

**City of Lubbock, Texas**  
**Regular City Council Meeting**  
**October 26, 2021**

Daniel M. Pope, Mayor  
Steve Massengale, Mayor Pro Tem, District 4  
Juan A. Chadis, Councilman, District 1  
Shelia Patterson Harris, Councilwoman, District 2  
Jeff Griffith, Councilman, District 3  
Randy Christian, Councilman, District 5  
Latrell Joy, Councilwoman, District 6



W. Jarrett Atkinson, City Manager  
Chad Weaver, City Attorney  
Rebecca Garza, City Secretary

<http://www.mylubbock.us>

City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas

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City of Lubbock City Council Meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary's Office at (806)775-2061 or write to Post Office Box 2000, Lubbock, Texas 79457 at least 48 hours in advance of the meeting.

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*Note: On occasion the City Council may consider agenda items out of order.*

**1:00 p.m. - City Council convenes in City Council Chambers in Work Session regarding items for presentation and discussion on such issues that may require in-depth consideration by the City Council. No action will be taken by the City Council in Work Session.**

1. **Citizen Comments - According to Lubbock City Council Rules, any citizen wishing to appear in person before the meeting of the City Council, regarding Item 2.1 on the Work Session Agenda, shall complete the sign-up form provided at the meeting, no later than 1:00 p.m. on October 26, 2021. Citizen Comments is an opportunity for citizens to make comments and express a position on agenda items. Any comment received that is in the nature of asking a question will be referred to an appropriate member of the City staff for a response.**
  
2. Hear and discuss presentations regarding the following and provide guidance to staff as appropriate.
  
2. 1. COVID Grant Summary - Public Health Services, Community Development, Airport, Citibus

**At the completion of the Work Session, City Council recesses into Executive Session.**

3. **Executive Session**

3. 1. Hold an executive session in accordance with Texas Government Code, Section 551.071, with legal counsel for advice about pending or contemplated litigation or settlement agreement and on matters in which the duty of the attorney under the Texas Disciplinary Rules of Professional Conduct conflicts with Chapter 551.
  
3. 1. 1. Texas Department of Transportation (TxDOT) Turnover Program

3. 1. 2. Waivers for Utility Infrastructure Requirements (when platting land)
3. 1. 3. Connection Requirements to Water and Wastewater Infrastructure
3. 1. 4. Lot 305-A, Midway Park Addition
3. 1. 5. Lease Agreement No. GS-07P-LTX00024 between the City of Lubbock and the United States of America
3. 1. 6. *Planned Parenthood of Greater Texas Surgical Health Services, et al v. City of Lubbock, Texas*, Case No.5:21-cv-114 in the United States District Court for the Northern District of Texas, Lubbock Division
3. 2. Hold an executive session in accordance with the Texas Government Code, Section 551.072, to deliberate the purchase, exchange, lease, or value of real property.
  3. 2. 1. Texas Department of Transportation (TxDOT) Turnover Program
  3. 2. 2. Lot 305-A, Midway Park Addition
  3. 2. 3. Lease Agreement No. GS-07P-LTX00024 between the City of Lubbock and the United States of America
3. 3. Hold an executive session in accordance with Texas Government Code Section 551.074, to discuss personnel matters, regarding the duties, responsibilities, and/or appointments to the Lubbock Central Appraisal District Board of Directors.

### **Adjourn from Executive Session**

**4:30 p.m. - City Council reconvenes in Open Session in City Council Chambers.**

### **4. Ceremonial Items**

4. 1. Invocation
4. 2. Pledges of Allegiance
4. 3. Proclamations and Presentations
  4. 3. 1. Presentation of a Special Recognition in support of Chiropractic Health Awareness Month



## Call to Order

5. **Citizen Comments - According to Lubbock City Council Rules, any citizen wishing to appear in-person before a regular meeting of the City Council, regarding any matter posted on the City Council Agenda below, shall complete the sign-up form provided at the meeting, no later than 5:00 p.m. on October 26, 2021. Citizen Comments is an opportunity for citizens to make comments and express a position on agenda items. Any comment received that is in the nature of asking a question will be referred to an appropriate member of the City staff for a response.**
  
6. **Minutes**
  6. 1. August 17, 2021 Special City Council Meeting - Electric Utility Board  
September 28, 2021 Regular City Council Meeting  
September 29, 2021 Special City Council Meeting - Parks Master Plan Open House  
September 30, 2021 Special City Council Meeting - TML Region 3 Regional Meeting
  
7. **Consent Agenda - Items considered to be routine are enacted by one motion without separate discussion. If the City Council desires to discuss an item, the item is removed from the Consent Agenda and considered separately.**
  7. 1. **Resolution - Finance:** Consider a resolution expressing intent to finance expenditures to be incurred for various capital projects and equipment, which were approved by the City Council in the FY 2021-22 Budget and Capital Program, and to reimburse the City from the proceeds of obligations that will be issued after the expenditure of funds, to pay costs of such projects and equipment.
  
  7. 2. **Budget Amendment Ordinance 2nd Reading - Finance:** Consider Budget Ordinance No. 2021-O0148, Amendment 2, amending the FY 2021-22 Budget for municipal purposes respecting the Grant Fund to accept and appropriate funding from the FY 2021 Federal Transit Administration Section 5310 Coronavirus Response and Relief Supplemental Appropriation Act Grant and Airport Capital Fund, to appropriate additional funding for Capital Improvement Project 92717, replace Aircraft Rescue Fire Fighting (ARFF) Vehicle; providing for filing; and providing for a savings clause.
    7. 2. 1. **Resolution - Public Transit Services:** Consider a resolution authorizing the acts of the City Financial Officer, in ratifying FY 2021 Federal Transit Administration Section 5310 Coronavirus Response and Relief Supplemental Appropriations Act Grant, Project ID TX-2021-106-00, for the mobility of elderly individuals and individuals with disabilities.
  
  7. 3. **Ordinance 2nd Reading - Right-of-Way:** Consider Ordinance No. 2021-O0149, abandoning and closing an easement, located in Lot 22A, Tanglewood Addition, Lubbock County, Texas, at 4601 23rd Street.
  
  7. 4. **Ordinance 1st Reading - Right-of-Way:** Consider an ordinance abandoning and closing a 20-foot alley right-of-way, located in Block 7, Original Town of Lubbock, Lubbock County Texas, at 5th Street and Avenue J.

7. 5. **Resolution - Right-of-Way:** Consider a resolution authorizing the Mayor to execute a Parking Lease Agreement between the City of Lubbock and Cast Iron Grill, for the use of a City-owned parking lot at 1801 Crickets Avenue.
7. 6. **Resolution - Planning:** Consider a resolution authorizing the Mayor to execute a Dedicatory Deed, associated Easements, and all related documents, in connection with property described as Tract A, Milwaukee EST Addition, Lubbock County, Texas, located south of 104th Street and west of Milwaukee Avenue.
7. 7. **Resolution - Engineering:** Consider a resolution ratifying the actions of the Mayor, in executing Contract 16224, an agreement and related documents, with the Texas Water Development Board (TWBD), for a grant utilizing TWBD Category 1 Flood Infrastructure Funds (FIF) associated with the project Flood Protection Planning of Watersheds.
7. 8. **Resolution - Engineering:** Consider a resolution authorizing the Mayor to execute Construction Service Contract 15944, with Garney Companies, Inc., for improvements at Pump Station No. 4, including pumps, motors, and starters.
7. 9. **Resolution - Public Works:** Consider a resolution authorizing the Mayor to execute Change Order No. 1 to Contract 15875, with MH Civil Constructors, Inc., for the construction of the brick paving project at the intersection of 13th Street and Texas Avenue.
7. 10. **Resolution - Public Works:** Consider a resolution authorizing the Mayor to execute an Advanced Funding Agreement, Contract 16170, between the City of Lubbock and the State of Texas, acting through the Texas Department of Transportation (TxDOT), for the Pedestrian and Bicyclist Connectivity Project inside Loop 289, at various locations.
7. 11. **Resolution - Water Utilities:** Consider a resolution authorizing the Mayor to execute the Third Amendment to the Raw Water Lease, between the City of Lubbock and the Lake Alan Henry Water District.
7. 12. **Resolution - Public Works Streets:** Consider a resolution authorizing the Mayor to execute Amendment No. 1 to Professional Services Agreement, Contract 15344, with Infrastructure Management Services, for an extension of time.
7. 13. **Resolutions - Public Works Streets:** Consider two resolutions authorizing the Mayor to execute Contract 16197, with MUDco Ready Mix, LLC, and Contract 16093, with West Infrastructure Construction, LLC, to establish the annual pricing of concrete products.
7. 14. **Ordinance 1st Reading - Traffic Management:** Consider an ordinance amending Section 20.05.103 of the Code of Ordinances of the City of Lubbock, with regard to school zones.
7. 15. **Resolution - Business Development:** Consider a resolution approving the Upland Crossing Public Improvement District (PID) Board Bylaws, as reviewed and recommended by the Upland Crossing PID Advisory Board.

7. 16. **Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute Contract 16151, and all related documents, between the City of Lubbock Community Development Department and the U. S. Department of Housing and Urban Development, for the Community Development Block Grant.
7. 17. **Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute Contract 16152, and all related documents, between the City of Lubbock Community Development Department and the U.S. Department of Housing and Urban Development, for the Emergency Solutions Grant.
7. 18. **Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute Contract 16153, and all related documents, between the City of Lubbock Community Development Department and the U. S. Department of Housing and Urban Development, for the Community Housing Development Organization.
7. 19. **Resolution - Aviation:** Consider a resolution authorizing the Mayor to execute Amendment No. 6 to Contract 15200, with RS&H, Inc., for the Security Systems Upgrade at Lubbock Preston Smith International Airport.
7. 20. **Resolution - Public Transit Services:** Consider a resolution authorizing the Mayor to execute Contract 15860, with Southern Tire Mart, LLC, for the supply of tires for Citibus paratransit vans and staff support vehicles.
7. 21. **Resolution - Health Benefits:** Consider a resolution authorizing the Mayor to execute the renewal of Contract 14820, by and between the City of Lubbock and Dearborn National Life Insurance, to enhance services by adding the SelerixBenSelect benefits administration system.
7. 22. **Resolution - Facilities Management:** Consider a resolution authorizing the Mayor to execute Contract 16057 with BFD Interiors, dba Built for Dreams, for purchase and installation of furniture for the newly constructed Lubbock Power and Light GIS addition.
7. 23. **Resolution - Fleet Services:** Consider a resolution authorizing the Mayor to execute Purchase Order 31062145, with C&C Manufacturing, LLC, for the purchase of a new 2022 Aljon Landfill Compactor, for Solid Waste Landfill.
7. 24. **Resolution - Parks and Recreation:** Consider a resolution authorizing the Mayor to execute Amendment No. 5 to the Lease Agreement, with Joyland Amusement Park, to extend the term until December 31, 2021.
7. 25. **Resolution - Civic Center:** Consider a resolution approving the recommendation from the Cultural Arts Grant Review Committee and the Civic Lubbock, Inc. Board of Directors, for the 2021 Live Music Performance Grant Program using Hotel Occupancy Tax funds collected at the end of FY 2019-20.
7. 26. **Resolution - Lubbock Power & Light:** Consider a resolution ratifying the Second Amendment to the Master Sales Agreement, by and between the City of Lubbock acting by and through its Electric Utility Board and City Council, and Itron, Inc., regarding the installation, maintenance, and support services relating to automatic meters and metering.

8. **Regular Agenda**
8. 1. **Board Appointments - City Secretary:** Consider a resolution authorizing the City Council to cast votes for candidates to the Lubbock Central Appraisal District Board of Directors.
8. 2. **Board Appointments - City Secretary:** Consider appointments to the Airport Board.
8. 3. **Public Hearing - Business Development:** Hold a public hearing on the proposed 2022 assessment rate for the Northwest Passage Public Improvement District (PID), and consider an ordinance reviewing classifications for the methods of assessing special benefits for the services and improvements of property in the Northwest Passage PID; approving, adopting, and filing with the City Secretary the assessment roll; levying 2022 assessments for the cost of certain services and improvements to be provided in the district during FY 2022-23; fixing charges and liens against the property in the district and against the owners thereof; and providing for the collection of the assessment.
8. 4. **Public Hearing - Business Development:** Hold a public hearing for the City Council to consider the creation of a Public Improvement District for Willow Bend Villas, which covers a portion of an area in the City of Lubbock, Lubbock County, Texas, generally bounded by 19th Street on the north, Kelsey Avenue on the east, and railroad tracks on the south and west.
8. 5. **Resolution - Business Development:** Consider a resolution making findings and authorizing establishment of the Willow Bend Villas Public Improvement District (PID), which covers a portion of an area in the City of Lubbock, Lubbock County, Texas, generally bounded by 19th Street on the north, Kelsey Avenue on the east, and railroad tracks on the south and west.
8. 6. **Public Hearing - Business Development:** Hold a public hearing regarding the proposed creation of the City of Lubbock Property Assessed Clean Energy Program (Lubbock City PACE).
8. 7. **Resolution - Business Development:** Consider a resolution to establish the City of Lubbock Property Assessed Clean Energy Program (Lubbock City PACE).
8. 8. **Resolution - Business Development:** Consider a resolution authorizing the Mayor to execute Contract 16202, with Texas Property Assessed Clean Energy Authority (Texas PACE Authority), for administrative services for the City of Lubbock Property Assessed Clean Energy Program (Lubbock City PACE).



Regular City Council Meeting

10/26/2021:

6. 1.

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### **Information**

#### **Agenda Item**

August 17, 2021 Special City Council Meeting - Electric Utility Board

September 28, 2021 Regular City Council Meeting

September 29, 2021 Special City Council Meeting - Parks Master Plan Open House

September 30, 2021 Special City Council Meeting - TML Region 3 Regional Meeting

#### **Item Summary**

August 17, 2021 Special City Council Meeting - Electric Utility Board

September 28, 2021 Regular City Council Meeting

September 29, 2021 Special City Council Meeting - Parks Master Plan Open House

September 30, 2021 Special City Council Meeting - TML Region 3 Regional Meeting

#### **Fiscal Impact**

None

#### **Staff/Board Recommending**

Rebecca Garza, City Secretary

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### **Attachments**

8.17.2021 S EUB

9.29.2021 S Parks Open House

9.28.2021

9.30.2021 S TML

**CITY OF LUBBOCK**  
**SPECIAL CITY COUNCIL MEETING**  
**August 17, 2021**  
**11:00 A.M.**

The City Council of the City of Lubbock, Texas met in special session on the 17th of August, 2021, in City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas, and via video conference and teleconference at 11:00 a.m.

**11:05 A.M. CITY COUNCIL CONVENED**

**City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas and via video conference and teleconference**

Present: Mayor Daniel M. Pope; Mayor Pro Tem Steve Massengale; Council Member Randy Christian; Council Member Jeff Griffith; Council Member Latrelle Joy; Council Member Shelia Patterson Harris; City Manager W. Jarrett Atkinson; City Secretary Rebecca Garza; City Attorney Chad Weaver

Council Member Shelia Patterson Harris attended via video conference.

Absent Council Member Juan A. Chadis

This was a meeting of the Electric Utility Board. A quorum of Council Members attended and participated in discussions during the meeting in which the board considered the following topics as shown below.

*Note: The Electric Utility Board addressed agenda items in the following order:*

- *Executive Session*
- *No quorum, of City Council, was present for all other items.*

**1. PUBLIC COMMENT**

- 1. 1.** This period, of up to thirty minutes, is dedicated to public comment. Each member of the public will have three minutes to speak. Any member of the public that requires the assistance of a translator will have six minutes to speak. Comments must be limited to only those items posted on the Electric Utility Board agenda. Any member of the public wishing to speak shall sign up on the public comment sheet on the day of the Electric Utility Board Meeting. The Electric Utility Board shall follow the order of persons wishing to speak as listed on the sign-up sheet. If everyone who signed up to speak has been given an opportunity to speak and the thirty minutes designated for public comment has not been exhausted, the Electric Utility Board may, at its discretion, open the floor to anyone else wishing to address the Electric Utility Board, subject to all the same procedures and guidelines.

**\*This item was deleted.**

1. 2. Alternatively, any member of the public wishing to address the Electric Utility Board, regarding any matter posted on the Electric Utility Board Agenda, may submit a public comment by email at [lplcitizencomments@mylubbock.us](mailto:lplcitizencomments@mylubbock.us) beginning at the time this agenda is publicly posted and no later than 9:00 a.m. on August 17, 2021. Each comment will be read aloud for a period of time not to exceed three minutes, in accordance with the practices and procedures of the Electric Utility Board.

**\*This item was deleted.**

## 2. EXECUTIVE SESSION

**This meeting was called into a closed session at 11:06 a.m. under the provisions of Section 551, Texas Government Code. The meeting was called back into a public session at 1:17 p.m. and adjourned.**

2. 1. Hold an executive session in accordance with V.T.C.A. Government Code § 551.086, to discuss and deliberate, on the following competitive matters of Lubbock Power & Light, reasonably related to the following categories:
  2. 1. 1. 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.
    2. 1. 1. 1. Discuss and deliberate generation unit matters.
    2. 1. 2. Bidding and pricing information for purchased power, generation and fuel, and Electric Reliability Council of Texas bids, prices, offers, and related services and strategies.
      2. 1. 2. 1. Discuss and deliberate issues regarding Electric Reliability Council of Texas prices and related services and strategies.
      2. 1. 2. 2. Resolution No. EUB 2021-R0054 regarding purchased power bidding and pricing.

Motion by Edwin Schulz, seconded by Kevin McMahon, to approve Resolution No. EUB 2021-R0054.

**Vote:** 8-0 Motion carried by the Board.

Other: Greg Taylor (ABSENT)
    2. 1. 3. Effective fuel and purchased power agreements and fuel transportation arrangements and contracts.
      2. 1. 3. 1. Discuss and deliberate purchased power matters.
    2. 1. 4. Risk management information, contracts, and strategies, including fuel hedging and storage.
      2. 1. 4. 1. Discuss and deliberate risk management strategies.

2. 1. 5. 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).
2. 1. 5. 1. Discuss and deliberate plans, studies, proposals, and analyses for system improvements, additions, or sales.
2. 1. 6. Customer billing, contract, and usage information, electric power pricing information, system load characteristics, and electric power marketing analyses and strategies.
2. 2. Hold an executive session in accordance with V.T.C.A. Government Code § 551.071, seeking the advice of its legal counsel about pending or contemplated litigation or settlement offers and hold a consultation with the attorney on matters in which the duty of the attorney to the Electric Utility Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Texas Government Code:
  2. 2. 1. Legal advice and counsel regarding the Application of the City of Lubbock, acting by and through Lubbock Power & Light for authority to establish initial wholesale transmission rates and tariffs before the Public Utility Commission of Texas and the State Office of Administrative Hearings, PUC Docket No. 51100, SOAH Docket 473-21-0043, and associated Tariff Filing No. 52011, proceeding before the Public Utility Commission of Texas.
  2. 2. 2. Legal issues regarding contract(s) herein listed on the agenda.
  2. 2. 3. Legal advice and counsel regarding matters identified in Section 2.1-2.1.6 of this Agenda.
  2. 2. 4. Legal advice and counsel regarding statutory changes.
  2. 2. 5. *Schumacher vs. City of Lubbock*, Cause No. 2020-541,386, proceeding in the 72nd District Court of Lubbock County, Texas.
  2. 2. 6. Application of the City of Lubbock, acting by and through Lubbock Power & Light, for Interim Update of Wholesale Transmission Rates, PUC Docket Number 52390, proceeding before the Public Utility Commission of Texas.
  2. 2. 7. Application of the Electric Reliability Council of Texas, Inc. for a Debt Obligation Order to Finance Uplift Balances under PURA Chapter 39, Subchapter M, and for a Good Cause Exception, PUC Docket No. 52321, proceeding before the Public Utility Commission of Texas.
  2. 2. 8. Application of the Electric Reliability Council of Texas, Inc., for a Debt Obligation Order to Finance Uplift Balances Under PURA Chapter 39, Subchapter N, and for a Good Cause Exception, PUC Docket No. 52322, proceeding before the Public Utility Commission of Texas.



2. 2. 9. Proceeding for Eligible Entities to File an Opt Out Pursuant to PURA § 39.653(d) and for Load-Serving Entities to File Documentation of Exposure to Costs Pursuant to the Debt Obligation Order in Docket No. 52322, PUC Docket No. 52364, proceeding before the Public Utility Commission of Texas.
2. 2. 10. Legal issues regarding customer choice and Texas Utilities Code, Chapter 40.
2. 2. 11. Claims related to alleged property damage on or about February 13-22, 2021.
2. 3. Hold an executive session in accordance with V.T.C.A. Government Code § 551.074 to deliberate the appointment, employment, evaluation, reassignment, and duties of a public officer or employee (Director of Electric Utilities, General Counsel, Chief Financial Officer, Director of Customer Service).
2. 4. Hold an executive session in accordance with V.T.C.A. Government Code § 551.074 to deliberate the appointment of a public officer or employee (Electric Utility Board).

*12:00 p.m. – Approximately - Following completion of the Executive Session, the Electric Utility Board will reconvene in open session to discuss the items listed below. It is anticipated that the open session will begin at 12:00 p.m. However, this is an approximation and the Board may begin the open session earlier or later depending on when the Executive Session is complete.*

### 3. **REGULAR SESSION**

3. 1. The Board will approve the minutes from the Regular Electric Utility Board Meeting of July 20, 2021.

**\*This item was deleted.**

3. 2. Presentation and discussion of the update/report by the Director of Electric Utilities, or his designee, regarding customer service, business center practices, procedures and policies, customer concerns and complaints, billing system, forms, and procedures, status of transmission and distribution projects, mutual aid, weather events, outage, and restoration efforts, staffing levels, regulatory matters, and operational performance metrics.

**\*This item was deleted.**

3. 3. Presentation and discussion of financial and capital statements, financing options, audits, and financial policies of Lubbock Power & Light relating to debt issuance issues, reserve account funding, cost allocation, revenue and expense projections, power cost recovery factor, customer metering, tariff and billing, service and administrative issues.

**\*This item was deleted.**

3. 4. Presentation and discussion of a preliminary plan of finance and rating matters related to the upcoming sale of Electric Light & Power System Revenue Bonds, Series 2021, the related refunding of interim obligations, and action taken on same by the City Council of the City of Lubbock.

**\*This item was deleted.**

3. 5. Presentation and discussion regarding the extension of the Commitment Expiration Date of the Note Purchase Agreement for City of Lubbock, Texas, Electric Light and Power System Revenue Revolving Notes, the reduction of the Available Commitment under such Agreement, the amendment of the substitute index for floating rate notes, and other necessary and appropriate amendments approved by the City Council of the City of Lubbock.

**\*This item was deleted.**

3. 6. Presentation and discussion of the Lubbock Power & Light FY 2021-22 Operating Budget and Capital Program, any action taken by the City Council of the City of Lubbock, and any updates regarding same.

**\*This item was deleted.**

3. 7. Presentation and discussion by the Director of Electric Utilities, or his designee, regarding updates on the legislative and regulatory matters regarding ERCOT and/or the electric utility industry, and the status of any legislation, legislative hearings, rulemakings, and/or regulatory or administrative action regarding same.

**\*This item was deleted.**

3. 8. Presentation and discussion by the Director of Electric Utilities, or his designee, regarding updates on potential for providing customer choice to LP&L customers, the need for a provider of last resort, and other related matters regarding competition of retail electric service in Lubbock Power & Light's certificated retail service area.

**\*This item was deleted.**

3. 9. Discussion and the Board will take possible minuted action for date, time, and location of a possible Special Meeting in August, 2021, if needed.

**\*This item was deleted.**

#### 4. **CONSENT AGENDA**

4. 1. The Board will consider a resolution approving Lubbock Power & Light's form Interconnection Agreement, as revised and amended in the Interconnection Agreement attached to the Resolution, and repealing Lubbock Power & Light's form Interconnection Agreement for all interconnections entered into on or after August 17, 2021, previously adopted by Resolution EUB 2015-R0054, and as amended in EUB 2018-R0072, and any prior form interconnections for Lubbock Power & Light.

**\*This item was deleted.**

4. 2. The Board will consider a resolution delegating authority to the Director of Electric Utilities to enter into and execute Purchase and Sale agreements for the sale of renewable energy credits (“RECs”) when the Director of Electric Utilities determines that doing so is in the best interest of LP&L and its ratepayers.

**\*This item was deleted.**

4. 3. The Board will consider a resolution authorizing the Director of Electric Utilities, or his designee, to execute that certain Amendment to the Payment Services Agreement, by and between the City of Lubbock, acting by and through Lubbock Power & Light, and Western Union Financial Services, Inc. regarding certain services related to payment processing and remittance.

