all of the obligations of the Company under the Agreement subject to the limitations set forth in the Agreement.

1.3 In this Guaranty:

(a) unless otherwise specified, references to Sections and clauses are references to Sections and clauses of this Guaranty; and

(b) except as otherwise specifically provided herein, including without limitation in this Section 1.3(b), references to any document or agreement, including this Guaranty, shall be deemed to include references to such document or agreement as amended, supplemented or replaced and in effect from time to time in accordance with its terms and subject to compliance with the requirements set forth therein;

1.4 The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Guaranty.

SECTION 2. Guaranty. Subject to the provisions hereof, Guarantor hereby unconditionally and irrevocably guarantees, to the Beneficiary, as primary obligor and not as surety, the full and prompt payment when due of the Guaranteed Obligations. To the extent that Company shall fail to pay any Guaranteed Obligations, Guarantor shall promptly pay to Beneficiary the amount due.

SECTION 3. Payment Demand. If Company fails or refuses to pay any Guaranteed Obligations when due and owing, Beneficiary shall notify Company in writing of the manner in which Company has failed to pay and demand that payment be made by Company. If Company's failure or refusal to pay continues for a period of five (5) business days after the date of Beneficiary's notice to Company, and Beneficiary has elected to exercise its rights under this Guaranty, Beneficiary shall make a demand upon Guarantor (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Company has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay such Guaranteed Obligations and such payment shall be made to Beneficiary by Guarantor within thirty (30) days after receipt of such Payment Demand. A single written Payment Demand shall be effective as to any specific default under the Agreement that is susceptible of being cured by the payment of money during the continuance of such default and additional written demands concerning such default shall not be required until such default is cured.

SECTION 4. Nature of Guaranty. This Guaranty constitutes a guaranty of payment when due and not of collection, and Guarantor specifically agrees that it shall not be necessary or required that the Beneficiary exercise any right, assert any claim or demand or enforce any remedy whatsoever against Company, either before or as a condition to the obligations of Guarantor hereunder; *provided* that Guarantor shall have the benefit of and the right to assert any defenses against the claims of the Beneficiary which are available to Company, and which would have also been available to Guarantor if Guarantor had been in the same contractual position as Company under the Agreement, other than (i) defenses arising from the insolvency, reorganization or bankruptcy of Company, (ii) defenses expressly waived in this Guaranty, and (iii) defenses previously asserted by Company against such claims to the extent such defenses have been finally (non-appealable) resolved in the Beneficiary's favor by a court of last resort or by arbitration conducted pursuant to the Agreement. For the avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Company to the Beneficiary under the terms and conditions of the Agreement.

SECTION 5. Unconditional Obligations. An action may be brought and prosecuted against Guarantor to enforce this Guaranty, irrespective of whether any action is brought against Company, or whether Company is joined in any such action or actions. The liability of Guarantor under this Guaranty shall be continuing, irrevocable, absolute and unconditional irrespective of, and Guarantor hereby irrevocably waives, any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than satisfaction in full of the Guaranteed Obligations. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Beneficiary upon the insolvency, bankruptcy or reorganization

of Company or otherwise, all as though such payment had not been made and, in such event, Guarantor will pay to the Beneficiary upon demand an amount equal to any such payment that has been rescinded or returned.

SECTION 6. Waiver. Except as set forth in this Guaranty, Guarantor hereby unconditionally waives (a) presentment, demand of payment, protest for nonpayment or dishonor, diligence, notice of acceptance and any other notice with respect to any of the Guaranteed Obligations by the Beneficiary, and (b) any requirement that the Beneficiary enforce or exhaust any right or remedy or take any action against Company.

SECTION 7. Subrogation; Setoffs and Counterclaims. Notwithstanding anything in this Guaranty to the contrary, and in addition to any other rights of the Beneficiary to which Guarantor or any of its designees may be subrogated, to the extent Guarantor shall make or cause to be made any payment pursuant to this Guaranty, Guarantor shall be subrogated to all rights the Beneficiary may have under the Agreement in respect thereof; provided, however, that Guarantor shall be entitled to enforce such right of subrogation only after all rights of the Beneficiary with respect to the Guaranteed Obligations shall have been fully satisfied. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, set-offs, counterclaims and other defenses to which Company or any other affiliate of Guarantor is or may be entitled to arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Company.