**\*This item was deleted.**

4. 4. The Board will consider a resolution authorizing the Purchasing Manager, or his designee, to execute a Purchase Order by and between the City of Lubbock, acting by and through Lubbock Power & Light, and Texas Electric Cooperatives, RFP# 7135-21-ELD, regarding LP&L 80’ Concrete Poles.

**\*This item was deleted.**

#### **1:17 P.M. CITY COUNCIL ADJOURNED**

There being no further business to come before Council, the meeting was adjourned.

The August 17, 2021 Special City Council Meeting minutes were approved by the City Council on the 26th day of October, 2021.

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DANIEL M. POPE, MAYOR

ATTEST:

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Rebecca Garza, City Secretary

**\*This item was discussed, by the Board, without a quorum of Council Members present.**

**CITY OF LUBBOCK**  
**SPECIAL CITY COUNCIL MEETING**  
**September 29, 2021**  
**5:30 P.M.**

**The City Council of the City of Lubbock, Texas met in special session on the 29th of September, 2021, at the Lubbock Memorial Civic Center, 1501 Mac Davis Lane, Banquet Hall, Lubbock, Texas.**

**6:00 P.M. CITY COUNCIL CONVENED**

**Lubbock Memorial Civic Center, 1501 Mac Davis Lane, Banquet Hall, Lubbock, Texas**

Present: Mayor Daniel M. Pope; Mayor Pro Tem Steve Massengale; Council Member Randy Christian; Council Member Jeff Griffith; Council Member Latrelle Joy; Council Member Shelia Patterson Harris; City Manager W. Jarrett Atkinson; City Attorney Chad Weaver; Deputy City Secretary Courtney Paz

Absent: Council Member Juan A. Chadis

*Note: City Council addressed agenda items in the following order:*

- 1.1-1.3

**1. Regular Agenda**

**1. 1. Introduction & Opening Remarks - Mayor Daniel M. Pope**

Mayor Daniel M. Pope and Colby VanGundy, director of parks and recreation, gave opening remarks, welcomed those in attendance, and introduced the consultant, Halff Associates, Inc.

**1. 2. Presentation of the Parks, Recreation, and Open Spaces Master Plan by Halff Associates, Inc.**

Aaron Tuley, with Halff Associates, Inc., gave a presentation on the Parks, Recreation, and Open Spaces Master Plan.

**1. 3. Question & Answer Session**

Parks and Recreation staff and representatives with Halff Associates, Inc. were available to answer questions from those in attendance.

**6:22 P.M. CITY COUNCIL ADJOURNED**

There being no further business to come before Council, the meeting was adjourned.

The September 29, 2021 Special City Council Meeting minutes were approved by the City Council on the 26th day of October, 2021.

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DANIEL M. POPE, MAYOR

ATTEST:

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Rebecca Garza, City Secretary

**CITY OF LUBBOCK**  
**REGULAR CITY COUNCIL MEETING**  
**September 28, 2021**  
**1:00 P. M.**

**The City Council of the City of Lubbock, Texas met in regular session on the 28th of September, 2021, in City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas at 1:00 p.m.**

**1:08 P.M. CITY COUNCIL CONVENED**

**City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas**

Present: Mayor Daniel M. Pope; Mayor Pro Tem Steve Massengale; Council Member Juan A. Chadis; Council Member Randy Christian; Council Member Jeff Griffith; Council Member Latrelle Joy; Council Member Shelia Patterson Harris; City Manager W. Jarrett Atkinson; City Secretary Rebecca Garza; City Attorney Chad Weaver

*Note: City Council addressed agenda items in the following order:*

- *Citizen Comments 1; 2.1-2.3; Executive Session; 4.1-4.4; Citizen Comments 5; 6.1; 7.1-7.15; 7.17-7.28; 7.16; 8.1-8.3; 8.7; 8.9-8.11; 8.13-8.16; 8.4-8.6; 8.8; 8.12; 8.17-8.20.*
- *Item No.'s 8.4, 8.8, and 8.12 failed.*

- 1. Citizen Comments - According to Lubbock City Council Rules, any citizen wishing to appear in person before the meeting of the City Council, regarding Items 2.2 and 2.3 on the Work Session Agenda, shall complete the sign-up form provided at the meeting, no later than 1:00 p.m. on September 28, 2021. Citizen Comments is an opportunity for citizens to make comments and express a position on agenda items. Any comment received that is in the nature of asking a question will be referred to an appropriate member of the City staff for a response.**

Sign ups:

- Aric Lampert; and Jarrod Miller, with First United Methodist Church, appeared before City Council to speak in favor of item 2.3 (Civic Park Discussion).

- 2. Hear and discuss presentations regarding the following and provide guidance to staff as appropriate.**

- 2. 1. Wellness Program**

Clifton Beck, director of human resources, gave a presentation on the proposed City of Lubbock employee wellness program and answered questions from City Council. Topics discussed included: the purpose of the wellness program, medical claims trends, prescription medication trends, program requirements, incentives, and next steps. Additionally, Mr. Beck introduced Gil

Hartsfield, president & CEO of IA Wellness; Meghan Gandy, director of wellness with IA Wellness; and Sharon Grant, also with IA Wellness, who were in attendance during the presentation.

Jarrett Atkinson, city manager, gave comments and answered questions from City Council.

## 2. 2. Presentation of Parks, Recreation, and Open Space Master Plan Update

Colby VanGundy, director of parks and recreation, introduced the item, gave comments, and answered questions from City Council. Fatima Wajahat, with Halff Associates, gave a presentation on Chapters one and two of the Parks, Recreation, and Open Space Master Plan and answered questions from City Council. Topics discussed included: Lubbock demographic profiles, the master plan approach, provisional goals, NRPA facility and equipment standards, an overview of existing parks and facilities, and the proposed parkland dedication ordinance. Aaron Tuley, with Halff Associates, gave a presentation on the Canyon Lakes Master Plan provisional program and answered questions from City Council. Meegan Honeyman, parks and recreation public relations coordinator, gave an update on the Parks Master Plan survey and answered questions from City Council.

Council Member Latrelle Joy, chair of the Unified Development Code (UDC) Sub-Committee, gave comments and answered questions from City Council.

## 2. 3. Civic Park Discussion

Brianna Gerardi, director of business development, introduced the item, gave a presentation, and answered questions from City Council. Ms. Gerardi presented on an update of the Downtown Master Plan as it relates to the establishment of a Downtown Civic Park and Civic Park project history.

Suzanne Blake, member of the Civic Park Advisory Committee; and Robert Taylor, chair of the Central Business District Tax Increment Financing Reinvestment Zone Board of Directors, gave a presentation and answered questions from City Council on the history of the Civic Park Advisory Committee; the recommendation, as approved by both bodies, of establishing the Downtown Civic Park at the 1301 Broadway location; funding options; and fundraising strategies. Mont McClendon, City of Lubbock's downtown master developer/McDougal Properties, gave a presentation on the projected economic impact of the Downtown Civic Park on the downtown area and answered questions from City Council.

Jarrett Atkinson, city manager; Bill Howerton, deputy city manager; and Colby VanGundy, director of parks and recreation, gave comments and answered questions from City Council.

**At the completion of the Work Session, City Council recessed into Executive Session.**

**3. Executive Session**

**The meeting recessed at 3:34 p.m. and reconvened in Executive Session under the provisions of Section 551, Texas Government Code. City Council reconvened in open session at 4:49 p.m., and the meeting was called to order at 5:04 p.m.**

3. 1. Hold an executive session in accordance with Texas Government Code, Section 551.071, with legal counsel for advice about pending or contemplated litigation or settlement agreement and on matters in which the duty of the attorney under the Texas Disciplinary Rules of Professional Conduct conflicts with Chapter 551.
  3. 1. 1. Discuss Chapter 551 of the Texas Government Code
  3. 1. 2. Texas Department of Transportation (TxDOT) Turnover Program
3. 2. Hold an executive session in accordance with the Texas Government Code, Section 551.072, to deliberate the purchase, exchange, lease, or value of real property.
  3. 2. 1. Texas Department of Transportation (TxDOT) Turnover Program
3. 3. Hold an executive session in accordance with Texas Government Code, Section 551.074, to discuss personnel matters, regarding the duties, responsibilities, and/or appointments to the Building Board of Appeals, Electric Utility Board, Health/Educational Facilities Development Corporation Board of Directors, Lubbock Central Appraisal District Board of Directors, LECD Board of Directors, Planning and Zoning Commission, Urban Design/Historic Preservation Commission, and the Water Board of Appeals.

**4:30 p.m. - City Council reconvenes in Open Session in City Council Chambers.**

City Council reconvened at 4:49 p.m.

**4. Ceremonial Items**

**4. 1. Invocation**

Senior Chaplain Josh Reglin, with Covenant Health System, led the invocation.

**4. 2. Pledges of Allegiance**

Pledges of Allegiance, to the United States and Texas Flags, were led by Mayor Pro Tem Steve Massengale.

**4. 3. Proclamations and Presentations**



- 4.3. 1. Presentation of a Special Recognition in support of the 5-5-5 Move Over and Slow Down Rally at the South Plains Mall on October 9, 2021

Shaun Fogerson, fire chief, presented a Special Recognition in support of the 2021 5-5-5 Move Over and Slow Down Rally. Chief Fogerson gave comments, thanked City Council for their support, and invited all Lubbock residents to attend the 5-5-5 Move Over and Slow Down Rally at the South Plains Mall on October 9, 2021, from 10:00 a.m. to 2:00 p.m. Additionally, Chief Fogerson introduced Mark and Susan Hill, parents of Lt. Eric Hill who was killed in the line of duty, and thanked them for their support and dedication in their development of the 5-5-5 foundation.

- 4.3. 2. Staff Recognition - Lubbock Fire Rescue - AHA Mission: Lifeline EMS Gold Plus Award

Shaun Fogerson, fire chief, presented a staff recognition to Lubbock Fire Rescue in recognition of their American Heart Association (AHA) Mission Lifeline EMS Gold Plus Award, which was awarded jointly to Lubbock Fire Rescue and UMC EMS. Chief Fogerson gave comments on the award's requirements and significance in the field of emergency medical services and answered questions from City Council. Chief Fogerson also recognized Deputy Fire Chief Nick Wilson, who was in attendance, and is responsible for overseeing Lubbock Fire Rescue's EMS operations.

- 4.4. **Board Recognitions:** Presented by Council Member Jeff Griffith

**Lubbock Reese Redevelopment Authority Board of Directors:**

George McMahan  
John T. Hamilton

**Call to Order**

The meeting was called to order at 5:04 p.m.

5. **Citizen Comments - According to Lubbock City Council Rules, any citizen wishing to appear in-person before a regular meeting of the City Council, regarding any matter posted on the City Council Agenda below, shall complete the sign-up form provided at the meeting, no later than 5:00 p.m. on September 28, 2021. Citizen Comments is an opportunity for citizens to make comments and express a position on agenda items. Any comment received that is in the nature of asking a question will be referred to an appropriate member of the City staff for a response.**

Sign ups:

- Stephen Faulk, with MWM Architects; Taylor McAlpine; Tara Newton; George Hardberger; and Ryan Reeber appeared before City Council to speak in favor of items 8.1 (resolution approving the Civic Park project to be located at 1301 Broadway Avenue) and 8.2 (a resolution authorizing the Mayor to execute a Grant Agreement and related documents, by and between the City of Lubbock and the CH Foundation).

6. **Minutes**

6. 1. August 24, 2021 Regular City Council Meeting  
August 26, 2021 Special City Council Meeting - Joint Meeting with the Planning & Zoning Commission  
September 7, 2021 Special City Council Meeting - Budget

Motion by Council Member Juan A. Chadis, seconded by Council Member Latrelle Joy to approve the August 24, 2021 Regular City Council Meeting minutes; the August 26, 2021 Special City Council Meeting - Joint Meeting with the Planning & Zoning Commission minutes; and the September 7, 2021 Special City Council Meeting - Budget minutes.

**Vote:** 7 - 0 Motion carried

7. **Consent Agenda - Items considered to be routine are enacted by one motion without separate discussion. If the City Council desires to discuss an item, the item is removed from the Consent Agenda and considered separately.**

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve items 7.1-7.15 and 7.17-7.28.

**Vote:** 7 - 0 Motion carried

7. 1. **Budget Ordinance Amendment 2nd Reading - Finance:** Ordinance No. 2021-00129, Amendment 43, amending the FY 2020-21 Budget for municipal purposes respecting the Lake Alan Henry Fund, Health Benefits Fund, the Storm Water Operating and Capital Funds to establish Capital Improvement Project 8667 Flood Protection Study, and the Grant Fund; to accept and appropriate funding from the U.S. Department of Transportation Federal Aviation Administration for the Airport Rescue Grant; providing for filing; and providing for a savings clause.
7. 2. **Budget Ordinance Amendment 2nd Reading - Finance:** Ordinance No. 2021-00130, Amendment 44, amending the FY 2020-21 Budget for municipal purposes respecting the Grant Fund to accept and appropriate funding from the Texas Department of State Health Services.
7. 3. **Budget Amendment Ordinance 1st Reading - Finance:** Ordinance No. 2021-O0135, Amendment 1, amending the Adopted FY 2021-22 Budget for municipal purposes respecting the Pay Plans; providing for filing; and providing for a savings clause.
7. 4. **Resolution - Finance:** Resolution No. 2021-R0365 authorizing the Mayor to execute an amendment to the Grant Management Agreement between the City of Lubbock and Market Lubbock, Inc., dated January 25, 1996.
7. 5. **Resolution - Risk Management:** Resolution No. 2021-R0366 authorizing and directing the City Manager to purchase, for and on behalf of the City of Lubbock, Network Security Privacy Insurance coverage from a carrier as yet to be determined, for which the premium amount shall not exceed \$114,393.

7. 6. **Ordinance 2nd Reading - Right-of-Way:** Ordinance No. 2021-O0131, abandoning and closing an Underground Water Line Easement on Lot 45-C, Northridge Addition, located at 3106 Canyon Road, Lubbock County, Texas.
7. 7. **Ordinance 2nd Reading - Right-of-Way:** Ordinance No. 2021-O0132, abandoning and closing a portion of a Drainage Easement, located in Section 1, Block AK, Viridian Addition, Lubbock County, Texas.
7. 8. **Resolution - Right-of-Way:** Resolution No. 2021-R0367 authorizing the Mayor to execute a Street Use License/City Public Grounds Monitor Well Permit, with Daniel B. Stephens and Associates, Inc., a Geo-Logic Company, for installation of a groundwater monitoring well in the right-of-way of Vanda Avenue and 44th Street, Lubbock, Texas.
7. 9. **Resolution - Right-of-Way:** Resolution No. 2021-R0368 authorizing the Mayor to execute a Street Use License/City Public Grounds Monitor Well Permit, with the Air Force Civil Engineering Center, for installation and maintenance of two groundwater monitoring wells, for collecting water samples near the former Reese Air Force Base.
7. 10. **Resolution - Right-of-Way:** Resolution No. 2021-R0369 authorizing the Mayor to accept, on behalf of the City of Lubbock, three Street and Public Use Dedication Deeds out of Sections 30 and 34, Block AK, Lubbock County, Texas, to be utilized for the Upland Avenue Roadway Expansion Project.
7. 11. **Resolution - Engineering:** Resolution No. 2021-R0370 authorizing the Mayor to execute Contract 15838, with Plummer Associates, Inc., for design services associated with the Reese Water Line Improvements Capital Improvements Project.
7. 12. **Resolution - Engineering:** Resolution No. 2021-R0371 authorizing the Mayor to execute Change Order No. 2 to Contract 15325 with Red River Construction, Co., for the construction of the Southeast Water Reclamation Plant, Plant 3 Improvements Project.
7. 13. **Resolution - Public Works Streets:** Resolution No. 2021-R0372 authorizing the Mayor to execute Public Works Contract 16027, with Lone Star Dirt and Paving, Ltd., for rebuilding sections of Frankford Avenue and Alcove Avenue.
7. 14. **Resolution - Public Health Services:** Resolution No. 2021-R0373 ratifying the acts of the Mayor in executing Amendment No. 1 to the Texas Health and Human Services Commission (HHSC) Contract HHS000780500002 and related documents, under the Substance Use Disorder Community Health Worker program, by and between the City of Lubbock and the State of Texas, acting by and through HHSC.
7. 15. **Resolution - Public Health Services:** Resolution No. 2021-R0374 ratifying the acts of the Mayor in executing Contract HHS001081400001 and all related documents, under the Substance Use Disorder Prevention Grant Program, by and between the City of Lubbock and the State of Texas, acting by and through the Texas Health and Human Services Commission.

7. 16. **Resolution - Public Health Services:** Resolution No. 2021-R0387 authorizing the Mayor to execute Contract 15629 and all related documents, by and between the City of Lubbock, with Methodist Children's Hospital d/b/a Covenant Children's Hospital of Lubbock, to provide Network of Substance Use Disorder Treatment Services.

Jarrett Atkinson, city manager, gave comments and answered questions from City Council.

Motion by Council Member Jeff Griffith, seconded by Council Member Juan A. Chadis to approve Resolution No. 2021-R0387.

**Vote:** 6 - 0 Motion carried

Other: Mayor Daniel M. Pope (RECUSE)

7. 17. **Resolution - Public Health Services:** Resolution No. 2021-R0375 authorizing the Mayor to execute Purchase Order 364432, with OfficeWise Commercial Interiors, in accordance with Purchasing Association of Cooperative Entities (PACE) Contract 00154, for the purchase of cubicles for the Health Department.
7. 18. **Resolution - Fleet Services:** Resolution No. 2021-R0376 authorizing the Mayor to execute Purchase Order 31061849, in accordance with BuyBoard Contract 617-20, with Farber Specialty Vehicles, for the purchase of a 2021 Mobile Medical Health Vehicle, for the Health Department.
7. 19. **Resolution - Facilities Management:** Resolution No. 2021-R0377 authorizing the Mayor to execute Public Works Contract 16023, with Johnson General Contractors Group, LLC, for the renovations of the Abernathy Landfill Gate House, located at 17304 North FM 2528, Abernathy, Texas.
7. 20. **Resolution - Facilities Management:** Resolution No. 2021-R0378 authorizing the Mayor to execute Professional Services Agreement 16135, with Parkhill, for remaining construction administration professional services, for the Municipal Parking Garage project.
7. 21. **Resolution - Facilities Management:** Resolution No. 2021-R0379 authorizing the Mayor to execute Purchase Order 10024401, with OfficeWise Commercial Interiors, in accordance with Purchasing Association of Cooperative Entities (PACE) Contract P10045, Omnia Contract BNR105, and Sourcewell Contract 121919-HMN, for replacement furniture, fixtures, and equipment at Citizens Tower and the Utilities Customer Services Center damaged by the flood event of March 12, 2021.
7. 22. **Resolution - Fleet Services:** Resolution No. 2021-R0380 authorizing the Mayor to execute Purchase Order 31061756, with Deere & Company, in accordance with Sourcewell Contract 032119-JDC, for the purchase of a 2018 John Deere 300G LC FT4 Excavator, for alley maintenance.
7. 23. **Resolution - Information Technology:** Resolution No. 2021-R0381 authorizing the Mayor to execute Purchase Order 33001539, with Dell Marketing LP, for the purchase of the Pluribus Unified Network Management and Automation Software, for the City's voice and data networks.

7. 24. **Resolution - Police:** Resolution No. 2021-R0382 approving the renewal of the Local Administrative Agreement Between the Constituent Agencies of the Lubbock Metropolitan Special Crimes Unit, an interlocal agreement between the City of Lubbock, on behalf of the Lubbock Police Department, and Lubbock County, on behalf of the Lubbock County Sheriff and the Lubbock County Criminal District Attorney, in order to enhance the ability of local law enforcement agencies to identify, investigate, and deter violent criminal activity throughout Lubbock County.
7. 25. **Resolution - Police:** Resolution No. 2021-R0383 authorizing the Mayor to execute an agreement by and between the City of Lubbock, the United States Department of Justice, and the United States Drug Enforcement Administration, for participation in the FY 2022-High Intensity Drug Trafficking Area (HIDTA) Task Force Agreement and any associated documents, including an Asset Sharing Agreement, to disrupt illicit drug traffic in the Lubbock area.
7. 26. **Resolution - Police:** Resolution No. 2021-R0384 authorizing the Mayor to execute an agreement, by and between the City of Lubbock, the United States Department of Justice, and the United States Drug Enforcement Administration, for participation in the FY 2022 Program-Funded State and Local Task Force Agreement - Task Force Group (Lubbock) and any associated documents, including an Asset Sharing Agreement, to disrupt illicit drug traffic in the Lubbock area.
7. 27. **Resolution - Police:** Resolution No. 2021-R0385 authorizing the Mayor to execute an agreement, and any associated documents, by and between the City of Lubbock, the United States Department of Justice, and the United States Drug Enforcement Administration, for participation in the FY 2022 - SURGE-Asset Forfeiture Sharing Agreement, to combat trafficking in narcotics and dangerous drugs in the Lubbock area.
7. 28. **Resolution - City Manager:** Resolution No. 2021-R0386 authorizing the Mayor to execute an agreement, by and between the City of Lubbock and the State of Texas, acting through the Texas Department of Transportation, for the temporary closure of State right-of-way during the 2021 Mayor's Marathon.
8. **Regular Agenda**
8. 1. **Resolution - City Manager:** Resolution No. 2021-R0388 approving the Civic Park project to be located at 1301 Broadway Avenue utilizing the Wind + Water design as created by TBG Partners and as recommended by the Central Business District Tax Increment Financing Reinvestment Zone Board.

Brianna Gerardi, director of business development, gave a presentation and answered questions from City Council.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Juan A. Chadis to approve Resolution No. 2021-R0388.

**Vote:** 5 - 2 Motion carried

NAY: Council Member Latrelle Joy  
Council Member Shelia Patterson Harris

- 8. 2. Resolution - City Manager:** Resolution No. 2021-R0389 authorizing the Mayor, to execute a Grant Agreement and related documents, by and between the City of Lubbock and the CH Foundation, for receipt of Grant Funds for the construction of a Downtown Civic Park, located at 1301 Broadway.

Brianna Gerardi, director of business development, gave a presentation and answered questions from City Council. Jarrett Atkinson, city manager, gave comments and answered questions from City Council.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Juan A. Chadis to approve Resolution No. 2021-R0389.

**Vote:** 7 - 0 Motion carried

- 8. 3. Board Appointments - City Secretary:** Resolution No. 2021-R0390 to nominate board members to serve as Appraisal District Directors for the Lubbock Central Appraisal District.

Jarrett Atkinson, city manager, gave comments and answered questions from City Council.

Motion by Council Member Latrelle Joy, seconded by Council Member Jeff Griffith to approve Resolution No. 2021-R0390, nominating Sonny Garza, Greg Jones, Bobby McQueen, Brady Goen, and Noe Reynolds to the Board of Directors of the Lubbock Central Appraisal District.

**Vote:** 7 - 0 Motion carried

- 8. 4. Public Hearing - Planning:** Consider a request for Zone Case 0335-C, a request of Rudy and Elida Morin, for a Specific Use for a Dance Hall on property zoned Commercial District (C-4), at 1813, 1815, and 1819 East Broadway, located north of East Broadway and west of Teak Avenue, Gearhart Addition, Block 2, Lots 20-23, and consider an ordinance.

**This item failed.**

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:38 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:39 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve this item.

**Vote:** 0 - 7 Failed

NAY: Mayor Daniel M. Pope  
Mayor Pro Tem Steve Massengale  
Council Member Juan A. Chadis  
Council Member Randy Christian  
Council Member Jeff Griffith  
Council Member Latrelle Joy  
Council Member Shelia Patterson Harris

- 8. 5. Public Hearing - Planning:** Ordinance No. 2021-00144, for Zone Case 2690-D, a request of AMD Engineering, LLC for KWTHEM, LLC, for a zone change from Family Apartment District (A-1) and General Retail District (C-3) to Local Retail District (C-2) with a Specific Use for a Self-Storage Facility, at 2501 Iola Avenue, located east of Iola Avenue and north of 26th Street, West End North Addition, Tract D1, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council. Cory Dulin, with AMD Engineering, gave comments and answered questions from City Council.

Mayor Pope opened the public hearing at 6:45 p.m.

Gary Andrews, with GRACO Real Estate, appeared to speak in favor.

John Chosa, Mike Haggard, and Lisa Chosa appeared to speak in opposition.

Mayor Pope closed the public hearing at 7:05 p.m.

Motion by Council Member Juan A. Chadis, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-00144.

**Vote:** 4 - 2 Motion carried

NAY: Council Member Latrelle Joy  
Council Member Shelia Patterson Harris  
Other: Council Member Randy Christian (AWAY)

- 8. 6. Public Hearing - Planning:** Ordinance No. 2021-00145, for Zone Case 2904-H, a request of Ingenium Civil Engineering, Inc. for Inn of South Plains, LLC, for a zone change from Interstate Highway Commercial District (IHC), Commercial District (C-4), and Multi-Family District (R-3) to IHC, at 301, 303, 305, 307, 309, 311, and 313 Avenue R and 302, 304, 306, and 310 Avenue Q, located north of Marsha Sharp Freeway and west of Avenue Q, Roberts & McWhorter Addition, Block 3, Lot 1 and part of Lot 2, and Tracts A-C and the north part of Tract D, and Dodson Addition, Block 3, Lots 1-5, and the south 16 feet of Lot 6, and consider an

ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 7:23 p.m.

Jeremy Pettit, with Ingenium Civil Engineering, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 7:27 p.m.

Motion by Council Member Juan A. Chadis, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-O0145.

**Vote:** 7 - 0 Motion carried

- 8. 7. Public Hearing - Planning:** Ordinance No. 2021-O0136, for Zone Case 2904-I, a request of Stough Real Estate Holdings, LLC for Isom E34, LLC, for a zone change from General Retail District (C-3) and Interstate Highway Commercial District (IHC) to Interstate Highway Commercial District (IHC) with a Specific Use for a Blood Bank and Blood Plasma Center, at 5120 34th Street, located east of Slide Road and north of 34th Street, Eckerd Addition, Tract A, less 3,585 square feet of right-of-way, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:27 p.m.

Laura Pratt, with Brady & Hamilton, LLP, representing Stough Real Estate Holdings, LLC, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:35 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-O0136.

**Vote:** 7 - 0 Motion carried

- 8. 8. Public Hearing - Planning:** Consider a request for Zone Case 2904-J, a request of Fusion LED Displays DBA Sign-Express for Behold the Signs, for a Specific Use for a billboard on property zoned Heavy Manufacturing District (M-2), at 901 Marsha Sharp Freeway, located south of Marsha Sharp Freeway and west of Texas Avenue, Original Town of Lubbock Addition, Block 7, part of Lots 22-24, and consider an ordinance.



**This item failed.**

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council. Jarrett Atkinson, city manager; and Chad Weaver, city attorney, gave comments and answered questions from City Council.

Mayor Pope opened the public hearing at 7:36 p.m.

Justin McCray, the proponent, appeared to speak in favor.

Mont McClendon, city of Lubbock's Downtown Master Developer/McDougal Properties; Mary Crites; Stephen Faulk; Sam Scheef; and Jane Henry appeared to speak in opposition.

Motion by Council Member Randy Christian, seconded by Council Member Jeff Griffith to postpone this item to the December 14, 2021 Regular City Council Meeting.

**Vote:** 2 - 5 Failed

NAY: Mayor Daniel M. Pope  
Mayor Pro Tem Steve Massengale  
Council Member Juan A. Chadis  
Council Member Latrelle Joy  
Council Member Shelia Patterson Harris

Motion by Council Member Juan A. Chadis, seconded by Council Member Latrelle Joy to approve this item.

**Vote:** 0 - 7 Failed

NAY: Mayor Daniel M. Pope  
Mayor Pro Tem Steve Massengale  
Council Member Juan A. Chadis  
Council Member Randy Christian  
Council Member Jeff Griffith  
Council Member Latrelle Joy  
Council Member Shelia Patterson Harris

- 8. 9. Public Hearing - Planning:** Ordinance No. 2021-00137, for Zone Case 3135-B, a request of Westar Commercial Realty for TopHat Operators, LLC, for a zone change from General Retail District (C-3) to Commercial District (C-4) Specific Use for a bar at 11824 Indiana Avenue, Suites #400 and #500, located west of Indiana Avenue and south of 118th Street, Cooper Plaza Addition, Tract C, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:27 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:35 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-O0137.

**Vote:** 7 - 0 Motion carried

- 8. 10. Public Hearing - Planning:** Ordinance No. 2021-O0138, for Zone Case 3257-M, a request of Hugo Reed and Associates, Inc. for 1585 Development, LLC and Rocket Partners I, LLC, for a zone change from Single-Family District (R-1) Specific Use to Single-Family District (R-1) with a Specific Use for Townhomes, generally located south of 137th Street and west of Elgin Avenue, on 3.4 acres of unplatted land out of Block AK, Section 1, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:27 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:35 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-O0138.

**Vote:** 7 - 0 Motion carried

- 8. 11. Public Hearing - Planning:** Ordinance No. 2021-O0139, for Zone Case 3308-D, a request of AMD Engineering, LLC for Dreambuilt Homes, Inc., Bushland Springs, LLC, Bo Properties, and HomeMakers Building Group, LLC, for a zone change from Single Family District (R-1) to Single Family District with Reduced Setbacks (R-1A), at 7211 through 7224 23rd Street, located east of Upland Avenue on the north and south sides of 23rd Street, Bushland Springs Addition, Lots 245-258, and 1.48 acres of unplatted land out of Block AK, Section 43, located at the northeast corner of Upland Avenue and 26th Street, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:27 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:35 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-O0139.

**Vote:** 7 - 0 Motion carried

- 8. 12. Public Hearing - Planning:** Consider a request for Zone Case 3314-A, a request of SK Architecture Group, for a zone change from Garden Office District (GO) to General Retail District (C-3), at 14101 Quaker Avenue, located east of Quaker Avenue and north of 142nd Street, on 3.097 acres of unplatted land out of Block AK, Section 4, and consider an ordinance.

**This item failed.**

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 8:03 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 8:04 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve this item.

**Vote:** 0 - 7 Failed

NAY: Mayor Daniel M. Pope  
Mayor Pro Tem Steve Massengale  
Council Member Juan A. Chadis  
Council Member Randy Christian  
Council Member Jeff Griffith  
Council Member Latrelle Joy  
Council Member Shelia Patterson Harris

- 8. 13. Public Hearing - Planning:** Ordinance No. 2021-O0140, for Zone Case 3443, a request of Dr. Piyush Mittal and Greg Garrett for JKLM Investments, for a zone change from Restricted Local Retail District (C-2A) to Local Retail District (C-2), at 10301 Indiana Avenue, located east of Indiana Avenue and south of 103rd Street, on 0.8193 acres of unplatted land out of Block E2, Section 19, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:27 p.m.

Greg Garrett, the proponent, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 6:35 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-O0140.

**Vote:** 7 - 0 Motion carried

- 8. 14. Public Hearing - Planning:** Ordinance No. 2021-O0141, for Zone Case 3444, a request of AMD Engineering, LLC for Escondido Lubbock, LLC, for a zone change from Transition District (T) to Two-Family District (R-2), at 5802 Upland Avenue, located west of Upland Avenue and south of 58th Street on 32.63 acres of unplatted land out of Block AK, Section 34, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:27 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:35 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-O0141.

**Vote:** 7 - 0 Motion carried

- 8. 15. Public Hearing - Planning:** Ordinance No. 2021-O0142, for Zone Case 3445, a request of Hugo Reed and Associates, Inc. for Lubbock Economic Development Alliance, for a zone change from Transition District (T) to Heavy Manufacturing District (M-2), located east of East Loop 289 and south of 4th Street on 407.3 acres of unplatted land out of Block O, Section 6, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:27 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:35 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-O0142.

**Vote:** 7 - 0 Motion carried

- 8. 16. Public Hearing - Planning:** Ordinance No. 2021-O0143, for Zone Case 3446, a request of AMD Engineering, LLC for NWP EB-5 Project, LLC, for a zone change from Single-Family District (R-1) to Two-Family District (R-2) and High-Density Apartment District (A-2), at 5601 Ursuline Street, located south of Ursuline Street and east of Frankford Avenue, on 134.45 acres of unplatted land out of Block JS, Section 6, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council.

Mayor Pope opened the public hearing at 6:27 p.m.

No one appeared to speak in favor or opposition.

Mayor Pope closed the public hearing at 6:35 p.m.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Jeff Griffith to approve Ordinance No. 2021-O0143.

**Vote:** 7 - 0 Motion carried

- 8. 17. Public Hearing - Planning:** Ordinance No. 2021-O0146, for Zone Case 3447, a request of AMD Engineering, LLC for NWP EB-5 Project, LLC, for a zone change from Single-Family District (R-1) to General Retail District (C-3) with a Specific Use for a Self-Storage Facility, generally located east of Frankford Avenue and south of Princeton Street, on 4.21 acres of unplatted land out of Block JS, Section 6, and consider an ordinance.

Kristen Sager, planning and zoning manager, gave a presentation and answered questions from City Council. Cory Dulin, with AMD Engineering, gave comments and answered questions from City Council.

Mayor Pope opened the public hearing at 8:10 p.m.

Cory Dulin, with AMD Engineering, appeared to speak in favor.

No one appeared to speak in opposition.

Mayor Pope closed the public hearing at 8:11 p.m.

Motion by Council Member Juan A. Chadis, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2021-O0146.

**Vote:** 7 - 0 Motion carried

- 8. 18. Public Hearing - Planning:** Ordinance No. 2021-00147, amending Chapter 40 “Zoning” of the City of Lubbock Code of Ordinances, amending Section 40.01.003 “Definitions” to add a definition for “Office/Warehouse”; amending Division 15 “C-3 General Retail District” to update General Provisions and Permitted Uses; and amending Section 40.03.2233 “C-4 Permitted Uses” to add “Office/Warehouse” setting forth regulations for outside storage in the “Office/Warehouse” use.

Kristen Sager, planning and zoning manager, gave comments and answered questions from City Council. Gary Andrews, with GRACO Real Estate, gave comments and answered questions from City Council.

Mayor Pope opened the public hearing at 8:20 p.m.

No one appeared to speak in favor or opposition

Mayor Pope closed the public hearing at 8:21 p.m.

Motion by Council Member Jeff Griffith, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2021-00147.

**Vote:** 6 - 1 Motion carried

NAY: Council Member Randy Christian

- 8. 19. Ordinance 2nd Reading - Planning:** Ordinance No. 2021-00133, pursuant to Chapter 43 of the Texas Local Government Code, for annexation of the property located south of 34th Street and west of Upland Avenue, containing approximately 7.867 acres, out of Section 39, Block AK, Lubbock County, Texas, and commonly identified by the Lubbock Central Appraisal District Reference Number R126622.

Kristen Sager, planning and zoning manager, gave comments and answered questions from City Council.

Motion by Council Member Latrelle Joy, seconded by Mayor Pro Tem Steve Massengale to approve Ordinance No. 2021-00133.

**Vote:** 7 - 0 Motion carried

- 8. 20. Resolution - Business Development:** Resolution No. 2021-R0391 making findings that the Willow Bend Villas Public Improvement District Petition meets the requirements of Chapter 372 of the Texas Local Government Code; accepting the Willow Bend Villas Public Improvement District Petition, which covers a portion of an area in the City of Lubbock, Lubbock County, Texas, generally bounded by 19th Street to the north, Kelsey Avenue to the east, and railroad tracks to the south and west; and calling for a public hearing to receive public comment on the formation of a public improvement district in the area depicted and described.

Brianna Gerardi, director of business development, gave a presentation and answered questions from City Council.

Motion by Mayor Pro Tem Steve Massengale, seconded by Council Member Juan A. Chadis to approve Resolution No. 2021-R0391.

**Vote:** 7 - 0 Motion carried

**8:43 P.M. CITY COUNCIL ADJOURNED**

There being no further business to come before Council, Mayor Pope adjourned the meeting.

The September 28, 2021 Regular City Council Meeting minutes were approved by the City Council on the 26th day of October, 2021.

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DANIEL M. POPE, MAYOR

ATTEST:

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Rebecca Garza, City Secretary

**CITY OF LUBBOCK**  
**SPECIAL CITY COUNCIL MEETING**  
**September 30, 2021**  
**6:30 P.M.**

**The City Council of the City of Lubbock, Texas met in special session on the 30th of September, 2021, in City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas at 6:30 p.m.**

**6:35 P.M. CITY COUNCIL CONVENED**

**City Council Chambers, Citizens Tower, 1314 Avenue K, Lubbock, Texas**

Present: Mayor Daniel M. Pope; Mayor Pro Tem Steve Massengale; Council Member Jeff Griffith; Council Member Latrelle Joy; Council Member Shelia Patterson Harris; City Manager W. Jarrett Atkinson; City Secretary Rebecca Garza; City Attorney Chad Weaver

Absent: Council Member Juan A. Chadis; Council Member Randy Christian

*Note: City Council addressed agenda items in the following order:*  
• 1.1-1.9

**1. Regular Agenda**

**1. 1. Call to Order & Welcome - Mario Martinez, TML Region 3 President**

Mario Martinez, president of TML Region 3, called the TML Region 3 Regional Meeting to order and welcomed those in attendance.

**1. 2. Invocation**

Tommy Murillo, homeland security program specialist with the South Plains Association of Governments (SPAG), led the invocation.

**1. 3. Opening Remarks - Evan Weiss, TML Region 3 First Vice President**

Evan Weiss, first vice president of TML Region 3, gave opening remarks.

**1. 4. Introductions & New Business - Mario Martinez, TML Region 3 President**

Mario Martinez, president of TML Region 3, introduced TML Region 3 Board Members in attendance and gave comments on new business.



**1. 5. TML Board Report - Council Member Latrelle Joy, TML Region 3 Regional Board Director**

Council Member Latrelle Joy, regional board director for TML Region 3, presented the TML Board Report.

**1. 6. Keynote Speaker - Monty Wynn, Director of Grassroots & Legislative Services for TML**

Monty Wynn, director of grassroots & legislative services for TML, gave the keynote speech for the TML Region 3 Regional Meeting regarding a legislative update.

**1. 7. Host City Introduction - Mayor Daniel M. Pope, City of Lubbock**

Mayor Daniel M. Pope gave a welcome and introduction on behalf of the City of Lubbock, as the host city for the TML Region 3 Regional Meeting.

**1. 8. Host City Presentation - City Manager W. Jarrett Atkinson, City of Lubbock**

Jarrett Atkinson, city manager, gave a presentation on the Citizens Tower Complex.

**1. 9. Closing Remarks/Adjournment - Kelly Davila, South Plains Association of Governments (SPAG) Regional Services Director  
(Tours of Citizens Tower will commence immediately following the meeting.)**

Kelly Davila, regional services director with the South Plains Association of Governments (SPAG), gave closing remarks and thanked the City of Lubbock for hosting.

**7:23 P.M. CITY COUNCIL ADJOURNED**

There being no further business to come before Council, the meeting was adjourned.

The September 30, 2021 Special City Council Meeting minutes were approved by the City Council on the 26th day of October, 2021.

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DANIEL M. POPE, MAYOR

ATTEST:

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Rebecca Garza, City Secretary



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## Information

### Agenda Item

**Resolution - Finance:** Consider a resolution expressing intent to finance expenditures to be incurred for various capital projects and equipment, which were approved by the City Council in the FY 2021-22 Budget and Capital Program, and to reimburse the City from the proceeds of obligations that will be issued after the expenditure of funds, to pay costs of such projects and equipment.

### Item Summary

The City will issue bonds during FY 2021-22, to fund projects that the City Council approved in the FY 2021-22 Capital Program. To allow capital projects to be completed within prescribed time frames, design, engineering, and construction costs may be incurred prior to delivery of the bond proceeds. For the costs to be eligible for reimbursement with bond proceeds, the City must declare its intent to reimburse bond-funded costs that are incurred prior to the bond issuance.

Total cost of \$53,960,727 is divided into 4 categories:

- General Fund is \$3,000,000.
- Internal Service Fund is \$5,100,000.
- Water/Wastewater Fund is \$8,200,000.
- Lubbock Power & Light is \$37,660,727.

The annual debt service is budgeted through the annual operating budget process and is included in long term financial planning and rate models. The annual payments are made from the annual revenues of the respective Enterprise and Governmental Funds where the projects are incurred.

### Fiscal Impact

The total cost of projects funded is \$53,960,727, and the maximum principal amount of Obligations to be issued will not exceed \$59,300,000.

### Staff/Board Recommending

D. Blu Kostelich, Chief Financial Officer

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## Attachments

Resolution & Exhibit A

RESOLUTION EXPRESSING INTENT TO  
FINANCE EXPENDITURES TO BE INCURRED

WHEREAS, the City of Lubbock, Texas (the "Issuer") is a political subdivision of the State of Texas authorized to finance its activities by issuing debt obligations, including obligations the interest on which is excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (collectively, the "Obligations");

WHEREAS, the Issuer will make or has made, not more than 60 days prior to the date hereof, payments for capital expenditures with respect to the acquisition, construction, renovation, improvement and equipment of the projects listed on Exhibit A attached hereto;

WHEREAS, the Issuer has concluded that it does not currently desire to issue Obligations to finance costs associated with the projects listed on Exhibit A attached hereto;

WHEREAS, the Issuer desires to reimburse itself for capital expenditures associated with the projects listed on Exhibit A attached hereto from the proceeds of Obligations to be issued subsequent to the date hereof; and

WHEREAS, the Issuer reasonably expects to issue Obligations to reimburse itself for the costs associated with the projects listed on Exhibit A attached hereto.

NOW, THEREFORE, be it resolved that:

Section 1. The Issuer reasonably expects to reimburse itself for capital expenditures that have been or will be paid subsequent to the date that is 60 days prior to the date hereof and that are to be paid in connection with the acquisition, construction, renovation, improvement and equipment of the projects listed on Exhibit A attached hereto from the proceeds of Obligations to be issued subsequent to the date hereof.

Section 2. The Issuer reasonably expects that the maximum principal amount of Obligations issued to reimburse the Issuer for the costs associated with the projects listed on Exhibit A attached hereto will not exceed \$59,300,000.

ADOPTED THIS 26<sup>th</sup> day of October, 2021 by the City Council of the City of Lubbock, Texas.

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DANIEL M. POPE, MAYOR

ATTEST:

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Rebecca Garza  
City Secretary


APPROVED AS TO CONTENT:



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D. Blu Kostelich  
Chief Financial Officer

APPROVED AS TO FORM:



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Jerry V. Kyle, Jr.  
Bond Counsel

EXHIBIT A

	<u>Cost Estimate</u>	<u>Totals</u>
<b>General Fund</b>		
114th Street - Quaker Avenue to Indiana Avenue	3,000,000	\$ 3,000,000
<b>Internal Service</b>		
Public Safety CAD, Mobile, and RMS Software	4,000,000	
Solid Waste Vehicle Replacement FY 21-22 Tax Notes	1,100,000	\$ 5,100,000
<b>Water/Wastewater</b>		
SEWRP Effluent Pump Station #2 Improvements	6,000,000	
South Lubbock Sanitary Sewer Extension Phase IV	2,200,000	\$ 8,200,000
<b>Lubbock Power and Light</b>		
Red Raider Substation Distribution Feeders	1,565,000	
Yellowhouse Substation Capacity Upgrade	1,335,000	
Fiberoptic Communications	903,238	
Distribution System Upgrade - Improvements - Expansion	6,445,000	
Downtown Redevelopment	1,377,489	
Substation Capacity Upgrade - Co-op	5,670,000	
Substation Capacity Upgrade - Northeast	7,555,000	
Substation Capacity Upgrade - Thompson	2,740,000	
Substation Capacity Upgrade - Vicksburg	8,660,000	
McDonald Substation Capacity Upgrade	1,410,000	\$ 37,660,727
<b>Total</b>		<b>\$ 53,960,727</b>



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## Information

### Agenda Item

**Budget Amendment Ordinance 2nd Reading - Finance:** Consider Budget Ordinance No. 2021-O0148, Amendment 2, amending the FY 2021-22 Budget for municipal purposes respecting the Grant Fund to accept and appropriate funding from the FY 2021 Federal Transit Administration Section 5310 Coronavirus Response and Relief Supplemental Appropriation Act Grant and Airport Capital Fund, to appropriate additional funding for Capital Improvement Project 92717, replace Aircraft Rescue Fire Fighting (ARFF) Vehicle; providing for filing; and providing for a savings clause.

### Item Summary

On October 12, 2021, the City Council approved the first reading of the ordinance.

- I. Accept and appropriate \$37,933 from the Federal Transit Administration for the FY 2021 Section 5310 Coronavirus Response and Relief Supplemental Appropriation Act Grant.
- II. Amend CIP 92717, replace ARFF Vehicle, and increase the appropriation and funding by \$75,000, from \$800,000 to \$875,000. The additional funding will come from CARES Act Grant.

### Fiscal Impact

Included in item summary.

### Staff/Board Recommending

Blu Kostelich, Chief Financial Officer

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## Attachments

Budget Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE FY 2021-22 BUDGET FOR MUNICIPAL PURPOSES RESPECTING THE GRANT FUND TO ACCEPT AND APPROPRIATE FUNDING FROM THE FY 2021 FEDERAL TRANSIT ADMINISTRATION SECTION 5310 CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATION ACT GRANT AND AIRPORT CAPITAL FUND TO APPROPRIATE ADDITIONAL FUNDING FOR CAPITAL IMPROVEMENT PROJECT 92717 REPLACE ARFF VEHICLE; PROVIDING FOR FILING; AND PROVIDING FOR A SAVINGS CLAUSE.

WHEREAS, Section 102.010 of the Local Government Code of the State of Texas authorizes the City Council to make changes in the budget for municipal purposes; and

WHEREAS, in accordance with the City Budget Ordinance the City Council shall approve all transfers between funds; and

WHEREAS, the City Council deems it advisable to change the FY 2021-22 Budget for municipal purposes and reallocate funds as follows; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT the City Council of the City of Lubbock hereby approves changes to the City of Lubbock Budget FY 2021-22 (Budget Amendment #2) for municipal purposes, as follows:

- I. Accept and appropriate \$37,933 from the Federal Transit Administration for the FY 2021 Section 5310 Coronavirus Response and Relief Supplemental Appropriation Act Grant.
- II. Amend CIP 92717, Replace ARFF Vehicle, and increase the appropriation and funding by \$75,000, from \$800,000 to \$875,000. The additional funding will come from CARES Act Grant.

SECTION 2. THAT a copy of the changes made to the City of Lubbock Budget pursuant to this Ordinance shall be filed with the City Secretary and County Clerk of Lubbock as required by law.

SECTION 3. THAT should any section, paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

AND IT IS SO ORDERED

Passed by the City Council on first reading on \_\_\_\_\_.

Passed by the City Council on second reading on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza  
City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
D. Blu Kostelich  
Chief Financial Officer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Amy Sims  
Deputy City Attorney





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## Information

### Agenda Item

**Resolution - Public Transit Services:** Consider a resolution authorizing the acts of the City Financial Officer, in ratifying FY 2021 Federal Transit Administration Section 5310 Coronavirus Response and Relief Supplemental Appropriations Act Grant, Project ID TX-2021-106-00, for the mobility of elderly individuals and individuals with disabilities.

### Item Summary

The Federal Transit Administration (FTA) has allocated \$37,933 in FY 2021 Section 5310 Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) Grant funds to the City of Lubbock/Citibus to for the mobility of elderly individuals and individuals with disabilities.

These funds will be used for funding trips outside of Citibus' required ADA service area and regular fixed route service hours. Funds will also be used to assist with the funding of free services for all individuals needing transportation to and from the Health Department for COVID-19 testing, as well as the free services being provided to all individuals needing transportation to and from COVID-19 treatment facilities. The free services have been implemented to prepare, prevent, and respond to the COVID-19 pandemic.

FTA regulations require that all grants must be applied for and executed electronically. The grant has been electronically executed by the Chief Financial Officer of the City of Lubbock.

### Fiscal Impact

100% of this grant is federal funding and therefore, does not require a local match. Acceptance of this grant will result in no additional cost to the City of Lubbock.