SECTION 8. Representations and Warranties. Guarantor hereby represents and warrants, as follows:

(a) Guarantor is a corporation organized and validly existing under the laws of Maryland.

(b) The execution, delivery and performance by Guarantor of this Guaranty are within Guarantor's corporate powers, have been duly authorized by all necessary corporate action, and do not contravene (i) Guarantor's organizational documents or (ii) applicable law.

(c) No authorization or approval by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for the due execution, delivery and performance by Guarantor of this Guaranty.

(d) There is no action, suit or proceeding now pending or, to Guarantor's knowledge, threatened against Guarantor before any court, administrative body or arbitral tribunal that could be reasonably likely to have a material adverse effect on Guarantor's ability to perform its obligations under this Guaranty.

SECTION 9. Governing Law. This Guaranty shall be governed by and interpreted in all respects in accordance with the laws of the State of Texas.

SECTION 10. Choice of Venue. The provisions and obligations of this Guaranty are performable in Dallas County, Texas such that exclusive venue for any action arising out of this Contract shall be in Dallas County, Texas. The Parties hereto accept, for themselves and in respect of their property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts. Each Party hereto hereby irrevocably consents to the service of process out of any of the aforementioned courts in any manner permitted by law. Each Party hereto hereby waives any

right to stay or dismiss any action or proceeding under or in connection with this Guaranty brought before the foregoing courts on the basis of forum non-conveniens.

SECTION 11. Dispute Resolution. In the event a dispute, controversy, or claim arises between Guarantor and Beneficiary relating to this Guaranty, the aggrieved party shall promptly provide notice of the dispute to the other party after such dispute arises. A meeting shall be held within fifteen (15) days between the Parties, attended by representatives of the Parties with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

SECTION 12. Waiver of Jury Trial. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY RIGHT IT MAY NOW OR HEREAFTER HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER, OR IN RESPECT OF THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE BENEFICIARY OR GUARANTOR.

SECTION 13. Amendments, Etc. No amendment or waiver of any provision of this Guaranty, and no consent to any departure by Guarantor or the Beneficiary herefrom, shall in any event be effective unless the same shall be in writing and signed by the Beneficiary and Guarantor and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 14. Addresses for Notices. All notices and other communications provided for hereunder shall be in writing (including telecopier) and mailed or delivered via overnight carrier to each of the Parties as follows:

if to Guarantor:

Digital Realty Trust, L.P.
2323 Bryan Street, Suite 1800
Dallas, TX 75201
Attention: Lease Administration
Facsimile No. (214) 231-1345
E-mail: leaseadministration@digitalrealty.com

with a copy to:

Digital Realty Trust, L.P.
2323 Bryan Street, Suite 1800
Dallas, TX 75201
Attention: Commercial Legal Department

if to the Beneficiary to:

City of Garland
c/o Garland Power & Light
Attention: GP&L Chief Operating Officer
217 N. Fifth Street
Garland, TX 75040

Telephone: (972) 205-2217
Fax: (972) 205-2636

All such notices and other communications shall be effective (a) if mailed, five (5) Business Days after deposit in the mails, postage prepaid, certified or registered, return receipt requested, (b) if delivered by hand or by courier, when signed for by or on behalf of the relevant Party, or (c) if sent by overnight delivery service (e.g., Federal Express, Emery, DHL or AirBorne), on the next Business Day.

SECTION 15. No Waiver Remedies. No failure on the part of the Beneficiary or Guarantor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 16. Severability. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 17. Counterparts. This Guaranty may be executed in one or more counterparts. Delivery of an executed signature page of this Guaranty by facsimile transmission shall be effective as delivery of a manually executed counterpart thereof.

SECTION 18. Entire Agreement. This Guaranty and any agreement, document or instrument referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect of the subject matter hereof.