### Staff/Board Recommending

Bill Howerton, Deputy City Manager  
Chris Mandrel, General Manager of Citibus  
Public Transit Advisory Board

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## Attachments

Resolution - FTA 5310 CRRSAA FY 2021

Citibus - FTA FY 2021 Section 5310 CRRSAA

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

THAT the acts of the Chief Financial Officer of the City of Lubbock in executing, on behalf of the City of Lubbock, a FY 2021 Federal Transit Administration Section 5310 Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) Grant, (Project ID TX-2021-106-00), for the mobility of elderly individuals and individuals with disabilities, acting by and through Citibus, and related documents, are hereby ratified in full. Said Grant is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Bill Howerton, Deputy City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Ryan Brooke, Assistant City Attorney

RES.FY 2021 FTA Section 5310 (CRRSAA) Grant Ratification  
10.4.21

## Award

<b>Federal Award Identification Number (FAIN)</b>	TX-2021-106-00
<b>Temporary Application Number</b>	1993-2021-6
<b>Award Name</b>	Lubbock-Citibus FY 2021 Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities (CRRSAA) Operating
<b>Award Status</b>	Active (Executed)
<b>Award Budget Number</b>	0

<b>Period of Performance Start Date</b>	9/23/2021
<b>Original Period of Performance End Date</b>	4/30/2023
<b>Current Period of Performance End Date</b>	4/30/2023 Revision #: 0

### Part 1: Recipient Information

**Name: LUBBOCK, CITY OF**

Recipient ID	Recipient OST Type	Recipient Alias	Recipient DUNS
1993	City	CITY OF LUBBOCK	058213893

Location Type	Address	City	State	Zip
Headquarters	1314 AVENUE K	LUBBOCK	TX	794014051
Physical Address	1314 AVENUE K	LUBBOCK	TX	79401
Mailing Address	P.O. BOX 2000	LUBBOCK	TX	79457

### Union Information

<b>Union Name</b>	NONE
Address 1	
Address 2	

City	
State	
Zipcode	00000
Contact Name	
Telephone	
Fax	00000
E-mail	
Website	

## Part 2: Award Information

### Title: Lubbock-Citibus FY 2021 Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities (CRRSAA) Operating

FAIN	Award Status	Award Type	Date Created	Last Updated Date	From TEAM?
TX-2021-106-00	Active (Executed)	Grant	4/26/2021	4/26/2021	No

#### Award Executive Summary

08/05/2021-NB- Purpose: This is an application for FY 2021 Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities (CRRSAA) in the amount of \$37,933. These funds will be used to assist with the mobility of seniors and individuals with disabilities.

Activities to be performed: Funding trips outside of our required ADA service area and regular fixed-route service hours.

Funds will also be used to assist with the funding of free services for all individuals needing transportation to and from the health department for COVID-19 testing as well as the free services being provided to all individuals needing transportation to and from the vaccination facility.

Expected Outcomes: The free services have been implemented to prepare, prevent and respond to the COVID-19 pandemic.

Intended Beneficiaries: Senior citizens, individuals with disabilities as well as citizens needing transportation to acquire vaccinations or testing for the COVID-19 virus.

Subrecipient Activities: N/A

Per the CRRSAA , this grant is 100% federal funding and therefore, does not require local match.

The recipient agrees that if it receives Federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a different Federal agency, or insurance proceeds for any portion of a project activity approved for FTA funding under this Grant Agreement, it will provide written notification to FTA, and reimburse FTA for any Federal share that duplicates funding provided by FEMA, another Federal agency, or insurance company. Per the CRRSAA, the project in this application is not required to be programmed in the Long-Range Transportation Plan or Statewide Transportation Improvement Program .

This grant request is within the acceptable limits of the fleet ratio.

**Frequency of Milestone Progress Reports (MPR)**

Annual

**Frequency of Federal Financial Reports (FFR)**

Annual

**Does this application include funds for research and/or development activities?**

This award does not include research and development activities.

**Pre-Award Authority**

This award is using Pre-Award Authority.

**Does this application include suballocation funds?**

Recipient organization is the Designated Recipient and can apply for and receive these apportioned funds.

**Will this Grant be using Lapsing Funds?**

No, this Grant does not use Lapsing Funds.

**Will indirect costs be applied to this application?**

This award does not include an indirect cost rate.

*Indirect Rate Details: N/A***Requires E.O. 12372 Review**

No, this application does not require E.O. 12372 Review.

**Delinquent Federal Debt**

No, my organization does not have delinquent federal debt.

**Award Point of Contact Information**

First Name	Last Name	Title	E-mail Address	Phone
Nitra	Barnes	Acctg Mgr	nbarnes@citibus.com	(806) 775-3641
	daniel.peschell@dot.gov	Transportation Program Specialist		

**Award Budget Control Totals**

Funding Source	Section of Statute	CFDA Number	Amount
5310 Mobility of Sr. & Indv. w/ Disabilities Formula (CRRSAA)	5310-1B	20513	\$37,933
Local			\$0
Local/In-Kind			\$0

State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
<b>Total Eligible Cost</b>			<b>\$37,933</b>

## Award Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
TX-2021-106-01-00	641-00 (641-A1) 5310 PROJECTS	\$37,933.00	\$0.00	\$37,933.00	0
TX-2021-106-01-00	30.09.08 EMER RELIEF - OPERATING ASSIST - 100% Fed Share	\$37,933.00	\$0.00	\$37,933.00	0

## Discretionary Allocations

This application does not contain discretionary allocations.

## Sources of Federal Financial Assistance

PO Number	Project Number	Scope Name	Scope Number	Scope Suffix	UZA Code	Area Name	Account Class Code	FPC	Description	Amendment Amount	Cumulative Amount
TX-16-Y067	TX-2021-106-01-00	5310 P ROJEC TS	641-00 (641)	A1	4813 50	Lubbo ck, TX	2021.28.1 6.LR.1	04	Seniors / Disabl ed Sec 5310 - > 200K Pop (CR RSAA)	\$37,933	\$37,933

## Part 3: Project Information

### Project Title: Lubbock-Citibus FY 2021 Section 5310 CRRSAA Operations

Project Number	Temporary Project Number	Date Created	Start Date	End Date
TX-2021-106-01-00	1993-2021-6-P1	4/26/2021	10/1/2020	12/31/2022

#### Project Description

07/26/2021-NB - This is an application for FY 2021 Federal Funds from the CRRSAA 5310 in the amount of \$37,933. These funds will be used to support the senior and disabled community for trips

outside of our required ADA service area and time. Additionally, the funds will be used to assist in the funding of our free services for transporting any individual needing transport to the health department for COVID-19 testing, and for individuals needing transport to and from the vaccination site. These free services were in response to the need to prepare, prevent and respond to the COVID-19 pandemic.

This grant is 100% federal funding and, therefore does not require local match.

### **Project Benefits**

These funds will be used to prevent, prepare and respond to COVID-19 for the City of Lubbock and Citibus.

### **Additional Information**

*None provided.*

### **Location Description**

At 318,679 people (Metropolitan Statistical Area), Lubbock is the 11th largest city in Texas, the 2nd largest west of Interstate 35 and is projected to grow 7 percent through 2022. With a median age of 31, the city's residents are youthful and hardworking. Featuring a regional population base of more than 645,647 people, Lubbock's size affords businesses access to dedicated community leaders and personalized service, while providing you with a pipeline of personnel to fill your workforce needs.

## **Project Location (Urbanized Areas)**

<b>UZA Code</b>	<b>Area Name</b>
481350	Lubbock, TX

## **Congressional District Information**

<b>State</b>	<b>District</b>	<b>Representative</b>
Texas	19	Randy Neugebauer

## **Program Plan Information**

### **STIP/TIP**

Date: Not Provided

Description: Not Required

### **UPWP**

Date: Not Provided

Description: Not Required

### **Long Range Plan**

Date: Not Provided

Description: Not Required

## **Project Control Totals**

Funding Source	Section of Statute	CFDA Number	Amount
5310 Mobility of Sr. & Indv. w/ Disabilities Formula (CRRSAA)	5310-1B	20513	\$37,933
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
<b>Total Eligible Cost</b>			<b>\$37,933</b>

## Project Budget

Project Number	Budget Item	FTA Amount	Non-FTA Amount	Total Eligible Amount	Quantity
TX-2021-106-01-00	641-00 (641-A1) 5310 PROJECTS	\$37,933.00	\$0.00	\$37,933.00	0
TX-2021-106-01-00	30.09.08 EMER RELIEF - OPERATING ASSIST - 100% Fed Share	\$37,933.00	\$0.00	\$37,933.00	0

## Project Budget Activity Line Items

Budget Activity Line Item: 30.09.08 - EMER RELIEF - OPERATING ASSIST - 100% Fed Share				
Scope Name / Code	Line Item #	Line Item Name	Activity	Quantity
5310 PROJECTS (641-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	OPERATING ASSISTANCE	0

### Extended Budget Description

These funds will be used to help to cover Salary/Wages, Benefits, Fuel, Supplies as needed to prepare, prevent and respond to the COVID-19 pandemic.

### Will 3rd Party contractors be used to fulfill this activity line item?

No, 3rd Party Contractors will not be used for this line item.



Funding Source	Section of Statute	CFDA Number	Amount
5310 Mobility of Sr. & Indv. w/ Disabilities Formula (CRRSAA)	5310-1B	20513	\$37,933
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
<b>Total Eligible Cost</b>			<b>\$37,933</b>

Milestone Name	Est. Completion Date	Description
Start Date	10/1/2020	Start Date
End Date	12/31/2022	End Date

## Project Environmental Findings

### Finding: Class II(c) - Categorical Exclusions (C-List)

#### Class Level Description

Class II(c) consists of projects that do not have a significant environmental impact on the human or natural environment and are therefore categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. FTA requires a sufficient project description to support a CE determination. The project may require additional documentation to comply with other environmental laws.

#### Categorical Exclusion Description

Type 04: Planning and administrative activities which do not involve or lead directly to construction, such as: training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.

Date Description	Date
Class IIc CE Approved	

Scope Name / Code	Line Item Number	Line Item Name	Quantity	FTA Amount	Total Eligible Cost
5310 PROJECTS (641-00)	30.09.08	EMER RELIEF - OPERATING ASSIST - 100% Fed Share	0	\$37,933.00	\$37,933.00

## Part 4: Fleet Details

No fleet data exists for this application.

## Part 5: FTA Review Comments

### Application Review Comments

**Comment By** Daniel Peschell

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Comment Type	Pre-Award Manager Returns Application
Date	8/16/2021
Comment	See email of 8/16/21 from Daniel Peschell for revisions.

## Part 6: Agreement

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

**GRANT AGREEMENT  
(FTA G-28, February 9, 2021)**

On the date the authorized U.S. Department of Transportation, Federal Transit Administration (FTA) official signs this Grant Agreement, FTA has obligated and awarded federal assistance as provided below. Upon execution of this Grant Agreement by the Recipient named below, the Recipient affirms this FTA Award, enters into this Grant Agreement with FTA, and binds its compliance with the terms of this Grant Agreement.

The following documents are incorporated by reference and made part of this Grant Agreement:

- (1) "Federal Transit Administration Master Agreement," FTA MA(28), February 9, 2021, <http://www.transit.dot.gov>,
- (2) The Certifications and Assurances applicable to the FTA Award that the Recipient has selected and provided to FTA, and
- (3) Any Award notification containing special conditions or requirements, if issued.

WHEN THE TERM "FTA AWARD" OR "AWARD" IS USED, EITHER IN THIS GRANT AGREEMENT OR THE APPLICABLE MASTER AGREEMENT, "AWARD" ALSO INCLUDES ALL TERMS AND CONDITIONS SET FORTH IN THIS GRANT AGREEMENT.

FTA OR THE FEDERAL GOVERNMENT MAY WITHDRAW ITS OBLIGATION TO PROVIDE FEDERAL ASSISTANCE IF THE RECIPIENT DOES NOT EXECUTE THIS GRANT AGREEMENT WITHIN 90 DAYS FOLLOWING FTA'S AWARD DATE SET FORTH HEREIN.

### **FTA AWARD**

Federal Transit Administration (FTA) hereby awards a Federal Grant as follows:

#### **Recipient Information**

Recipient Name: LUBBOCK, CITY OF

Recipient ID: 1993

DUNS No: 058213893

## **Award Information**

Federal Award Identification Number: TX-2021-106-00

Award Name: Lubbock-Citibus FY 2021 Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities (CRRSAA) Operating

Award Start Date: 9/23/2021

Original Award End Date: 4/30/2023

Current Award End Date: 4/30/2023

Award Executive Summary: 08/05/2021-NB- Purpose: This is an application for FY 2021 Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities (CRRSAA) in the amount of \$37,933. These funds will be used to assist with the mobility of seniors and individuals with disabilities.

Activities to be performed: Funding trips outside of our required ADA service area and regular fixed-route service hours.

Funds will also be used to assist with the funding of free services for all individuals needing transportation to and from the health department for COVID-19 testing as well as the free services being provided to all individuals needing transportation to and from the vaccination facility.

Expected Outcomes: The free services have been implemented to prepare, prevent and respond to the COVID-19 pandemic.

Intended Beneficiaries: Senior citizens, individuals with disabilities as well as citizens needing transportation to acquire vaccinations or testing for the COVID-19 virus.

Subrecipient Activities: N/A

Per the CRRSAA , this grant is 100% federal funding and therefore, does not require local match.

The recipient agrees that if it receives Federal funding from the Federal Emergency Management Agency (FEMA) or through a pass-through entity through the Robert T. Stafford Disaster Relief and Emergency Assistance Act, a different Federal agency, or insurance proceeds for any portion of a project activity approved for FTA funding under this Grant Agreement, it will provide written notification to FTA, and reimburse FTA for any Federal share that duplicates funding provided by FEMA, another Federal agency, or insurance company. Per the CRRSAA, the project in this application is not required to be programmed in the Long-Range Transportation Plan or Statewide Transportation Improvement Program .

This grant request is within the acceptable limits of the fleet ratio.

Research and Development: This award does not include research and development activities.

Indirect Costs: This award does not include an indirect cost rate.

Suballocation Funds: Recipient organization is the Designated Recipient and can apply for and receive these apportioned funds.

Pre-Award Authority: This award is using Pre-Award Authority.

**Award Budget**

Total Award Budget: \$37,933.00

Amount of Federal Assistance Obligated for This FTA Action (in U.S. Dollars): \$37,933.00

Amount of Non-Federal Funds Committed to This FTA Action (in U.S. Dollars): \$0.00

Total FTA Amount Awarded and Obligated (in U.S. Dollars): \$37,933.00

Total Non-Federal Funds Committed to the Overall Award (in U.S. Dollars): \$0.00

**Award Budget Control Totals**

(The Budget includes the individual Project Budgets (Scopes and Activity Line Items) or as attached)

<b>Funding Source</b>	<b>Section of Statute</b>	<b>CFDA Number</b>	<b>Amount</b>
5310 Mobility of Sr. & Indv. w/ Disabilities Formula (CRRSAA)	5310-1B	20513	\$37,933
Local			\$0
Local/In-Kind			\$0
State			\$0
State/In-Kind			\$0
Other Federal			\$0
Transportation Development Credit			\$0
Adjustment			\$0
<b>Total Eligible Cost</b>			<b>\$37,933</b>

(The Transportation Development Credits are not added to the amount of the Total Award Budget.)

**U.S. Department of Labor Certification of Public Transportation Employee Protective Arrangements:**

Original Certification Date:

**Special Conditions**

There are no special conditions.

**FINDINGS AND DETERMINATIONS**

By signing this Award on behalf of FTA, I am making all the determinations and findings required by federal law and regulations before this Award may be made.

#### **FTA AWARD OF THE GRANT AGREEMENT**

Awarded By:  
Donald Koski  
Deputy Regional Administrator  
FEDERAL TRANSIT ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION  
Contact Info: donald.koski@dot.gov  
Award Date: 9/23/2021

#### **EXECUTION OF THE GRANT AGREEMENT**

Upon full execution of this Grant Agreement by the Recipient, the Effective Date will be the date FTA or the Federal Government awarded Federal assistance for this Grant Agreement.

By executing this Grant Agreement, the Recipient intends to enter into a legally binding agreement in which the Recipient:

- (1) Affirms this FTA Award,
- (2) Adopts and ratifies all of the following information it has submitted to FTA:
  - (a) Statements,
  - (b) Representations,
  - (c) Warranties,
  - (d) Covenants, and
  - (e) Materials,
- (3) Consents to comply with the requirements of this FTA Award, and
- (4) Agrees to all terms and conditions set forth in this Grant Agreement.

Executed By:  
*Blu Kostelich*  
Chief Financial Officer  
LUBBOCK, CITY OF  
9/24/2021



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## Information

### Agenda Item

**Ordinance 2nd Reading - Right-of-Way:** Consider Ordinance No. 2021-O0149, abandoning and closing an easement, located in Lot 22A, Tanglewood Addition, Lubbock County, Texas, at 4601 23rd Street.

### Item Summary

On October 12, 2021, the City Council approved the first reading of the ordinance.

The City of Lubbock is in receipt of a request to abandon and close a 10-foot easement, located in Lot 22-A, Tanglewood Addition, Lubbock County, Texas. The easement was dedicated by re-plat and is no longer needed.

All City departments and franchise utility companies are in agreement with the closure.

### Fiscal Impact

None

### Staff/Board Recommending

Jessica McEachern, Assistant City Manager

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## Attachments

Ordinance Abandon and Close a 10-foot Easement - Tanglewood Addition

Exhibit A - 10-foot Easement, Tanglewood Addition

Plat- Lot 22-A Tanglewood Addition

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ABANDONING AND CLOSING A TEN-FOOT EASEMENT LOCATED IN LOT 22A, TANGLEWOOD ADDITION, LUBBOCK COUNTY, TEXAS ACCORDING TO THE MAP, PLAT, AND/OR DEDICATION DEED THEREOF RECORDED IN VOLUME 797, PAGE 324 OF THE DEED RECORDS OF LUBBOCK COUNTY, TEXAS, WHICH IS MORE PARTICULARLY DESCRIBED IN THE BODY OF THIS ORDINANCE; DIRECTING THE CITY ENGINEER TO MARK THE OFFICIAL MAPS OF THE CITY TO REFLECT SAID ABANDONMENT AND CLOSING; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council finds that the easement hereinafter described in the body of this Ordinance is no longer needed for easement purposes and for public use; and it would be in the public interest to close, vacate and abandon the same for easement purposes and for public use; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT the easement as hereinafter described shall BE and the same is hereby closed, vacated and abandoned for easement purposes and for public use, such easement being more particularly described in the attached Exhibit "A."

SECTION 2. THAT the City Engineer is hereby authorized and directed to mark the official maps of the City of Lubbock to reflect said abandonment and closing, showing the number of this Ordinance and the date of its final passage.

SECTION 3. THAT should any section, paragraph, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 4. THAT the City Secretary of the City of Lubbock is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Passed by the City Council on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

 For MIKE KEENUM.  
\_\_\_\_\_  
Michael Keenum, P.E., Division Director of Engineering/City Engineer

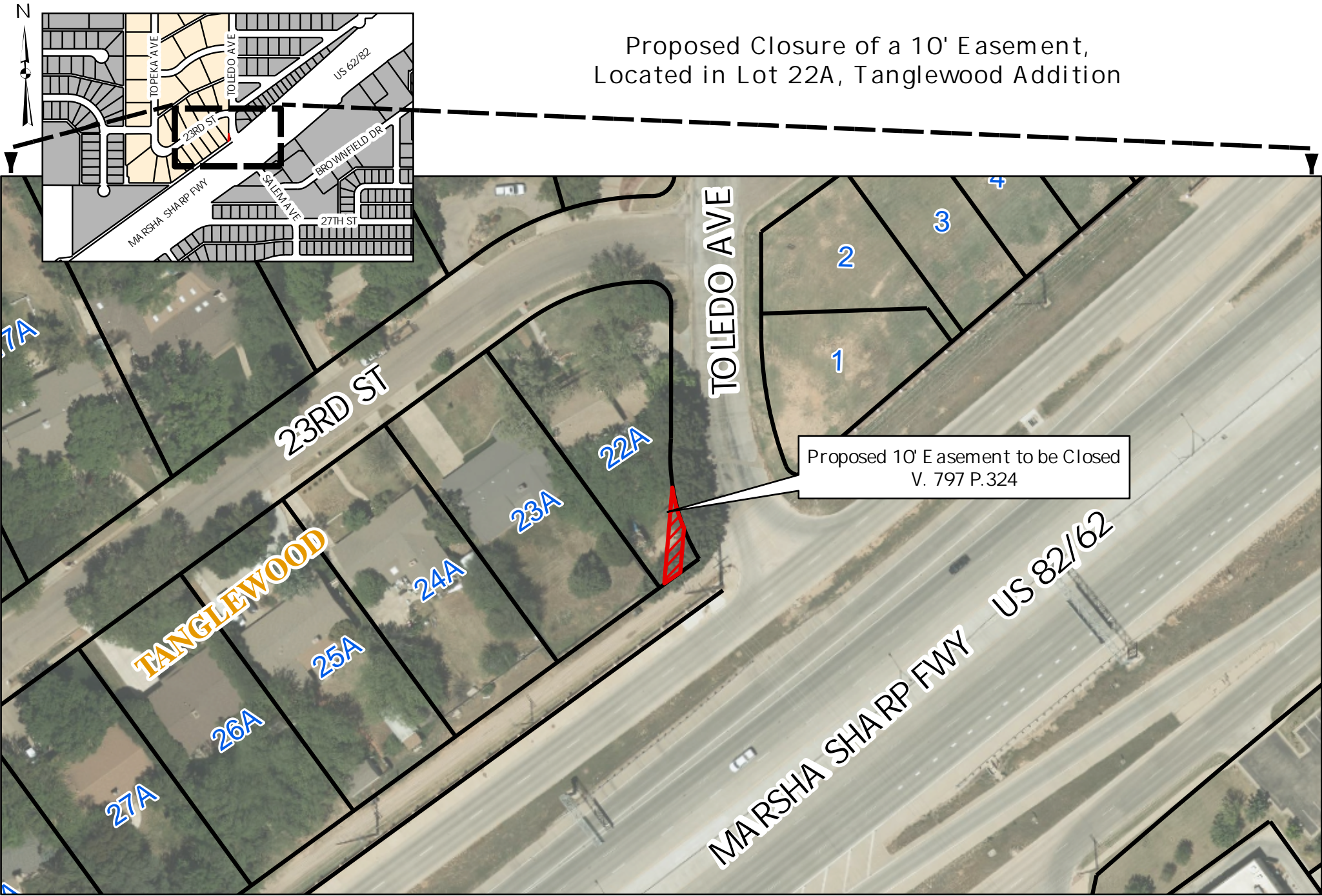
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ryan Brooke, Assistant City Attorney

Ord.A&C-10-Foot Easement-Lot 22A, Tanglewood  
9.27.21



# Proposed Closure of a 10' Easement, Located in Lot 22A, Tanglewood Addition



Proposed 10' Easement to be Closed  
V. 797 P.324

0 50 100 200 Feet

As required by Chapter 2051, Geospatial Data Products of the Government Code, this product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



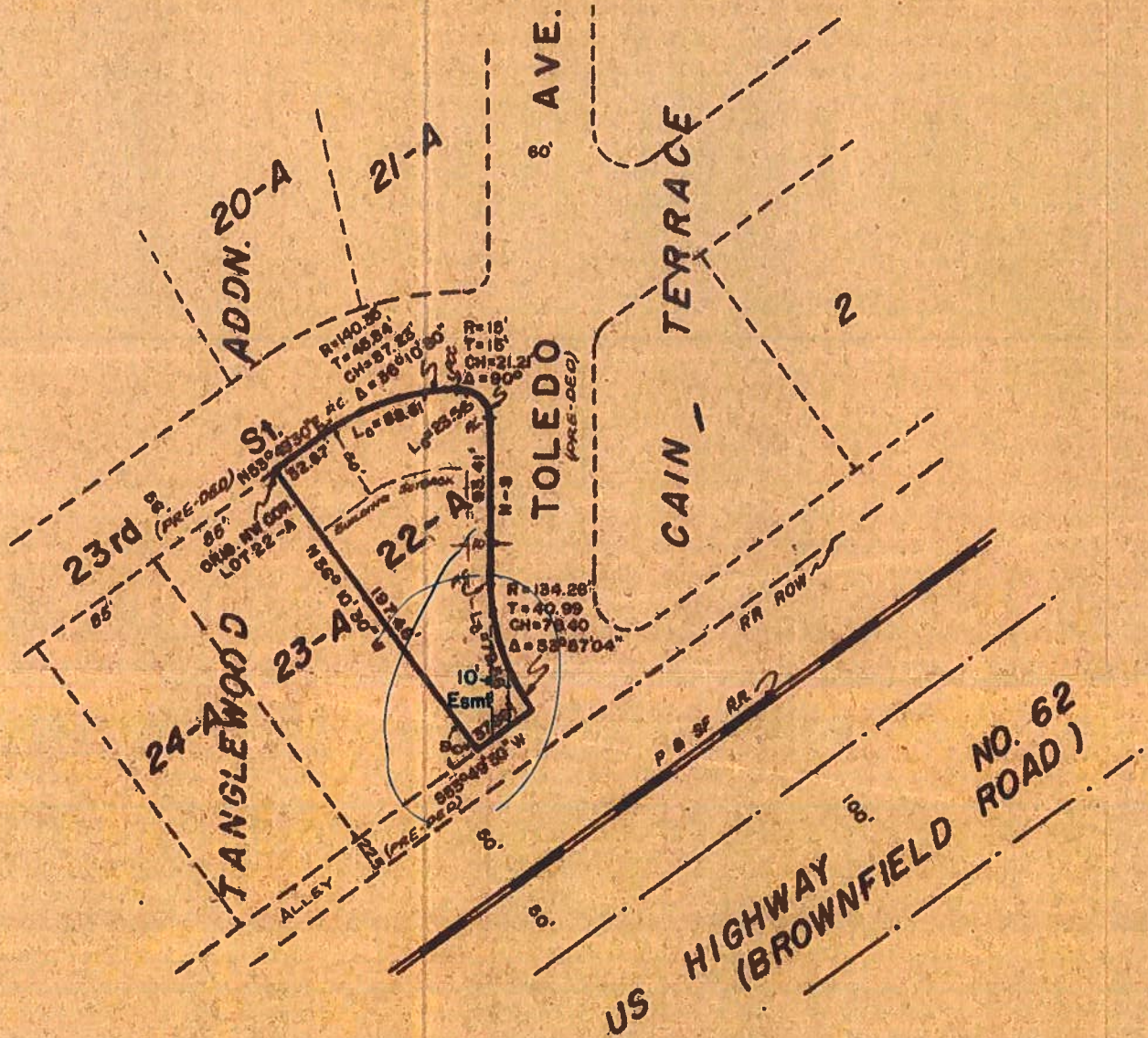


Vol-797  
Pg-324

RE-PLAT OF LOT 22-A

# TANGLEWOOD ADDITION

TO THE CITY OF LUBBOCK  
LUBBOCK COUNTY, TEXAS



SCALE  
HEI  
3/4





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## Information

### Agenda Item

**Ordinance 1st Reading - Right-of-Way:** Consider an ordinance abandoning and closing a 20-foot alley right-of-way, located in Block 7, Original Town of Lubbock, Lubbock County Texas, at 5th Street and Avenue J.

### Item Summary

The City of Lubbock is in receipt of a request to abandon and close a 20-foot alley, located in Block 7 Original Town of Lubbock, Lubbock County, Texas.

The total area being closed is 2,389 square feet. The Right-of-Way Department valued the closure of 2,389 square feet, at \$1.00 per square foot, based on adjacent property land values, for a total value of \$2,389.00 due to the City of Lubbock.

All City departments and franchise utility companies are in agreement with the closure.

### Fiscal Impact

\$2,389.00 revenue to the General Fund

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager

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## Attachments

Ordinance Abandon and Close an Alley Right-of-Way - Block 7 Original Town

Exhibit A - Closure Alley ROW - Blk 7 Original Town

Map- Closure of Alley Blk 7 Original Town

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ABANDONING AND CLOSING AN ALLEY RIGHT-OF-WAY LOCATED IN BLOCK 7, ORIGINAL TOWN OF LUBBOCK, LUBBOCK COUNTY, TEXAS ACCORDING TO THE MAP, PLAT, AND/OR DEDICATION DEED THEREOF RECORDED IN VOLUME 5, PAGE 384 AND 385 OF THE DEED RECORDS OF LUBBOCK COUNTY, TEXAS, WHICH IS MORE PARTICULARLY DESCRIBED IN THE BODY OF THIS ORDINANCE; DIRECTING THE CITY ENGINEER TO MARK THE OFFICIAL MAPS OF THE CITY TO REFLECT SAID ABANDONMENT AND CLOSING; PROVIDING A SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council finds that the alley right-of-way hereinafter described in the body of this Ordinance is no longer needed for alley right-of-way purposes and for public use; and it would be in the public interest to close, vacate and abandon the same for alley right-of-way purposes and for public use; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

SECTION 1. THAT the alley right-of-way as hereinafter described shall BE and the same is hereby closed, vacated and abandoned for alley right-of-way purposes and for public use, such alley right-of-way being more particularly described in the attached Exhibit "A."

SECTION 2. THAT the City Engineer is hereby authorized and directed to mark the official maps of the City of Lubbock to reflect said abandonment and closing, showing the number of this Ordinance and the date of its final passage.

SECTION 3. THAT should any section, paragraph, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 4. THAT the City Secretary of the City of Lubbock is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method provided by law.

AND IT IS SO ORDERED.

Passed by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Passed by the City Council on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

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Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

~~ For MIKE KEENUM~~  
Michael Keenum, P.E., Division Director of Engineering/City Engineer

APPROVED AS TO FORM:

  
Ryan Brooke, Assistant City Attorney

Ord.A&C-Alley ROW, Block 7, Original Town  
9.27.21



## AMD Engineering and Surveying

**AN ALLEY RIGHT-OF-WAY  
TO BE CLOSED, ABANDONED AND VACATED  
IN BLOCK 7 OF THE ORIGINAL TOWN OF LUBBOCK,  
AN ADDITION TO THE CITY OF LUBBOCK,  
LUBBOCK COUNTY, TEXAS**

Sheet 1 of 2

(Sketch of easement tract attached herewith as Exhibit "A", Sheet 2 of 2)

A closure, abandonment and vacation of an alley right-of-way, 20 feet in width, located in Block 7 of the Original Town of Lubbock, Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded in Volume 5, Page 384 and 385 of the Deed Records of Lubbock County, Texas, said alley to be closed and abandoned contains 0.0549 acres (2,389 sq. feet) of land being further described by metes and bounds as follows:

**BEGINNING** at a point in the north right-of-way line of 5th Street, as previously dedicated by the plat of said Original Town, and the southwest corner of Lot 13, Block 7 of said Original Town for the southeast corner of this alley closure and having coordinates of Northing: 7,278,075.93 and Easting: 949,687.24 of the Texas Coordinate System of 1983 (2011), Texas North Central Zone;

**THENCE** N. 88° 24' 17" W. a distance of 20.00 feet to a point for the southeast corner of Lot 12, Block 7 of said Original Town and the southwest corner of this alley closure;

**THENCE** N. 01° 35' 27" E., along the west line of said alley, a distance of 130.09 feet to a point of intersection with the southwestern right-of-way line of the B.N. & S.F. Railroad, as described in a Deed recorded in Volume 1047, Page 343 of the Deed Records of Lubbock County, Texas, for the northwest corner of this alley closure;

**THENCE** southeasterly, along a curve to the right and said railroad right-of-way, an arc distance of 29.19 feet, said curve having a radius of 5629.58 feet, a delta angle of 00° 17' 49", a chord distance of 29.19 feet and a chord bearing of S. 41° 39' 32" E., to a point of intersection with the east line of said alley for the northeast corner of this alley closure;

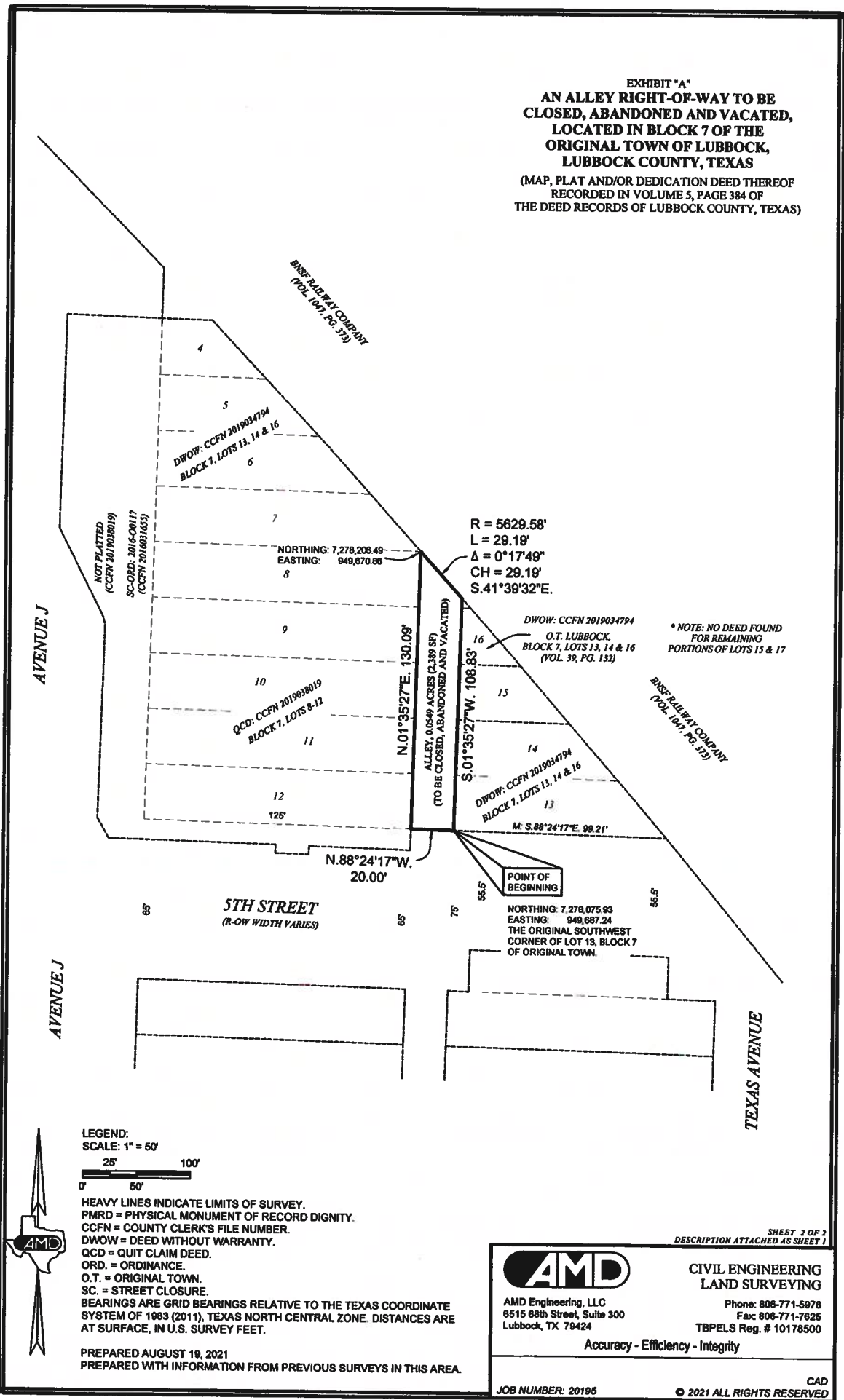
**THENCE** S. 01° 35' 27" W. a distance of 108.83 feet to the **POINT OF BEGINNING**. Bearings are relative to the Texas Coordinate System of 1983 (2011), Texas North Central Zone. Distances are at surface, in U.S. Survey feet.

Prepared: August 19, 2021

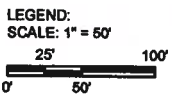
This description was prepared with information from previous surveys in this area.

20195 Exhibit "A" - ALLEY R-O-W CLOSURE

EXHIBIT "A"  
**AN ALLEY RIGHT-OF-WAY TO BE  
 CLOSED, ABANDONED AND VACATED,  
 LOCATED IN BLOCK 7 OF THE  
 ORIGINAL TOWN OF LUBBOCK,  
 LUBBOCK COUNTY, TEXAS**  
 (MAP, PLAT AND/OR DEDICATION DEED THEREOF  
 RECORDED IN VOLUME 5, PAGE 384 OF  
 THE DEED RECORDS OF LUBBOCK COUNTY, TEXAS)



\* NOTE: NO DEED FOUND  
 FOR REMAINING  
 PORTIONS OF LOTS 15 & 17



HEAVY LINES INDICATE LIMITS OF SURVEY.  
 PMRD = PHYSICAL MONUMENT OF RECORD DIGNITY.  
 CCFN = COUNTY CLERK'S FILE NUMBER.  
 DWOW = DEED WITHOUT WARRANTY.  
 QCD = QUIT CLAIM DEED.  
 ORD. = ORDINANCE.  
 O.T. = ORIGINAL TOWN.  
 SC. = STREET CLOSURE.  
 BEARINGS ARE GRID BEARINGS RELATIVE TO THE TEXAS COORDINATE  
 SYSTEM OF 1983 (2011), TEXAS NORTH CENTRAL ZONE. DISTANCES ARE  
 AT SURFACE, IN U.S. SURVEY FEET.

PREPARED AUGUST 10, 2021  
 PREPARED WITH INFORMATION FROM PREVIOUS SURVEYS IN THIS AREA.

SHEET 2 OF 2  
 DESCRIPTION ATTACHED AS SHEET 1

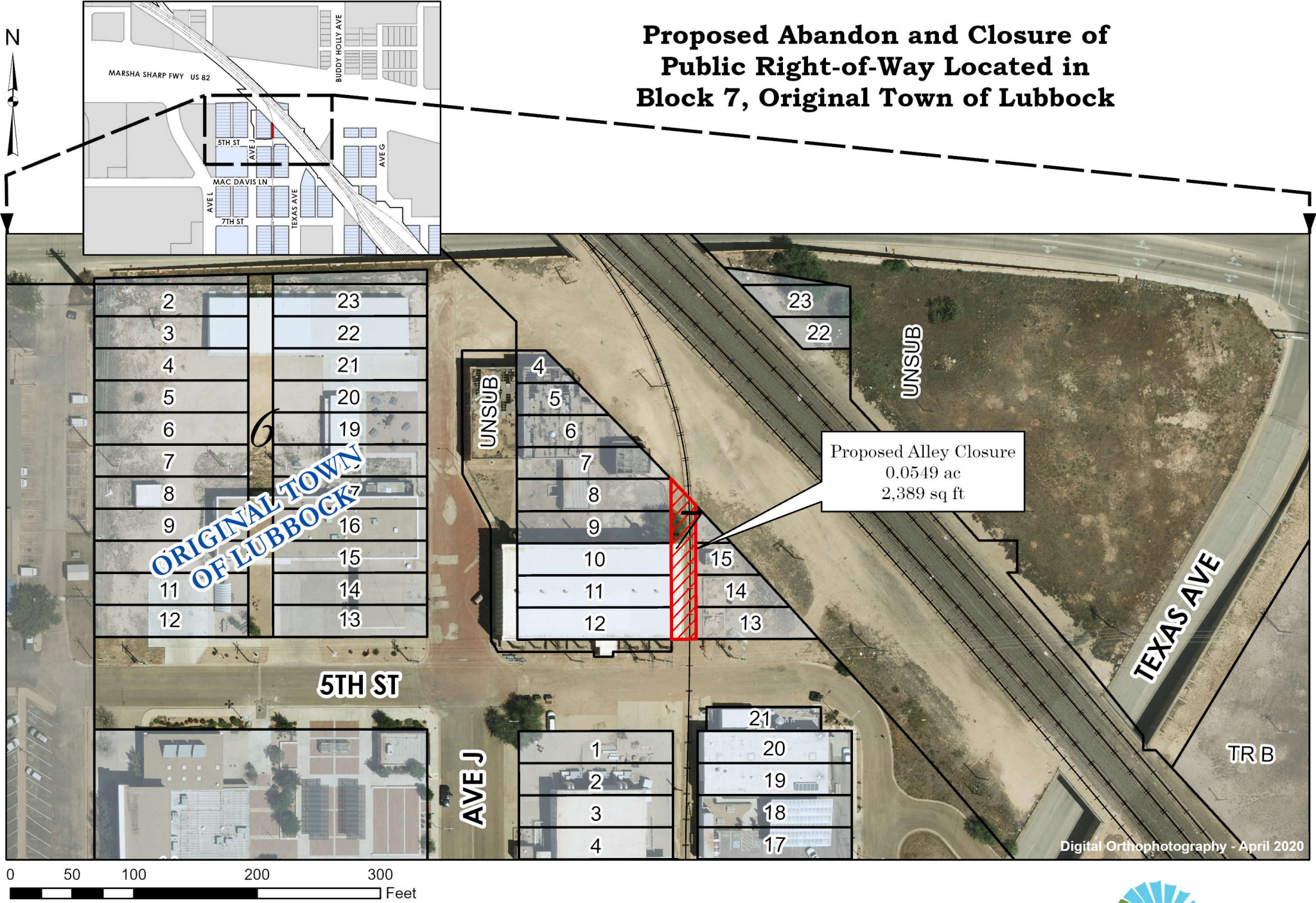
**AMD**  
 CIVIL ENGINEERING  
 LAND SURVEYING

AMD Engineering, LLC  
 6515 68th Street, Suite 300  
 Lubbock, TX 79424  
 Phone: 806-771-5978  
 Fax: 806-771-7825  
 TBPELS Reg. # 10178500

Accuracy - Efficiency - Integrity



# Proposed Abandon and Closure of Public Right-of-Way Located in Block 7, Original Town of Lubbock



As required by Chapter 2051, SUBCHAPTER D. GEOSPATIAL DATA PRODUCTS of the Government Code, the City of Lubbock hereby provides notice that the data on this map was created by the City of Lubbock. Any data that appears to represent property boundaries is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.







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## Information

### Agenda Item

**Resolution - Right-of-Way:** Consider a resolution authorizing the Mayor to execute a Parking Lease Agreement between the City of Lubbock and Cast Iron Grill, for the use of a City-owned parking lot at 1801 Crickets Avenue.

### Item Summary

The lease agreement renewal between the City of Lubbock and the Cast Iron Grill, located at 620 19th Street, is for the use of 72 parking spaces on City-owned Property at 1801 Crickets Avenue. Cast Iron Grill requested the lease to provide employees and customers additional parking between the hours of 6:00 a.m. and 2:00 p.m., Monday through Friday. The term of the lease is 2 years.

The City will receive \$480 per month calculated as follows: \$20 per space (the current market rental rate for downtown parking) x 72 spaces x 1/3 day (8 hours) = \$480 a month.

### Fiscal Impact

\$480 monthly revenue to the General Fund

### Staff/Board Recommending

Jessica McEachern, Assistant City Manager

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## Attachments

Resolution - Parking Lot Lease Agreement - Cast Iron Grill

Parking Lot Lease Agreement - Cast Iron Grill

Exhibit A -Parking Lot Lease Agreement - Cast Iron Grill

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT** the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Parking Lease Agreement for parking by and between the City of Lubbock and Cast Iron Grill, and related documents. Said Parking Lease Agreement is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

**Passed by the City Council on \_\_\_\_\_.**

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Michael Keenum, P.E., Division Director of Engineering/City Engineer

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Ryan Brooke, Assistant City Attorney

**PARKING LEASE AGREEMENT**

**THE STATE OF TEXAS     §**

**KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF LUBBOCK     §**

This Parking Lease Agreement (the "Lease") is entered into as of the day set forth below, by and between the **CITY OF LUBBOCK** (the "LESSOR"), and **CAST IRON GRILL**, (the LESSEE"), who in consideration of the mutual agreements contained herein, does hereby contract and agree as follows:

**LEASE**

**Section 1.** The LESSOR, subject to the terms and provisions herein, hereby leases unto the LESSEE for a term of two (2) years, beginning \_\_\_\_\_, and ending \_\_\_\_\_, (the "Term") subject to earlier termination as provided in this Lease, seventy-two (72) parking spaces of the following described tract of land (the "Leased Premises"):

**BLOCK 232, LOTS 7 THRU 23, ORIGINAL TOWN OF LUBBOCK, LUBBOCK COUNTY, TEXAS.**

**Section 2.** The LESSEE, shall pay as a cost for the lease of the Leased Premises the sum of Four Hundred Eighty Dollars (\$480.00) in advance on the first (1<sup>st</sup>) day of each month during the Term (the "Rent"), by check or money order to the **CITY OF LUBBOCK**, P.O. Box 2000, Lubbock, Texas, 79457, Attention: Property Manager; with the first such payment being due upon the execution of this Lease.

**Section 3.** Any Rent unpaid after the first (1<sup>st</sup>) day of each month during the Term is delinquent and will constitute a default of the Lease by the LESSEE if not paid according to the requirements of this Section. If all Rent is not paid on or before the fifth (5) day of the month of default, the LESSEE shall pay the lesser of:

- (i) an initial late charge of twenty-five dollars (\$25.00) plus a late fee of one dollar (\$1.00) per day thereafter until all delinquent Rent and late charges are paid in full; or,
- (ii) the maximum charge for the payment of delinquent Rent allowed by applicable Federal, State, or local statute, regulation, rule, order, or ordinance. Daily late charges shall not exceed twenty-five dollars (\$25.00) for any Rent.

**Section 4.** The Leased Premises shall be used by the LESSEE as a parking lot for vehicles used by the LESSEE or the LESSEE's customers, guests, licensees, or invitees between the hours of 6:00 a.m. and 2:00 p.m., Monday through Friday. Except as expressly authorized herein, the LESSEE shall have no rights or privileges to utilize the Leased Premises. The LESSEE will restrict the use of the Leased Premises for such purpose, and will not use, or permit the use of, the Lease Premises for any other purpose without first obtaining the written consent of the LESSOR.

**Section 5.** The LESSEE will not commit, or allow to be committed, any waste on the Leased Premises, create or allow any nuisance to exist on the Leased Premises, or use or allow the Leased Premises to be used for any unlawful purpose.

**Section 6.** The LESSOR represents that the Leased Premises are in fit condition for the use as described in Section 4. The LESSEE agrees to accept the Leased Premises on possession as being in good state of repair and suitable for such use and purposes. The LESSEE agrees to surrender the Leased Premises to the LESSOR at the end of the Term in the same condition as when the LESSEE took possession, allowing for reasonable use and wear.

**Section 7.** Partial destruction of the Leased Premises shall not terminate this Lease, nor shall it render this Lease void or voidable, except as provided in this Lease. Nevertheless, the LESSEE may terminate this Lease upon five (5) days written notice in the event of partial destruction.

**Section 8.** TO THE EXTENT ALLOWED BY LAW, THE LESSEE HEREBY HOLDS THE LESSOR HARMLESS, AND INDEMNIFIES THE LESSOR, FROM AND AGAINST ANY AND ALL PAYMENTS, EXPENSES, COSTS, ATTORNEY'S FEES, AND ALL CLAIMS, LIABILITIES, LOSSES, OR DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSSES OR DAMAGES TO PROPERTY OR INJURIES TO PERSONS, OF ANY KIND OR TYPE, CAUSED WHOLLY OR IN PART BY, RESULTING FROM, OR RELATED IN ANY WAY TO THE NEGLIGENCE OF THE LESSOR, OR ANY ACT OR OMISSIONS BY THE LESSEE OR THE LESSEE'S CUSTOMERS, GUESTS, LICENSEES, OR INVITEES, UNDER THE TERMS OF THIS LEASE OR FOR ANY CAUSE WHATSOEVER ARISING OUT OF, RELATED TO, OR BY REASON OF THE USE OR OCCUPATION OF THE LEASED PREMISES BY THE LESSEE OR THE LESSEE'S CUSTOMERS, GUESTS, LICENSEES, OR INVITEES.

**Section 9.** The LESSEE shall procure and carry throughout the term of this Lease, insurance as specified in the attached Exhibit "A" or shall provide written documentation satisfactory to the LESSOR that the LESSEE is self-insured.

**Section 10.** No improvements of any kind or type are to be placed on the Leased Premises by the LESSEE. If any such improvements are placed on the Leased Premises, they shall be removed by the LESSEE immediately upon the request of the LESSOR at the sole expense of the LESSEE.

**Section 11.** If the LESSEE fails to comply with any conditions and covenants of this Lease, the LESSOR may perform the requirements of this Lease, with the cost and expense of such performance to be charged to the LESSEE in the LESSEE's next installment of the Rent.

**Section 12.** To the extent allowed by law, all goods and personal property of any kind in or on the Leased Premises will be the sole responsibility of the LESSEE, and in no event will the LESSOR be liable for any loss or damage to such goods or property for any reason whatsoever.

**Section 13.** This Lease cannot be assigned in whole or in part by the LESSEE except upon the express written permission of such assignment by the LESSOR, with such consent to be at the sole discretion of the LESSOR.

**Section 14.** The LESSEE's rights to utilize the Leased Premises granted hereunder shall be deemed subordinate to the rights of LESSOR. Should the use of the Leased Premises become necessary for any purpose of LESSOR, the LESSOR's use will supersede any use of the Leased Premises granted to the LESSEE under this Lease. If any use of the Leased Property by the LESSEE should be superseded by the LESSOR, the LESSEE will be pro-rated any Rent prepaid at the time of such use. The LESSOR shall make every effort to provide written notice to the LESSEE for any anticipated use of the Leased Premises by the LESSOR that might conflict with the LESSEE's use of the Leased Premises granted under this License.