SECTION 19. Term. Notwithstanding anything to the contrary in the Agreement, this Guaranty shall remain in full force and effect until (a) payment in full of the Guaranteed Obligations or (b) termination of the Agreement by mutual agreement and consent of both Company and the City.

SECTION 20. Successors and Assigns. This Guaranty shall be binding upon the Parties and their successors and assigns and inure to the benefit of and be enforceable by the Parties and their successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Guarantor and the Beneficiary have caused this Guaranty to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

GUARANTOR:

DIGITAL REALTY TRUST, L.P.,
a Maryland limited partnership

By: Digital Realty Trust, Inc.,
its general partner

By: _____
Name:
Title:

Accepted and agreed to as of the date first above written:

BENEFICIARY:

By: _____
Name:
Title:



GARLAND
CITY COUNCIL ITEM SUMMARY SHEET

City Council Work Session Agenda

4. a.

Meeting Date: October 17, 2022

Item Title: Transportation, Infrastructure and Mobility Committee Report

Summary of Request/Problem

Council Member Dylan Hedrick, Chair of the Transportation, Infrastructure and Mobility Committee, will provide a committee report on the following items:

- Flood Prone Properties Buyout Program Ordinance and Operating Guidelines

Recommendation/Action Requested and Justification

Council discussion.



GARLAND POLICY REPORT

City Council Work Session Agenda

4. b.

Meeting Date: October 17, 2022

Item Title: Consider GCACI Hotel Occupancy Tax Revenue Budget, Sub-grant Recipients and Hotel Occupancy Tax Program Management Agreement

Submitted By: Amy Rosenthal, Cultural Arts Director

Strategic Focus Areas: Commercially Thriving Downtown

ISSUE

Staff is seeking Council approval of the 2022-2023 budget of the Garland Cultural Arts Commission, Inc. (GCACI), sub-grant recipients and authorization of the City Manager's execution of the "Hotel Occupancy Tax Program Management Agreement" between the City of Garland and the GCACI.

OPTIONS

Council may follow staff's recommendation to approve approve the 2022-2023 GCACI budget, the list of sub-grant recipients, and authorize the City's execution of the agreement; Return the item to staff for further review and discussion; Do not approve the 2022-2023 GCACI budget, list of sub-grant recipients, nor authorize execution of the agreement, thereby canceling the \$187,293.00 in revenues, which support cultural arts in Garland.

RECOMMENDATION

This item is scheduled for formal consideration at the October 18, 2022 Regular Meeting.

BACKGROUND

In February 1986, the Garland City Council created the nine-member Garland Cultural Arts Commission to serve as a liaison between the City and all community based arts related programs, and historical organizations. The Commission's primary goal is to increase the visibility of the arts and promote an active and diverse arts culture in Garland.

In 1987, the Commission created the private non-profit Garland Cultural Arts Commission Inc. (GCACI) to pursue various sources of revenue, contributions and support in order to grow a cultural arts grant program to provide funding assistance to meritorious arts and historical groups.

The GCACI administers this grant program, funded primarily through revenues received from

Hotel Occupancy Tax funds. Since the program's inception in 1987, grant funds have contributed over \$2 million towards the advancement of local cultural arts organizations. GCACI's extensive promotional efforts have been the foundation for building Garland's cultural tourism, which attracts thousands of arts patrons from throughout North Texas to Garland's arts facilities and activities.

The Cultural Arts staff reviews the applicants to ensure all organizations presented to the GCACI have met requirements for the granting process. The GCACI conducts interviews with each organization requesting funding, and then moves through the process with staff's guidance using a scoring rubric for applicants, followed by open panel discussion, and award granting.

CONSIDERATION

The attached "Hotel Occupancy Tax Program Management Agreement" in the amount of \$187,293 provides the GCACI with fifteen percent of the hotel occupancy tax net revenue from Quarter 3 of 2020 thru Quarter 2 of 2021. As a provision of this agreement, the GCACI annually adopts a budget which details the proposed expenditures of the revenues provided by this program. Attachments include the GCACI budget and list of GCACI sub-grant recipients approved October 4, 2022 by the GCACI for this 2022-2023 fiscal year.