**Section 15.** The LESSOR reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the LESSOR shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.

EXECUTED on this \_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF LUBBOCK**

**CAST IRON GRILL**

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

  
\_\_\_\_\_  
**Name (Signature)**

  
\_\_\_\_\_  
**Name (Printed)**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**



Michael Keenum, P.E., Division Director of Engineering/City Engineer

**APPROVED AS TO FORM:**



Ryan Brooke, Assistant City Attorney

## **Exhibit "A" - Insurance**

### **General Liability:**

LESSEE's insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$500,000 each occurrence and in the aggregate and shall include the following:

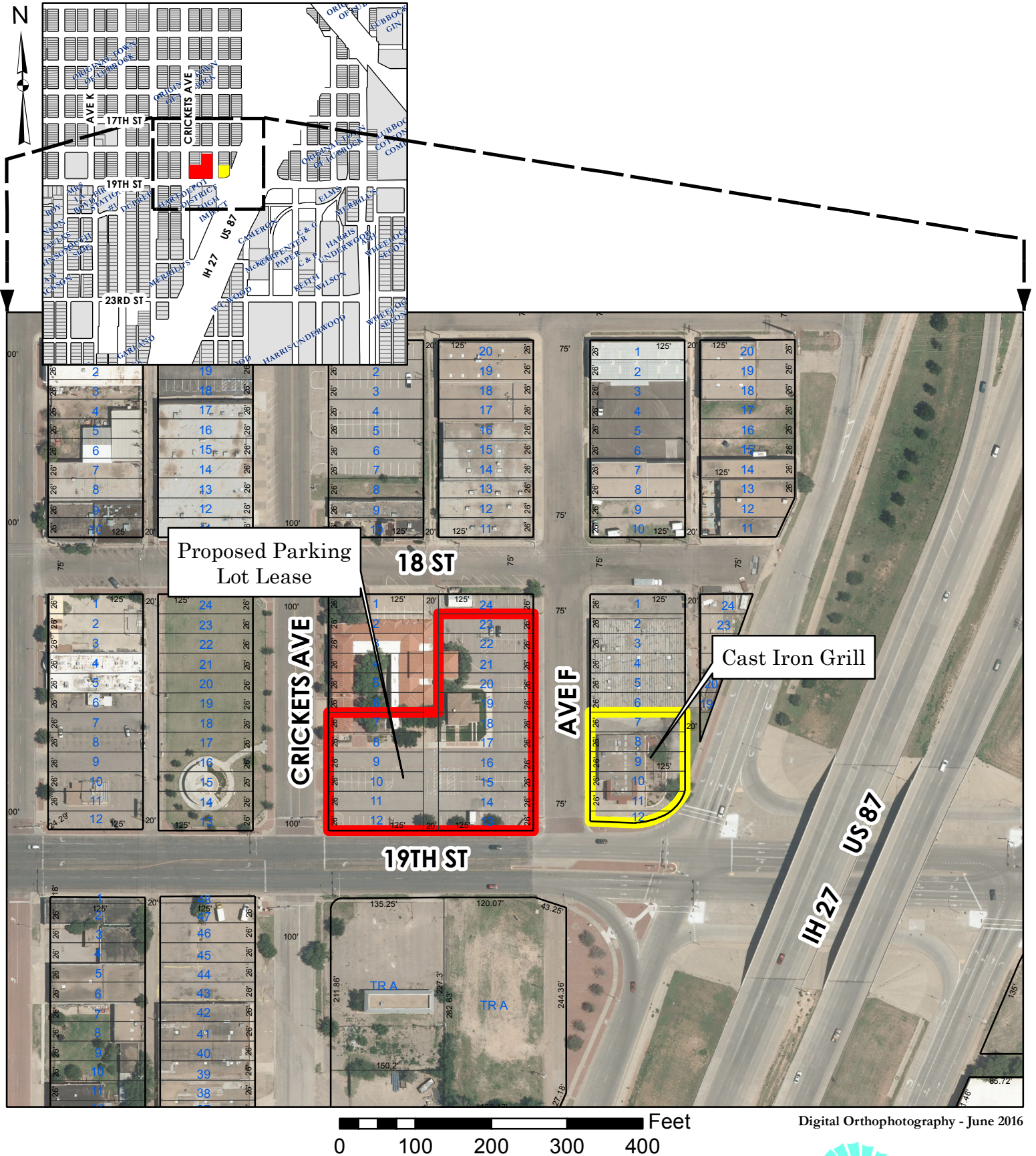
- Bodily Injury and Property Damage
- Broad form Contractual Liability
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

### **Other Insurance Requirements:**

LESSEE shall provide a Certificate of Insurance to the City of Lubbock as evidence of the required insurance coverage. The Certificate will provide 30 days notice of cancellation. A copy of the required endorsements and waivers of subrogation shall be included in the certificate. LESSEE's insurance policy through policy endorsement must name LESSOR as an additional insured and include wording, which states that the policy shall be primary and non-contributory with respect to any insurance carried by City of Lubbock. The certificate of insurance described below must reflect that the above wording is included in evidenced policies. The policy must be endorsed to include a waiver of subrogation in favor of the City of Lubbock.



# Proposed Parking Lot Lease for Cast Iron Grill



As required by SECTION 1. Chapter 2051, SUBCHAPTER D. GEOSPATIAL DATA PRODUCTS of the Government Code, the City of Lubbock hereby provides notice that the data on this map was created by the City of Lubbock. Any data that appears to represent property boundaries is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.





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## Information

### Agenda Item

**Resolution - Planning:** Consider a resolution authorizing the Mayor to execute a Dedicatory Deed, associated Easements, and all related documents, in connection with property described as Tract A, Milwaukee EST Addition, Lubbock County, Texas, located south of 104th Street and west of Milwaukee Avenue.

### Item Summary

The plat of Milwaukee EST Addition, Tract A, which is for an elevated water storage tank, was approved by the Planning and Zoning Commission with conditions, on May 2, 2019. Hugo Reed and Associates, Inc. submitted a revised plat on June 22, 2021, which satisfied the required conditions. The plat has been reviewed and approved by City staff and is now ready for recording. The Dedicatory Deed is required for the plat to be recorded with the County Clerk's Office. The Dedicatory Deed dedicates the streets, alleys, easements and other public properties shown on the plat, to the public for public use.

### Fiscal Impact

None

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager  
Planning and Zoning Commission

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## Attachments

Resolution

Dedicatory Deed

Plat

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT** the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock a Dedicatory Deed, associated Easements, and all related documents in connection with a property described as Tract "A", Milwaukee EST Addition to the City of Lubbock, Lubbock County, Texas and all related documents. Said Dedication Deeds and Easements are attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

## DEDICATION DEED

THE STATE OF TEXAS     §  
  §     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF LUBBOCK     §

That CITY OF LUBBOCK is the Owner (hereinafter referred to as the “Owner”) of the following described real property:

**METES AND BOUNDS DESCRIPTION** of the plat limits of Tract “A”, Milwaukee EST Addition to the City of Lubbock, Lubbock County, Texas, being further described as follows:

**BEGINNING** at an “X” cut in concrete set in the South right-of-way line of 104th Street and the West right-of-way line of Milwaukee Avenue both being described in Volume 1237, Page 531 of the Deed Records of Lubbock County, Texas (DRLCT), for the Northeast corner of this tract which bears S. 01°50’43” W. a distance of 2142.93 feet and N. 88°08’50” W. a distance of 50.00 feet from the Northeast corner of Section 22, Block AK, Lubbock County, Texas;

**THENCE** S. 01°50’43” W., along the West right-of-way line of said Milwaukee Avenue, a distance of 200.66 feet to a 1/2” iron rod with cap (marked “Hugo Reed & Assoc.”) set in the Northern boundary of a 0.8279 acre tract of land as described under County Clerk File Number (CCFN) 2008022864 of the Official Public Records of Lubbock County, Texas (OPRLCT), for the Southeast corner of this tract;

**THENCE** N. 88°07’33” W., along the Northern boundary of said 0.8279 acre tract, a distance of 269.98 feet to a 1/2” iron rod with cap (marked “Stevens 4439”) found in the Eastern boundary of a 5.1788 acre tract of land as described under CCFN 2008022863, OPRLCT, at the Northwest corner of said 0.8279 acre tract and the Southwest corner of this tract;

**THENCE** N. 01°49’42” E., along the Eastern boundary of said 5.1788 acre tract, a distance of 200.55 feet to a 1/2” iron rod with cap (marked “Hugo Reed & Assoc.”) set in the South right-of-way line of said 104th Street for the Northwest corner of this tract;

**THENCE** S. 88°08’50” E., along said South right-of-way line, a distance of 270.04 feet to the **POINT OF BEGINNING** (the “Property”).

That Owner does hereby plat and dedicate the Property into the lots, designating streets, alleys, easements and other public properties, as shown on and in accordance with the attached map prepared by Hugo Reed and Associates, a licensed surveyor for the State of Texas, on the 5th day of April, 2019 and approved by the City Planning Commission of the City of Lubbock, County of Lubbock, State of Texas, on the 2nd day of May, 2019;

That Owner desires to have the Property platted, dedicated and duly filed for record as required by law, all as shown on the attached map; and



# TRACT "A", MILWAUKEE EST ADDITION

TO THE CITY OF LUBBOCK,  
LUBBOCK COUNTY, TEXAS

### GENERAL NOTES:

Scale : 1"=50'

Heavy lines indicate plat limits.

All streets, alleys, and easements within plat limits are herein dedicated unless noted otherwise.

All easements herein granted shall entitle the City or the utility company using such easements to the right to remove, repair, or replace any lines, pipes, conduits, or poles within such easements as may be determined by the City or utility company without the City or utility company being responsible or liable for the replacement of improvements, paving, or surfacing of the easement necessitated by such removal, repair, or replacement. Easements designated or intended for vehicular passage (utility and emergency) or pedestrian access shall not be fenced or otherwise obstructed.

All utility service shall be in accordance with the Underground Utilities Policy Statement by the Planning and Zoning Commission of the City of Lubbock, Texas and the provisions of section 36.09,095 of the Lubbock Code of Ordinances. Any relocation or revision of existing facilities shall be at the subdivider's expense. Compensation shall be made prior to the recording of this final plat.

All existing or proposed utility services to and on tracts indicated by this plat shall be contained in the public right-of-way and public or private utility easements. Utility service installation requested at a future date, and not within an easement indicated by this plat, shall be within a proper utility easement granted by the owner of said property by separate recorded instrument prior to the provision of such service. Such easements shall be at expense of the entity requesting such installation.

No building permit shall be issued on any survey certificate that is not in accordance with an approved final plat unless exception is provided by Planning and Zoning Commission policy or by the Lubbock Code of Ordinances.

Minimum floor elevations shall conform to the requirements of the Lubbock Drainage Criteria Manual, as adopted by Ord. 10022, as amended, and Sec. 28.09.131, Sec. 28.14.004, and Sec. 30.03.073 of the Lubbock Code of Ordinances.

Blanket underground utility, transformer pad, and switching enclosure easement is herein granted to South Plains Electric Co-op as required for service.

Blanket underground utility easement is herein granted to Southwestern Bell Telephone Company as required for service.

Public pedestrian access easement is herein granted for persons traversing along the public parkway and needing to enter onto private property for the purpose of crossing a driveway. The easement is limited to those portions of the as-constructed driveways and walks which may extend outside public right-of-way onto private property and are constructed for the continuance of the accessible (wheelchair) routes across the back of the driveway. This easement applies to existing and any future drive entrances as constructed.

### ADDITIONAL NOTES:

Contains: 1,243 acres

CCFN - County Clerk File Number

R-O-W - Right of Way

● - Found 1/2" iron rod with cap (marked "Hugo Reed & Assoc.")

○ - Set 1/2" iron rod with cap (marked "Hugo Reed & Assoc.")

⊗ - Found "X" cut in concrete

⊙ - Found 1/2" iron rod with cap (marked "Stevens 4339")

### SURVEY CONTROL:

NAD83: Coordinates shown hereon as "NAD83" are relative to the Texas Coordinate System of 1983, North Central Zone datum as described in Texas Natural Resources Code, Title 2, Chapter 21, as amended. Coordinates are "grid" coordinates. Distances shown are surface, U.S. Survey feet.

Bearings are relative to Grid North, Texas Coordinate System of 1983, North-Central Zone, (2011, epoch 2010.0)

A legal description of even survey date herewith accompanies this plat.

No abstract of title or title commitment was provided to this surveyor for this proposed plat. Any record research done by this surveyor was made only for the purpose of determining the boundary of this property (and as it may relate to adjoining parcels or rights-of-way). Record documents other than those shown on this plat may exist and encumber this property. This plat does not constitute or imply a complete title examination and any such title examinations are not the responsibility of this surveyor.

Know all men by these presents:

That I, Robert A. Christopher, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments indicated thereon were properly placed under my personal supervision in accordance with the Subdivision Regulations of the City of Lubbock, Texas.

April 5, 2019

May 5, 2020 - Revised to change interior lot lines



Registered Professional  
Land Surveyor No. 5167  
Licensed State Land Surveyor  
State of Texas



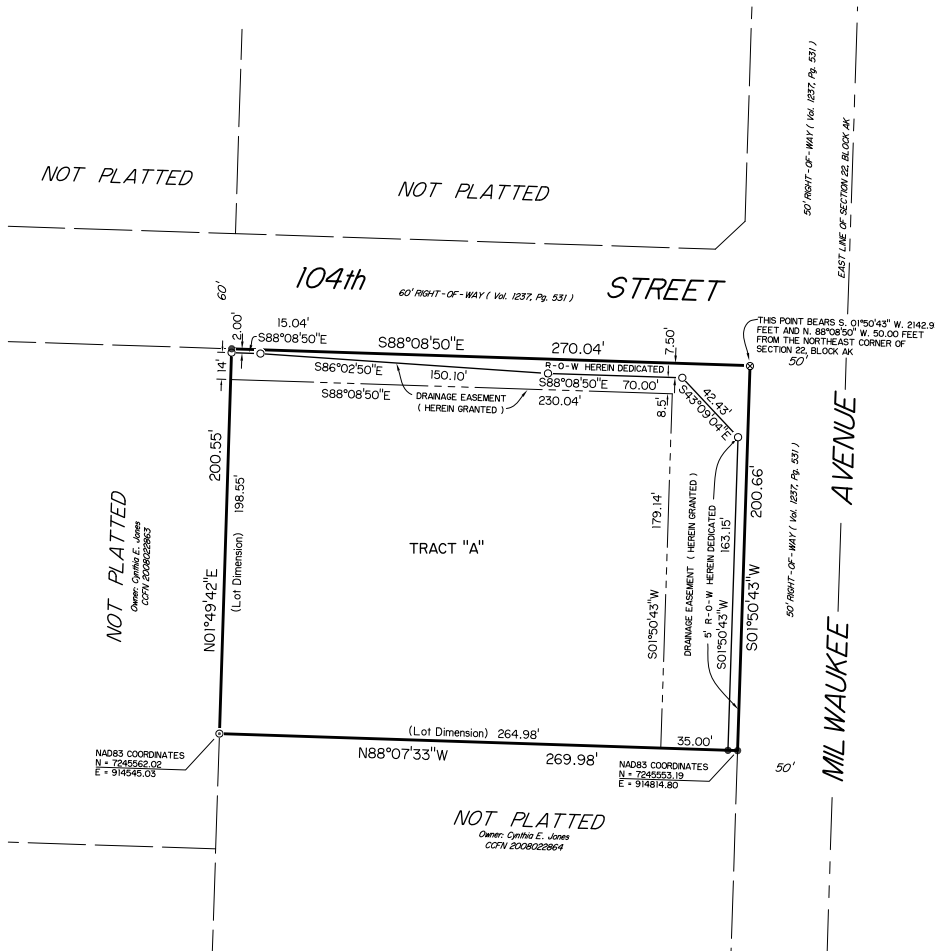
Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by the City Planning Commission of the City of Lubbock, Texas

Approved \_\_\_\_\_, Chairman

Attest \_\_\_\_\_, Secretary



**HR HUGO REED AND ASSOCIATES, INC.**  
LAND SURVEYORS 1601 AVENUE N  
CIVIL ENGINEERS LUBBOCK, TEXAS 79401  
TEXAS LICENSED SURVEYING FIRM 100575-00 PHONE: 806 / 763-5642  
TEXAS REGISTERED ENGINEERING FIRM FA760 FAX: 806 / 763-3891





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## Information

### Agenda Item

**Resolution - Engineering:** Consider a resolution ratifying the actions of the Mayor, in executing Contract 16224, an agreement and related documents, with the Texas Water Development Board (TWDB), for a grant utilizing TWDB Category 1 Flood Infrastructure Funds (FIF) associated with the project Flood Protection Planning of Watersheds.

### Item Summary

The City of Lubbock proposes completion of flood protection planning activities for restoration of the Canyon Lakes System on the City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301).

The watershed study will include the development of comprehensive hydrologic and hydraulic models that will serve as planning tools to define and map flood hazard risks within the designated areas. The models will also provide a platform for developing and evaluating improvement alternatives. The updated models will be compared to the existing Federal Emergency Management Agency (FEMA) floodplain maps and all differences will be noted. Coordination with FEMA will occur throughout the process so that the submitted data complies with the latest FEMA requirements.

The proposed flood protection planning study will include the development of new hydrologic and hydraulic models or update existing models for the study area. The models will utilize the latest estimates of rainfall for the area (Atlas 14), which will develop inundation maps representing existing conditions for the 2-yr, 5-yr, 10-yr, 25-yr, 50-yr, 100-yr, and 500-yr storm events. It will also identify areas at risk for structural and major roadway flooding due to riverine conditions. This study will also assist with community outreach and education of the public about study purpose, findings, and project recommendations.

Following Council approval, staff will submit the executed resolution to the TWDB to complete the application.

### Fiscal Impact

The City of Lubbock will be responsible for contributing \$187,500, which is 25% of the total project cost of \$750,000. Approval of the grant application enables the City to benefit from TWDB Category 1 Flood Infrastructure Funds (FIF) grant funding.

### Staff/Board Recommending

Jessica McEachern, Assistant City Manager

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## Attachments

Resolution (r) - TWDB Grant



**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the City Council of the City of Lubbock hereby authorizes and ratifies the execution by the Mayor for and on behalf of the City of Lubbock, of Contract No. 16224 for a flood infrastructure funding agreement, by and between the City of Lubbock and the Texas Water Development Board (TWDB), of Austin, Texas, and related documents. Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:



\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney



STATE OF TEXAS

TWDB Commitment No. G1001313

COUNTY OF TRAVIS

Flood Infrastructure Fund Category 1

City of Lubbock, Texas

This Contract, (hereinafter "CONTRACT"), between the Texas Water Development Board (hereinafter "TWDB") and the City of Lubbock, Texas (hereinafter "GRANTEE"), is composed of two parts, SECTION I - SPECIFIC CONDITIONS AND EXCEPTIONS TO THE STANDARD AGREEMENT and SECTION II - STANDARD AGREEMENT.

### **SECTION I - SPECIFIC CONDITIONS AND EXCEPTIONS TO STANDARD AGREEMENT**

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#### **ARTICLE I                    DEFINITIONS**

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For the purposes of this CONTRACT, the following terms or phrases are defined as follows:

1. TWDB – The Texas Water Development Board, or its designated representative
2. GRANTEE – City of Lubbock, Texas
3. EXECUTIVE ADMINISTRATOR – The Executive Administrator of TWDB or a designated representative
4. PARTICIPANT(S) –N/A
5. REQUIRED INTERLOCAL AGREEMENT(S) –N/A
6. TWDB APPROVAL DATE – April 22, 2021
7. PROJECT – A regional flood planning study of the PROJECT AREA identified as Project No. 40065, as more specifically described in **EXHIBIT A**, Detailed Description of the Project Service Area and **EXHIBIT B**, Scope of Work.
8. PROJECT AREA – consists of the City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301) with a total of 428.44 square miles. and between 10-20 stream miles, as more specifically defined in **EXHIBIT A**, Detailed Description of the Project Service Area.
9. DEADLINE FOR CONTRACT EXECUTION – October 22, 2021
10. CONTRACT INITIATION DATE – The date CONTRACT is signed by the EXECUTIVE ADMINISTRATOR as shown on the last page of this CONTRACT document.
11. FINAL REPORT – The report including deliverables as described in **EXHIBIT B**, Scope of Work, and all maps, models, and other data gathered and developed for the PROJECT as described in TWDB guidance.

12. PROJECT COMPLETION DATE – October 22, 2023
13. CONTRACT EXPIRATION DATE – December 22, 2023
14. TOTAL PROJECT COST – \$750,000
15. TWDB SHARE OF THE TOTAL PROJECT COST – The lesser of \$562,500 or 75 percent of the total cost.
16. LOCAL SHARE OF THE TOTAL PROJECT COST – \$187,500 in cash and/or in-kind contributions or 25 percent of the total costs.
17. PAYMENT REQUEST SCHEDULE – Not less than quarterly but not more frequently than monthly.
18. SURPLUS FUNDS – Those funds remaining after the GRANTEE has submitted final accounting to the EXECUTIVE ADMINISTRATOR, including interest earned.
19. PROJECT ACCOUNT – An account dedicated to the payment of PROJECT costs.
20. ELIGIBLE EXPENSES – The expenses allowed by TWDB program requirements and authorized by the TWDB in the approved Project Task and Expense Budget. Expenses incurred prior to March 12, 2020, are not ELIGIBLE EXPENSES.
21. ESCROW ACCOUNT – An account established by GRANTEE that will be used to manage the grant funds in accordance with an escrow agreement acceptable to the EXECUTIVE ADMINISTRATOR, until the EXECUTIVE ADMINISTRATOR authorizes the release of the grant funds to the PROJECT ACCOUNT.

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**ARTICLE II                      SPECIAL CONDITIONS**

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**OTHER SPECIAL CONDITIONS AND EXCEPTIONS TO STANDARD AGREEMENT OF THIS CONTRACT –**

1. GRANTEE must work with any community within the PROJECT AREA that does not yet have floodplain management standards at least equivalent to National Flood Insurance Program minimum standards to assist that community with adopting and enforcing floodplain management standards at least equivalent to National Flood Insurance Program minimum standards, in accordance with the Flood Intended Use Plan. This work must be reflected in the Scope of Work, EXHIBIT B.
2. Prior to closing, GRANTEE must execute an escrow agreement or trust agreement, approved as to form and substance by the EXECUTIVE ADMINISTRATOR, and must submit that executed agreement to TWDB;

**SECTION II - STANDARD AGREEMENT**

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**ARTICLE I                      RECITALS**

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WHEREAS, GRANTEE applied to TWDB, for financial assistance to conduct flood protection planning for the PROJECT AREA;

WHEREAS, GRANTEE will commit cash and/or in-kind services to pay for the LOCAL SHARE OF THE TOTAL PROJECT COST;

WHEREAS, GRANTEE is the entity that will act as administrator of the PROJECT and will be responsible for the execution of this CONTRACT;

WHEREAS, on TWDB APPROVAL DATE, TWDB approved GRANTEE's application for financial assistance for the PROJECT, consisting of reimbursement of the TWDB SHARE OF THE TOTAL PROJECT COST;

Whereas, TWDB's approval of GRANTEE's application for financial assistance included a condition that all appropriate entities within the PLANNING AREA adopt and enforce floodplain management ordinances or orders, as applicable, in accordance with the Flood Intended Use Plan before execution of this CONTRACT and this special condition has been satisfied;

Now, therefore, TWDB and GRANTEE agree as follows:

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**ARTICLE II                      PROJECT DESCRIPTION AND SERVICES TO BE PERFORMED**

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1. TWDB enters into this CONTRACT pursuant to Texas Water Code § 15.405; EXHIBIT A, Detailed Description of the Project Service Area; EXHIBIT B, Scope of Work; EXHIBIT C, Task and Expense Budgets; EXHIBIT D, Guidelines for Authors Submitting Contract Reports to the Texas Water Development Board; and EXHIBIT E, TWDB Guidelines for a Progress Report; which are incorporated herein and made a permanent part of this CONTRACT.
2. GRANTEE will conduct the PROJECT for the PROJECT AREA, as delineated and described in EXHIBIT A, and according to the Scope of Work contained in EXHIBIT B. GRANTEE will be solely responsible for all costs that exceed the Task and Expense Budgets for the PROJECT, EXHIBIT C.
3. GRANTEE must hold public meetings with the consultants, local entities, TWDB, and any other interested parties to describe the PROJECT and to solicit input and comments from the affected public. Public meetings must be conducted in accordance with the Texas Open Meetings Act (in accordance with Section II, Article X, Paragraph 2H) and held as determined by GRANTEE and TWDB as detailed below.
4. GRANTEE must hold at least two public meetings as follows:
  - A. One meeting should occur toward the beginning of the project during data collection phase, to inform people of the project, how the study outcome will benefit the community, and gather any additional project related information that people have to share including location of flood risk
  - B. One meeting should be held toward the end of the project to present the key findings of the study, how the study outcome will benefit the community, communicate any identified flood risks in the study area, and receive feedback.

- C. For larger projects and projects involving alternative solution identification, an additional meeting should be scheduled to present project updates and receive feedback.

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**ARTICLE III CONTRACT TERM, SCHEDULE, REPORTS, AND OTHER REQUIREMENTS**

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1. GRANTEE has until the DEADLINE FOR CONTRACT EXECUTION to execute this CONTRACT and to provide acceptable evidence of any REQUIRED INTERLOCAL AGREEMENTS and evidence of GRANTEE's ability to provide the LOCAL SHARE OF THE TOTAL PROJECT COST, if applicable, and any applicable federal share. Otherwise, TWDB SHARE OF THE TOTAL PROJECT COST will be rescinded.
2. This CONTRACT begins and GRANTEE begins performing its obligations hereunder on the CONTRACT INITIATION DATE and ends on the EXPIRATION DATE. Delivery of an acceptable FINAL REPORT for the PROJECT no later than the EXPIRATION DATE constitutes completion of the terms of this CONTRACT.
3. A progress report, including results to date, must be provided to the EXECUTIVE ADMINISTRATOR throughout the project on the same timetable as the PAYMENT REQUEST SCHEDULE. Interim reports on special topics and/or results must be provided as requested. Instructions for the progress report are shown in **EXHIBIT E**.
4. GRANTEE must complete a draft Report. Draft Reports must include an Executive Summary, Table of Contents, List of Figures, List of Tables, a List of References, Conclusion (including key findings and recommendations), and any other pertinent information such as the Scope of Work or other diagrams, graphics, or tables to explain the procedures and results of the PROJECT. The Draft Report also must include an electronic copy of any computer programs, maps, or models along with any manuals or sample data set(s) developed under the terms of this CONTRACT. GRANTEE must deliver one (1) Portable Document Format (PDF) copy, with searchable text of the Draft Report to the EXECUTIVE ADMINISTRATOR no later than the PROJECT COMPLETION DATE. All Draft Reports must be prepared according to **EXHIBIT D**. After a 45-day review period, the EXECUTIVE ADMINISTRATOR will return review comments to GRANTEE.
5. GRANTEE must consider incorporating comments from the EXECUTIVE ADMINISTRATOR and other commenters on all draft deliverables into the FINAL REPORT. GRANTEE must attach a copy of the EXECUTIVE ADMINISTRATOR's comments in the FINAL REPORT. GRANTEE must submit one (1), or more as requested by the TWDB project manager, physical copy (bound) and one (1) electronic copy of the entire FINAL REPORT in Portable Document Format (PDF), with searchable text, to the EXECUTIVE ADMINISTRATOR no later than the EXPIRATION DATE. GRANTEE must submit one (1) electronic copy of any computer programs or models and an operations manual developed under the terms of this CONTRACT. In compliance with Texas Administrative Code, Title 1, Part 10, Chapters 206 and 213 (related to Accessibility and Usability of State Web Sites), the digital copy of the FINAL REPORT must comply with the requirements and standards specified in statute. After a 30-day review period, the EXECUTIVE ADMINISTRATOR will either accept or reject the FINAL REPORT. If the FINAL REPORT is rejected, the rejection letter sent to GRANTEE will state the reasons for rejection and the steps GRANTEE needs to take to have the FINAL REPORT accepted and the retainage released. The CONTRACT may be extended if necessary and allowable, based on the state funding source, to allow time for GRANTEE to resubmit the FINAL REPORT.

6. The EXECUTIVE ADMINISTRATOR may extend the PROJECT COMPLETION DATE and the EXPIRATION DATE upon written approval. GRANTEE must notify the EXECUTIVE ADMINISTRATOR in writing within ten (10) working days prior to the PROJECT COMPLETION DATE or thirty (30) days prior to the EXPIRATION DATE that GRANTEE is requesting an extension to the respective dates.
7. If GRANTEE is a retail public utility as defined in Texas Water Code § 13.002 and GRANTEE provides potable water, then GRANTEE annually must perform and file a water audit computing GRANTEE's most recent annual system water loss with TWDB. The first water audit must be submitted by May 1st following the passage of one year after the effective date of this Agreement and then by May 1st every year thereafter during the term of this Agreement. GRANTEE agrees to comply with 31 TAC § 358.6 relating to water audits.
8. During the Term of this Agreement, GRANTEE must submit an annual audit of the general-purpose financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) by a certified public accountant or licensed public accountant. Audits must be submitted to TWDB no later than 180 days after the close of GRANTEE's fiscal year.

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**ARTICLE IV                      COMPENSATION AND REIMBURSEMENT**

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1. TWDB agrees to compensate and reimburse GRANTEE in a total amount not to exceed TWDB SHARE OF THE TOTAL PROJECT COST for costs incurred by GRANTEE pursuant to performance of this CONTRACT. GRANTEE will contribute local funds, if applicable, in sources and amounts defined as the LOCAL SHARE OF THE TOTAL PROJECT COST. TWDB will reimburse GRANTEE for ninety-five percent (95%) of TWDB SHARE OF THE TOTAL PROJECT COST pending GRANTEE's performance, completion of the PROJECT, and written acceptance of said PROJECT by the EXECUTIVE ADMINISTRATOR, at which time TWDB will pay the retained five percent (5%) to GRANTEE.
2. TWDB will deposit the TWDB SHARE OF THE TOTAL PROJECT COST in an approved ESCROW ACCOUNT to be released to GRANTEE's PROJECT ACCOUNT at the direction of the EXECUTIVE ADMINISTRATOR.
3. GRANTEE must submit TWDB Outlay Report forms identifying:
  - A. the total amount of expenses incurred by GRANTEE for the period covered by the Outlay Report; and
  - B. identification and description of LOCAL SHARE OF THE TOTAL PROJECT COST for the billing period, if applicable, and any applicable federal or other share for the billing period; and
  - C. invoices, receipts, or other documentation satisfactory in form and in substance to TWDB sufficient to establish the requested amount as an eligible expense incurred by the GRANTEE.
4. EXECUTIVE ADMINISTRATOR will authorize the release of TWDB SHARE OF THE TOTAL PROJECT COST from the ESCROW ACCOUNT when Outlay Reports have been approved by TWDB.
5. GRANTEE must use grant funds for ELIGIBLE EXPENSES. GRANTEE must return any grant funds that are used for expenses that cannot be verified as eligible or that are ineligible. The amount of grant funds used for any ineligible or unverified expenses must be credited against verified ELIGIBLE EXPENSES. If the total amount of ELIGIBLE EXPENSES is insufficient to fully offset the amount of

improperly expended grant funds, the GRANTEE must use other funds to fully repay the TWDB. This Section II, Article IV, Item 5 survives the termination or expiration of this Agreement.

6. GRANTEE must submit payment requests and documentation for reimbursement billing according to the PAYMENT REQUEST SCHEDULE.
7. GRANTEE is responsible for any food or entertainment expenses incurred by its own organization or that of its subcontractors, outside that of eligible travel expenses authorized and approved by the State of Texas under this CONTRACT.
8. Travel expenses are limited to travel expenses authorized for state employees by the Texas Comptroller of Public Accounts at <https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>, as amended or superseded. Receipts required for lodging; as well as copies of invoices or tickets for transportation costs or, if not available, names, dates, and points of travel of individuals.
9. GRANTEE is responsible for submitting any final payment request and documentation for reimbursement, along with a request to release any retained funds, no later than 60 days following the EXPIRATION DATE. Failure to submit a timely final payment request may result in closure of the CONTRACT. After closure of the CONTRACT, any SURPLUS FUNDS will be unavailable for reimbursement.
10. GRANTEE must provide a final accounting of funds expended on the PROJECT and return any SURPLUS FUNDS remaining after GRANTEE has submitted a final accounting to the EXECUTIVE ADMINISTRATOR.

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**ARTICLE V INTELLECTUAL PROPERTY**

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1. It is agreed that all works developed by GRANTEE and any subcontractors using funds provided under this CONTRACT or otherwise rendered in or related to the performance in whole or part of this CONTRACT, including but not limited to reports, drafts of reports, material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate, are the joint property of TWDB and GRANTEE. GRANTEE hereby conveys co-ownership of such works to TWDB as they are created in whole or part. If present conveyance is ineffective under applicable law, GRANTEE agrees to convey a co-ownership interest of such works to TWDB after creation and to provide written documentation of such conveyance upon request by TWDB. TWDB and GRANTEE each have full and unrestricted rights to use such works with no compensation obligation.
2. GRANTEE must include terms and conditions in all contracts or other engagement agreements with any subcontractors as are necessary to secure these rights and protections and must require that subcontractors include similar such terms and conditions in any contracts or other engagements with their subcontractors.
3. To the extent allowed by law, GRANTEE must make all reports, drafts of reports, data, drawings, studies, analyses, models, notes, plans, computer programs and codes, or other work products, whether final or intermediate, available to the regional flood planning group applicable to the PROJECT AREA within a reasonable time after a request from the regional flood planning group.

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**ARTICLE VI AMENDMENT, TERMINATION, AND STOP ORDERS**

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1. This CONTRACT may be altered or amended by mutual written consent of the GRANTEE and the EXECUTIVE ADMINISTRATOR. This CONTRACT may be terminated by the EXECUTIVE ADMINISTRATOR at any time by written notice to GRANTEE. PROJECT schedule dates and deadlines as outlined in Section I, Article I may not be revised without written approval by TWDB and amendment to this CONTRACT. Upon receipt of such termination notice, GRANTEE must, unless the notice directs otherwise, immediately discontinue all work in connection with the performance of this CONTRACT and cancel all existing orders insofar as such orders are chargeable to this CONTRACT. GRANTEE must submit a statement showing in detail the work performed under this CONTRACT to the date of termination. TWDB will pay GRANTEE that proportion of the prescribed fee which applies to the work that is actually performed under this CONTRACT, less all payments that have been previously made. Thereupon, copies of all work accomplished under this CONTRACT must be delivered to TWDB.
2. The EXECUTIVE ADMINISTRATOR may issue a Stop Work Order to GRANTEE at any time. Upon receipt of such order, GRANTEE must discontinue all work under this CONTRACT and cancel all orders pursuant to this CONTRACT, unless the order directs otherwise. The GRANTEE may not resume work under this CONTRACT unless the EXECUTIVE ADMINISTRATOR issues a Restart Order. If the EXECUTIVE ADMINISTRATOR does not issue a Restart Order within 60 days after the Stop Work Order, this CONTRACT is terminated in accordance with the foregoing provisions.

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**ARTICLE VII SUBCONTRACTS**

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1. Each Subcontract entered into to perform required work under this CONTRACT must contain the following:
  - A. A detailed budget estimate with specific cost details for each task or specific item of work to be performed by the Subcontractor and for each category of reimbursable expenses.
  - B. A clause stating the following: "Subcontractor agrees and acknowledges that it is subject to all applicable requirements of the master contract between (Contractor Name) and the Texas Water Development Board. Subcontractor adopts by reference the requirements of Article VII of the TWDB Contract for this Subcontract."

All Subcontracts entered into to perform required work under this CONTRACT are also subject to the following requirements:

1. the Subcontract is subject to audit by the Texas State Auditor's Office, and Subcontractor must cooperate with any request for information from the Texas State Auditor, as further described in Section II, Article X, Paragraph 1K;
2. payments under the Subcontract are contingent upon appropriation of funds by the Texas Legislature, as further described in Section II, Article X, Paragraph 1C;
3. ownership of data, materials and work papers, in any media, that is gathered, compiled, adapted for use, or generated by Subcontractor or GRANTEE will become data, materials and work owned by TWDB and Subcontractor will have no proprietary rights in such data, materials and work papers, except as further described in Section II, Article V;

4. Subcontractor must keep timely and accurate books and records of accounts according to Generally Accepted Accounting Principles;
5. Subcontractor is solely responsible for securing all required licenses and permits from local, state and federal governmental entities and solely responsible for obtaining sufficient insurance in accordance with the general standards and practices of the industry or governmental entity; and
6. Subcontractor is an independent contractor and TWDB has no liability resulting from any failure of Subcontractor that results in breach of contract, property damage, personal injury or death.

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**ARTICLE VIII                    LICENSES, PERMIT, AND INSURANCE**

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1. For the purpose of this CONTRACT, GRANTEE will be considered an independent contractor (in accordance with Section II, Article X, Paragraph 2D) and therefore solely responsible for liability resulting from negligent acts or omissions. GRANTEE must obtain all necessary insurance that, in the judgment of GRANTEE and consistent with the standard practices of the industry or GRANTEE, is necessary to protect themselves, TWDB, and employees and officials of TWDB from liability arising out of this CONTRACT to the extent permitted by applicable law.
2. GRANTEE is solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for GRANTEE to perform the subject work.

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**ARTICLE IX                    SEVERABILITY**

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Should any one or more provisions of this CONTRACT be held to be null, void, voidable, or for any reason whatsoever, of no force and effect, such provision(s) will be construed as severable from the remainder of this CONTRACT and will not affect the validity of all other provisions of this CONTRACT which will remain of full force and effect.

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**ARTICLE X                    GENERAL TERMS AND CONDITIONS**

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1. GENERAL TERMS

- A. **Disaster Recovery Plan.** Upon request of TWDB, GRANTEE must provide descriptions or copies of its business continuity and disaster recovery plans.
- B. **Dispute Resolution.** The dispute resolution process provided for in Texas Government Code Chapter 2260 must be used to attempt to resolve any dispute arising under this CONTRACT.
- C. **Excess Obligations Prohibited/No Debt Against the State.** This CONTRACT is subject to termination or cancellation without penalty to TWDB, either in whole or in part, subject to the availability of state funds.
- D. **False Statements.** If GRANTEE signs its application with a false statement or it is subsequently determined that GRANTEE has violated any of the representations, guarantees, warranties, certifications, or affirmations included in its application, GRANTEE will be in default under the CONTRACT and TWDB may terminate or void the CONTRACT.



- E. **Force Majeure.** Neither GRANTEE nor TWDB will be liable to the other for any delay in or failure of performance of any requirement contained in this CONTRACT caused by force majeure. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.
- F. **Governing Law and Venue.** This CONTRACT is governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under this CONTRACT is fixed in any court of competent jurisdiction in Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TWDB.
- G. **Applicable Laws.** In consideration of the performance of the mutual agreements set forth in this CONTRACT, the GRANTEE, by and through its designated and authorized representatives agrees to implement the PROJECT in compliance with all state and federal laws and regulations that may be applicable; Texas Water Code, Chapter 15, Subchapters F and I; 31 Texas Administrative Code Chapter 355; and TWDB Guidance.
- H. **Remedies.** TWDB has all remedies available in law or equity, including remedies available under Texas Water Code §§ 6.114 and 6.115.
- I. **Indemnification.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, GRANTEE AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TWDB, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE MUST BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. GRANTEE AND TWDB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- J. **Public Information Act.** GRANTEE understands that TWDB will comply with the Texas Public Information Act, Texas Government Code Chapter 552, as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this CONTRACT may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Texas Government Code § 2252.907, GRANTEE is required to make any information created or exchanged with the State pursuant to this CONTRACT, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

- K. **State Auditor's Right to Audit.** The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the CONTRACT or indirectly through a subcontract under the CONTRACT. The acceptance of funds directly under the CONTRACT or indirectly through a subcontract under the CONTRACT acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- L. **National Flood Insurance Program.** The appropriate entities within the PROJECT AREA must currently enforce and continue to enforce floodplain management standards at least equivalent to National Flood Insurance Program minimum standards and may exceed the National Flood Insurance Program minimum standards subject to Section I, Article II.
- M. **Investment and Collateralization of Public Funds.** Grant proceeds are public funds and, as such, these proceeds must be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257.

## 2. STANDARDS OF PERFORMANCE

- A. **Personnel.** GRANTEE must assign only qualified personnel to perform the services required under this CONTRACT. GRANTEE is responsible for ensuring that any Subcontractor utilized also assigns only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skill, and ability to perform the tasks and services required herein according to the standards of performance and care for their trade or profession.
- B. **Professional Standards.** GRANTEE must provide the services and deliverables in accordance with applicable professional standards. GRANTEE represents and warrants that it is authorized to acquire Subcontractors with the requisite qualifications, experience, personnel, and other resources to perform in the manner required by this CONTRACT.
- C. **Procurement Laws.** GRANTEE must engage in competitive procurements for work on the Project. All purchases for goods, services, or commodities made with funds provided under this CONTRACT must comply with State and local procurement and contracting laws.
- D. **Party Relationship.** Both the GRANTEE and TWDB, in the performance of this CONTRACT, act in an individual capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party will not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- E. **Proprietary and Confidential Information.** GRANTEE warrants and represents that any information that is proprietary or confidential and is received by GRANTEE from TWDB or any governmental entity will not be disclosed to third parties without the written consent of TWDB or applicable governmental entity, whose consent will not be unreasonably withheld, and shall be consistent with the requirements of the Public Information Act, Chapter 552 of the Texas Government Code.

- F. **Contract Administration.** TWDB will designate a project manager for this CONTRACT. The project manager will serve as the point of contact between TWDB and GRANTEE. TWDB's project manager will supervise TWDB's review of GRANTEE's technical work, deliverables, draft reports, the FINAL REPORT, payment requests, schedules, financial and budget administration, and similar matters. The project manager does not have any express or implied authority to vary the terms of the CONTRACT, amend the CONTRACT in any way or waive strict performance of the terms or conditions of the CONTRACT.
- G. **Nepotism.** GRANTEE must comply with Texas Government Code Chapter 573 by ensuring that no officer, employee or member of GRANTEE's governing body votes or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition does not prohibit the employment of a person who has been continuously employed for a period of two years prior to the election or appointment of the officer, employee or governing body member related to such person in the prohibited degree.
- H. **Open Meetings.** GRANTEE must comply with Texas Government Code Chapter 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law.

### 3. AFFIRMATIONS AND CERTIFICATIONS

- A. **Antitrust Affirmation.** GRANTEE represents and warrants that, in accordance with Texas Government Code § 2155.005, neither GRANTEE nor any firm, corporation, partnership, or institution represented by GRANTEE, or anyone acting for such a firm, corporation, partnership, or institution has (1) violated any provision of the Texas Free Enterprise and Antitrust Act of 1983, Chapter 15 of the Texas Business & Commerce Code, or the federal antitrust laws; or (2) communicated directly or indirectly the contents of the proposal resulting in this CONTRACT to any competitor or any other person engaged in the same line of business as GRANTEE.
- B. **Child Support Obligation Affirmation.** Under Texas Family Code § 231.006, GRANTEE certifies that the individual or business entity named in this CONTRACT is not ineligible to receive the specified grant, loan or payment, and acknowledges that this CONTRACT may be terminated and payment may be withheld if this certification is inaccurate.
- C. **Dealings with Public Servants.** Pursuant to Texas Government Code § 2155.003, GRANTEE represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the goods or services being supplied.
- D. **Debts and Delinquencies Affirmation.** GRANTEE agrees that any payments due under the CONTRACT will be applied towards any debt or delinquency that is owed to the State of Texas.
- E. **E-Verify Program.** GRANTEE certifies that for contracts for services, GRANTEE will utilize the U.S. Department of Homeland Security's E-Verify system during the term of the CONTRACT to determine the eligibility of: (1) all persons employed by GRANTEE to perform

duties within Texas; and (2) all persons, including Subcontractors, assigned by GRANTEE to perform work pursuant to the CONTRACT within the United States of America.

- F. **Entities that Boycott Israel.** Pursuant to Texas Government Code § 2270.002, GRANTEE certifies that either (1) it meets one of the exemption criteria under § 2270.002; or (2) it does not boycott Israel and will not boycott Israel during the term of the CONTRACT resulting from this solicitation. GRANTEE must state any facts that make it exempt from the boycott certification.
- G. **Excluded Parties.** GRANTEE certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- H. **Executive Head of a State Agency Affirmation.** In accordance with Texas Government Code § 669.003, relating to contracting with the executive head of a state agency, GRANTEE certifies that it is not: (1) the executive head of TWDB; (2) a person who at any time during the four years before the date of this CONTRACT was the executive head of TWDB; or (3) a person who employs a current or former executive head of TWDB.

If § 669.003 applies, the GRANTEE must provide the following information:

Name of Former Executive: \_\_\_\_\_  
Name of State Agency: \_\_\_\_\_  
Date of Separation from State Agency: \_\_\_\_\_  
Position with GRANTEE: \_\_\_\_\_  
Date of Employment with GRANTEE: \_\_\_\_\_

- I. **Financial Participation Prohibited.** Pursuant to Texas Government Code § 2155.004(a), GRANTEE certifies that neither GRANTEE nor any person or entity represented by GRANTEE has received compensation from TWDB or any agency of the State of Texas for participation in the preparation of the specifications or solicitation on which this CONTRACT is based. Under Texas Government Code § 2155.004(b), GRANTEE certifies that the individual or business entity named in this CONTRACT is not ineligible to receive the specified CONTRACT and acknowledges that this CONTRACT may be terminated and payment withheld if this certification is inaccurate.
- J. **Foreign Terrorist Organizations.** GRANTEE represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.
- K. **Human Trafficking Prohibition.** Under Texas Government Code § 2155.0061, GRANTEE certifies that the GRANTEE is not ineligible to receive the specified CONTRACT and acknowledges that this CONTRACT may be terminated and payment withheld if this certification is inaccurate.
- L. **Lobbying Prohibition.** GRANTEE represents and warrants that TWDB's payments to GRANTEE and GRANTEE's receipt of appropriated or other funds under the CONTRACT are not prohibited by Texas Government Code §§ 556.005 or 556.0055, related to the prohibition on payment of state funds to a lobbyist or for lobbying activities.

- M. No Conflict of Interest.** GRANTEE represents and warrants that the provision of goods and services or other performance under this CONTRACT will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. GRANTEE also represents and warrants that, during the term of this CONTRACT, GRANTEE will immediately notify TWDB, in writing, of any existing or potential conflict of interest relative to the performance of the CONTRACT.
- N. Prior Disaster Relief Declaration.** Texas Government Code §§ 2155.006 and 2261.053 prohibit state agencies from accepting a response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Texas Government Code § 418.004, occurring after September 24, 2005. Under Texas Government Code §§ 2155.006 and 2261.053, GRANTEE certifies that the individual or business entity named in this CONTRACT is not ineligible to receive the specified CONTRACT and acknowledges that this CONTRACT may be terminated and payment withheld if this certification is inaccurate.
- O. Suspension and Debarment.** GRANTEE certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

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**ARTICLE XI                      CORRESPONDENCE**

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All correspondence between the parties must be made to the following addresses:

For **TWDB**:

Contract Issues:

Texas Water Development Board

Attention: Flood Planning

P.O. Box 13231

Austin, Texas 78711-3231

Email: [floodplanning@twdb.texas.gov](mailto:floodplanning@twdb.texas.gov)

Payment Request Submission:

Texas Water Development Board

Attention: Outlays and Escrows

P.O. Box 13231

Austin, Texas 78711-3231

Email: [outlays@twdb.texas.gov](mailto:outlays@twdb.texas.gov)

Physical Address:

Stephen F. Austin State Office Building

1700 N. Congress Avenue

Austin, Texas 78701

For the **GRANTEE**:

Contract Issues:

City of Lubbock, Texas

1314 Avenue K

Lubbock, Texas 79401

Email: [bkostelich@mail.ci.lubbock.tx.us](mailto:bkostelich@mail.ci.lubbock.tx.us)

Payment Request Submission:

Josh Kristinek, P.E.

City of Lubbock, Texas

1314 Avenue K

Lubbock, Texas 79401

Email: [jkristinek@mail.ci.lubbock.tx.us](mailto:jkristinek@mail.ci.lubbock.tx.us)

Physical Address:

City of Lubbock, Texas

1314 Avenue K

Lubbock, Texas 79401

IN WITNESS WHEREOF, the parties have caused this CONTRACT to be duly executed in multiple counterparts, each of which shall be deemed to be an original.

CITY OF LUBBOCK, TEXAS

Daniel Pope 10/20/2021  
Daniel M. Pope, Mayor

ATTEST:

Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

Michael G. Keenum  
Michael G. Keenum, P.E., Division Director of Engineering/City Engineer

Jessica McEachern  
Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:

Kelli Leisure  
Kelli Leisure, Assistant City Attorney

Date: 10.21.21

**TEXAS WATER DEVELOPMENT BOARD**

By: Amanda Lavin

Name: Jeff Walker

Title: Executive Administrator

Date: 10/20/2021



## EXHIBIT A

### DETAILED DESCRIPTION OF THE PROJECT SERVICE AREA

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#### Flood Protection Planning for Watersheds

The City of Lubbock proposes to complete flood protection planning activities of the following full HUC-10s:

- Canyon Lakes System on the City of Shallowater-Yellow House Draw HUC-10 (1205000113), and
- Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301).
- Storm events to be evaluated including: 2-yr, 5-yr, 10-yr, 25-yr, 50-yr, 100-yr, and 500-yr storms.

This flood protection planning study includes use of the best and most current data with regard to:

- cumulative changes in land cover and land use (development),
- updated rainfall data (NOAA Atlas 14),
- updated topographic data (LiDAR),
- topographic survey and stream cross-sectional data



## **EXHIBIT B**

### **SCOPE OF WORK**

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#### **Flood Protection Planning for Watersheds**

##### **Task 1: Project Management and Meetings**

- A. General project management and communications with the City and partner entities.
- B. Project kickoff meeting with City staff and partner entities staff.
- C. Monthly status reports.
- D. Up to six (6) meetings including a project kickoff and data collection meeting, hydrology review meeting, hydraulics review meeting, alternatives review meeting, dam assessment meeting, and final report review meeting.

##### **Task 2: Public Outreach**

- 1. Development of a web survey to collect resident feedback on known drainage issues within the watershed. The web survey will be posted on the City's website and promoted via social media platforms.
- 2. Prepare for and facilitate three (3) public meetings during the project to communicate with the public. The public meetings will be held at the project kickoff phase, after completion of the flood risk analysis task, and at the completion of the project to present the watershed study results.
- 3. Coordination with non-NFIP Participating Entities - There is one (1) non-NFIP participating community in the larger Project Area that are not members of the National Flood Insurance Program (NFIP) and do not currently enforce floodplain management ordinances that are at least equivalent to the NFIP minimum standards. In accordance with Flood Infrastructure Fund program requirements, City of Lubbock staff or designates will reach out individually to the one (1) non-NFIP participating community of Smyer, Texas, to provide assistance to this non-NFIP participating community to draft and recommend adoption of floodplain ordinances that meet the NFIP minimum standards. Assistance will consist of written correspondence and at a minimum one (1) teleconference to discuss floodplain ordinances. Model floodplain ordinances developed by the TWDB will be provided by the City of Lubbock, or designate, to each non-NFIP community for their consideration.

##### **Task 3: Data Collection**

- A. GIS data: topographic maps, LiDAR, zoning maps, storm drain system mapping, roadways, property lines, buildings, future land use maps, aerial imagery.
- B. Previous plans and studies from partnering entities and other related authorities.
- C. Existing hydrologic and hydraulic models.

- D. Field Survey will be collected at bridge/culvert crossings and at intermittent creek cross sections to supplement and ground truth the LIDAR. At each crossing, survey will be collected for the hydraulic openings, railings, curbs, and centerlines. In addition, each crossing survey includes cross sections upstream of the crossing. Cross sections to be surveyed will include the channel geometry for 20 feet on either side of the banks. The remainder of the section will be supplemented with LIDAR as needed. The location of cross sections and bridges to be surveyed is not defined. The location of all survey to be collected will be verified with the City prior to commencing work.

#### **Task 4. Screening Assessment**

- A. Development of a two-dimensional (2D) hydraulic model to perform high-level planning and analysis for the entirety of the City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301).
- B. Perform "Rain-on-Mesh" analysis to define overland flow paths and identify flooding areas within and outside of the floodplain. Flow hydrographs will be developed for standard design storms including the 2, 5, 10, 25, 50, and 100-year events (24-hr duration) for existing and ultimate development conditions.
- C. Evaluate flooded structures and roadways within the watershed to identify flooding hotspot locations.

#### **Task 5. Flood Risk Analysis**

The purpose of this task is to develop detailed hydrologic and hydraulic modeling for City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301). These streams have been selected for detailed study due to the location of existing developments. The models will be developed in a format suitable for future submission to FEMA as a Letter of Map Revision (LOMR), but the preparation of a LOMR and associated FEMA coordination is beyond the scope of this study.

##### **A. Detailed Hydrologic Analysis**

1. Delineate watersheds and sub-watersheds for the study area.
2. Define model input parameters for the study area.
3. Create both existing and fully-developed land use hydrologic models in HEC-HMS for the study area based on the Soil Conservation Service (SCS) unit hydrograph method.
4. Determine the existing and fully-developed discharges for the study area for the 2-, 5-, 10-, 25-, 50-, 100-, and 500-year storm events.
5. Calculate basin routing parameters using the Modified Puls (where hydraulic models are available) or Muskingum Cunge method.

##### **B. Detailed Hydraulic Analysis**

- 1) Develop new HEC-RAS Steady hydraulic models.
- 2) Update channel and pond routings in hydrologic modeling.
- 3) Determine the existing and fully-developed water surface elevations for the streams

within the study area for the 2-, 5-, 10-, 25-, 50-, 100-, and 500-year storm events.

- 4) Develop the existing and fully-developed conditions 100-year floodplains within the stream study limits.
- 5) Identify flood-prone areas and document existing and fully-developed structure overtopping (road crossings) and flooding potential (structures).

#### **Task 6. Critical Flood Hazard Alternatives Analysis**

- A. Utilize staff input and results from Task 4 and 5 to identify up to ten (10) critical flood hazard areas within the City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos River HUC-10 (1205000301).
- B. If necessary, refine hydrologic and hydraulic analyses to achieve greater level of detail for critical flood areas identified in Task 3. It is assumed that additional analysis will be required for up to five (5) areas.
- C. Develop up to two (2) conceptual level alternatives to resolve identified structure and roadway crossing flooding at up to ten (10) critical flood areas.
- D. Evaluate the alternatives for the 2-, 5-, 10-, 25-, 50- and 100-year storm events.
- E. Develop corresponding exhibits depicting the concept and resulting reduction in flooding risks.
- F. Develop alternatives with the goal of minimizing flood risk considering economic constraints. Achieving a 100-yr level of protection may not be economically feasible for all locations.
- G. Prepare planning level opinion of probable construction cost (OPCC) for each alternative in 2020 dollars.
- H. Develop a ranking criteria and associated weights for the storm water Capital Improvement Projects (CIP) in conjunction with City Staff.
- I. Score and rank each project following a pairwise ranking methodology.
- J. Identify funding sources and financing strategies to adequately fund the necessary improvements for high ranking projects.
- K. When possible and as applicable, evaluations of flood risk reduction solutions, including flood mitigation projects, should be consistent with "Technical Guidelines for Regional Flood Planning," Exhibit C to Regional Flood Planning Grant Contracts, which can be found at: <https://www.twdb.texas.gov/flood/planning/planningdocu/2023/index.asp>.
- L. Each feasible flood mitigation alternatives evaluated must identify and compare cost and benefits of projects. Quantification of cost will include engineering, permitting, easement and/or property acquisition, capital cost, operation and maintenance, and other costs as applicable. Quantification of benefit of the project will include the following items, as applicable:
  - o Number of structures with reduced 100-year (1% annual chance) flood risk.
  - o Number of structures removed from 100-year (1% annual chance) flood risk.
  - o Number of structures removed from 500-year (0.2% annual chance) flood risk.
  - o Residential structures removed from 100-year (1% annual chance) flood risk.

- Estimated Population removed from 100-year (1% annual chance) flood risk.
  - Critical facilities removed from 100-year (1% annual chance) flood risk (#).
  - Number of low water crossings removed from 100-year (1% annual chance) flood risk (#).
  - Estimated reduction in road closure occurrences.
  - Estimated length of roads removed from 100-year flood risk (miles).
  - Estimated farm & ranch land removed from 100-year flood risk (acres). Estimated farm & ranch land at 100-year flood risk (acres) should only include farm and ranch land that are negatively impacted by flooding events and should not include land that benefits from floodplains for example rice fields.
  - Estimated reduction in fatalities (if available).
  - Estimated reduction in injuries (if available).
  - Pre-Project Level-of-Service
  - Post-Project Level-of-Service
  - Cost/ Structure removed
  - Percent Nature-based Solution (by cost)
  - Negative Impact (Y/N)
  - Negative Impact Mitigation (Y/N)
  - Social Vulnerability Index (SVI)
  - Water Supply Benefit (Y/N)
  - Traffic Count for Low Water Crossings
- M. The recommended solutions must be permissible, constructable and implementable.
- N. The recommended flood risk reduction solutions must have no negative effect on neighboring areas in accordance with statutory requirements for regional flood plans (Texas Water Code § 16.062(i) and (j)(2)). Recommended flood risk reduction solutions, including flood mitigation projects, must meet the definition and requirements regarding no negative effect identified in Exhibit C to the Regional Flood Planning Contracts, Technical Guidelines for Regional Flood Planning, which can be found at: <https://www.twdb.texas.gov/flood/planning/planningdocu/2023/index.asp>. The flood mitigation projects identified from this FIF CAT 1 study must comply with 'no negative effect' in order to be included in the regional flood plans.

### **Task 7. Dam Safety Assessment**

FNI will perform a Dam Safety Assessment for up to eight (8) dams within the City of Shallowater-Yellow House Draw HUC-10 (1205000113) and the Buffalo Springs Lake-North Fork Double Mountain Fork Brazos



River HUC-10 (1205000301). The Dam Safety Assessment will consist of the following tasks:

1. Data Collection

- A. Original Natural Resources Conservation Service (NRCS) watershed workplans and supplements.
- B. Original design plans (i.e. as-builts).
- C. Repair of modification design plans.
- D. Inspection reports.
- E. NRCS dam assessment reports, breach analyses and/or emergency action plans.
- F. Texas Commission on Environmental Quality (TCEQ) dam inventory data.

2) Site Visits

- A. Visual inspection to assess dam conditions and current status of operation and maintenance (O&M) activities.
- B. Create condition worksheet to record inspection findings, including representative photographs.

3) Dam Breach Analysis

- A. Develop breach analysis using the simplified DSS-WISE model. DSS-WISE is considered an appropriate program by TCEQ for screening and estimating downstream impacts.
- B. Develop inundation maps and estimates of population at risk (PAR).

4) Hydrologic Capacity Analysis

- A. Develop hydrologic model using HEC-HMS model to evaluate dams in accordance to TCEQ Guidelines.
- B. Develop one (1) conceptual rehabilitation alternative to upgrade the dams to comply with TCEQ hydrologic capacity criteria based on dam size and hazard classification.
- C. Develop planning level cost estimates for rehabilitation alternatives.
- D. Make recommendations for any TCEQ filings or regulatory actions.

**Task 8. City of Lubbock Watershed Study – Technical Report**

- 1. Prepare Draft Technical Report documenting the findings and recommendations of the watershed study including digital deliverables such as field survey, GIS information, and hydrologic and hydraulic models.
- 2. Draft report will be submitted in digital format (.pdf file) for City review. Up to one (1) round of revisions to the report will be performed after receiving City feedback. Final report will be submitted in digital format (.pdf file) and up to two (2) hard copies will be provided.

**EXHIBIT C****TASK AND EXPENSE BUDGETS****TASK BUDGET**

<b>TASK</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
1	PROJECT MANAGEMENT AND MEETINGS	\$56,212
2	PUBLIC OUTREACH	\$29,663
3	DATA COLLECTION AND SURVEY	\$149,140
4	SCREENING ASSESSMENT	\$62,750
5	FLOOD RISK ANALYSIS HYDROLOGY & HYDRAULICS	\$141,042
6	CRITICAL FLOOD HAZARD ALTERNATIVE ANALYSIS	\$63,450
7	DAM SAFETY ASSESSMENT	\$162,078
8	TECHNICAL REPORT	\$85,665
<b>TOTAL</b>		<b>\$ 750,000</b>



**EXPENSE BUDGET**

CATEGORY	AMOUNT
Salaries & Wages <sup>1</sup>	\$0
Fringe <sup>2</sup>	\$0
Travel <sup>3</sup>	\$0
Subcontract Services	\$750,000
Equipment	\$0
Other Expenses <sup>4</sup>	\$0
Overhead <sup>5</sup>	\$0
Profit	\$0
<b>TOTAL</b>	<b>\$ 750,000</b>

<sup>1</sup> Salaries and Wages is defined as the cost of salaries of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc., for time directly chargeable to this CONTRACT.

<sup>2</sup> Fringe is defined as the cost of social security contributions, unemployment, excise, and payroll taxes, workers' compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation, and holiday pay applicable thereto.

<sup>3</sup> Travel is limited to the maximum amounts authorized for state employees by the General Appropriations Act, Tex. Leg. Regular Session, 2017, Article IX, Part 5, as amended or superseded

<sup>4</sup> Other Expenses is defined to include expendable supplies, communications, reproduction, postage, and costs of public meetings directly chargeable to this CONTRACT.

<sup>5</sup> Overhead is defined as the costs incurred in maintaining a place of business and performing professional services similar to those specified in this CONTRACT.

## EXHIBIT D

### GUIDELINES FOR AUTHORS SUBMITTING CONTRACT REPORTS TO THE TEXAS WATER DEVELOPMENT BOARD

---

#### 1.0 Introduction

The purpose of this document is to describe the required format of contract reports submitted to the Texas Water Development Board (TWDB). Our reason for standardizing the format of contract reports is to provide our customers a consistent, and therefore familiar, format for contract reports (which we post online for public access). Another reason for standardizing the format is so that we can more easily turn a contract report into a TWDB numbered report if we so choose. Remember that your report will not only be seen by TWDB staff, but also by any person interested in the results of your study. A professional and high-quality report will reflect well on you, your employer, and the TWDB.

Available upon request, we will provide a Microsoft Word template (used to write these instructions) that gives the fonts, spacing, and other specifications for the headings and text of the report. Please follow this template as closely as possible.

#### 2.0 Formatting your report

The TWDB format is designed for simplicity. For example, we use Times New Roman for all text. We use 12 point, single-spaced text, left justification for paragraph text, 18 point bold for first-level headings, and 14 point bold for second-level headings. Page numbers are centered at the bottom of the page. Other than page numbers, please refrain from adding content to the document header or footer. Page setup should use one-inch margins on all four sides.

##### 2.1 Text

The best way to format your document is to use the styles described and embedded in the template document (Authors\_Template.dot) that is available on request from the TWDB. To use the Authors\_Template.dot file, open it in Word (make sure \*.dot is listed under Files of type) and save it as a .doc file. Advanced users can add the .dot file to their computers as a template.

Make sure the formatting bar is on the desktop (to open, go to View→Toolbars→Formatting) or, to view all of the formatting at once, go to Format→Styles and Formatting and select Available Styles from the dropdown box at the bottom of the window. The formatting in the template document provides styles (such as font type, spacing, and indents) for each piece of your report. Each style is named to describe what it should be used for (for example, style names include Chapter Title, Body Text, Heading 1, References, and Figure or Table Caption). As you add to your report, use the dropdown list on the Formatting Toolbar or the list in the Styles and Formatting window to adjust the text to the correct style. The Authors\_Template.dot file shows and lists the specifications for each style.

##### 2.1.1 Title

Give your report a title that gives the reader an idea of the topic of your report but is not terribly long. In addition to the general subject (for example, "Droughts"), you may include a few additional words to describe a place, methodology, or other detail focused on throughout the paper (for example, "Droughts in the High Plains of Texas" or "Evaluating the effects of drought using groundwater flow modeling"). Please capitalize only the first letter of each word except 'minor' words such as 'and' and 'of'. Never use all caps. Use headings to help the reader follow you through the main sections of your report and to make it easier for readers to skim through your report to find sections that might be the most interesting or useful to them. The text of the report should include an executive summary and sections outlined in 4.4 of Attachment 1. Headings for up to five levels of subdivision are provided in the template; however, we suggest not using more than three

or four levels of subdivision except where absolutely necessary. Please avoid stacked headings (for example, a Heading 1 followed immediately by a Heading 2) and capitalize only the first letter of headings or words where appropriate—never use all caps.

## 2.2 Figures and photographs

To publish professional-looking graphics, **we need all originals to be saved at 300 dots-per-inch (dpi)** and in grayscale, if possible, or in the CMYK color format if color is necessary. Excessive use of color, especially color graphics that do not also work in grayscale, will prevent us from publishing your report as a TWDB numbered report (color reproduction costs can be prohibitive). Preferred file formats for your original graphics are Adobe Illustrator (.ai), Photoshop (.psd), EPS with .tiff preview, .jpg, .png, or .tiff files. Refrain from using low resolution .jpg or .gif files. Internet images at 72 dpi are unacceptable for use in reports. All graphics shall be submitted in two forms:

1. Inserted into the Microsoft Word document before you submit your report. Ideally, inserted graphics should be centered on the page. Format the picture to downsize to 6 inches wide if necessary. Please do not upsize a graphic in Word.
2. Saved in one of the formats listed above.

### 2.2.1 Other graphics specifications

It is easiest to design your figures separately and add them in after the text of your report is complete. Graphics should remain within the 1-inch page margins of the template (6 inches maximum graphic width). Be sure that the graphics (as well as tables) are numbered in the same order that they are mentioned in the text. Figures should appear embedded in the report after being called out in the text. Also, remember to include a caption for each graphic in Word, not as part of the graphic. We are not able to edit or format figure captions that are part of the figure. For figures and photographs, the caption should appear below the graphic. For tables, the caption should appear above.

### 2.2.2 Creating publication-quality graphics

When designing a graphic, make sure that the graphic (1) emphasizes the important information and does not show unnecessary data, lines, or labels; (2) includes the needed support material for the reader to understand what you are showing; and (3) is readable (see Figures 1 and 2 for examples). Edward R. Tufte's books on presenting information (Tufte, 1983; 1990; 1997) are great references on good graphic design. Cole Nussbaumer Knaflic's website *Storytelling With Data* also provides freely accessible resources for designing infographics and data visualizations (<http://www.storytellingwithdata.com/blog>). Figures 1 through 3 are examples of properly formatted, easy to understand graphics. Do not include fonts that are less than 6 points.

For good-looking graphics, the resolution needs to be high enough to provide a clear image at the size you make them within the report. In general, 300 dpi will make a clear image and is the minimum resolution for all situations. Try to create your figures at the same size they will be in the report, as resizing them in Word greatly reduces image quality. Photographs taken with at least a two-megapixel camera (if using digital) and with good contrast will make the best images. Save the original, and then adjust color levels and size in a renamed image copy. Print a draft copy of your report to double-check that your figures and photographs have clear lines and show all the features that you want them to have.

Figures and photographs should be in grayscale. Color greatly adds to the cost of printing, so we are trying to keep it to a minimum. Also remember that your report may be photocopied, scanned, or downloaded and printed in black and white. For this reason, you should use symbols or patterns, or make sure that colors print as different shades in black and white. All interval or ratio data (data measuring continuous phenomena, with each color representing an equal interval) need to be displayed in a graded scale of a single

color (Figure 3). This way your figures will be useful even as a photocopy.

If you need help with your graphics or have questions, please contact the TWDB graphics department at (512)936-0129.

### 2.2.3 Use of Figures, Graphics, and Photographs

Figures, photographs, and tables need to be your own unless you have written permission from the creator, publisher, or copyright holder that allows us to reprint them (we will need a copy of this permission for copyrighted material our records). All figures and photographs must cite the source in the legend, and include whether the material is in the public domain, used under a Creative Commons License (<https://creativecommons.org/licenses/>), or used with permission of the copyright holder. Use caution when using any figures or photographs taken off the Internet or from newspapers or magazines—these sources may be subject to copyright and must be cited properly and/or used by permission.

### 2.3 Tables

Tables should be created in Microsoft Word (see Table 1). Tables should include a minimal amount of outlining or bold font to emphasize headings, totals, or other important points. Tables should be numbered separately from figures, and captions should appear above the text of the table.

**Table 1: A sample table. Note caption above table.**

Table text heading\*

Table text	1940	1950	1960	1970	1980	1990	2000	%GW
Table text	15	441	340	926	196	522	83	97.4
Table text	64	944	626	173	356	171	516	99.9
Total	79	1385	966	1099	552	693	599	

\* A footnote should look like this using 10 point Cambria.

%GW = percent groundwater

Be sure to describe any abbreviations or symbols, and, unlike in this table, be sure to note the units!

### 3.0 Units

Measurements should be in English units. Metric units may be included in parentheses after the English units.

### 4.0 Citations and references

It is important to give credit for all external sources referenced in your report. Therefore, be sure to use the appropriate citations and include references in your paper.

#### 4.1 In-text citations

Each piece of information you use in your report that comes from an outside source must be cited within the text using the author's last name and the year of publication. If there are two authors, list the last name of each followed by the year, and if there are more than two authors, list the last name of the first author followed by "and others" and the year. For example: "the end of the Jurassic Period occurred approximately 145.5 million years ago (Gradstein and others, 2004)."

## 4.2 References

All sources that are cited within the report should be listed at the end of the paper under the heading References. The references should follow the guidelines in "Suggestions to Authors of the Reports of the United States Geological Survey" (Hansen, 1991). These are available online at <https://pubs.usgs.gov/unnumbered/7000088> (a link to the chapter "Preparing references for Survey reports," p. 234-241, is found at <https://pubs.usgs.gov/unnumbered/7000088/sta28.pdf>). Several examples of complete reference citations are listed at the end of these guidelines. Be sure that any citations that appear in tables or figures are included in the reference list. Also, before submitting the report, please check that all the citations in the report are included in the reference list and all references in the reference list are cited in the report.

## 5.0 Submitting your report

Before you submit your report, proofread it. Look for spelling and grammatical errors. Also, check to see that you have structured the headings, paragraphs, and sentences in your paper so that it is easy to follow and understand (imagine you are a reader who does not already know the information you are presenting).

## 6.0 Conclusions

Following the instructions above and providing accurate and readable text, tables, figures, and citations will help to make your report useful to readers. Scientists may read your report, as well as water planners, utility providers, and interested citizens. If your report successfully conveys accurate scientific information and explanations to these readers, we can help to create more informed decisions about the use, development, and management of water in the state.

## 7.0 Acknowledgments

Be sure to acknowledge the people and entities that assisted you in your study and report. For example:

We would like to thank the Keck Geology Consortium, the American Society of Civil Engineers, and the Texas Bar CLE for providing examples to use in developing these guidelines. In addition, we appreciate Mike Parcher for providing information on how to create publication-quality graphics, Shirley Wade for creating the data used in sample Figure 1, and Ian Jones for providing sample Figure 3.

## 8.0 References

Gradstein, F.M., J.G. Ogg, and A.G. Smith, eds., 2005, A geologic time scale 2004: Cambridge, Cambridge University Press, 610 p.

Hansen, W.R., ed., 1991, Suggestions to authors of the reports of the United States Geological Survey (7th ed.): Washington, D.C., U.S. Government Printing Office, 289 p.

Tufte, E. R., 1983, The visual display of quantitative information: Cheshire, C.T., Graphics Press, 197 p.

Tufte, E. R., 1990, Envisioning information: Cheshire, C.T., Graphics Press, 126 p.

Tufte, E. R., 1997, Visual explanations: Cheshire, C.T., Graphics Press, 156 p.

## 9.0 Examples of references

Arroyo, J. A., and Mullican, III, W. F., 2004, Desalination: in Mace, R. E., Angle, E. S., and Mullican, W. F., III, editors, Aquifers of the Edwards Plateau: Texas Water Development Board Report 360, p. 293-302.

Bates, R. L., and Jackson, J. A., 1984, Dictionary of geological terms: Anchor Press/Doubleday, Garden City, New York, 571 p.

Blandford, T. N., Blazer, D. J., Calhoun, K. C., Dutton, A. R., Naing, T., Reedy, R. C., and Scanlon, B. R., 2003, Groundwater availability of the southern Ogallala aquifer in Texas and New Mexico—Numerical simulations through 2050: contract report by Daniel B. Stephens and Associates, Inc., and the Bureau of Economic Geology, The University of Texas at Austin to the Texas Water Development Board, variably paginated.

Fenneman, N. M., 1931, Physiography of Western United States (1st edition): New York, McGraw-Hill, 534 p.

Hubert, M., 1999, Senate Bill 1—The first big bold step toward meeting Texas's future water needs: Texas Tech Law Review, v. 30, no. 1, p. 53-70.

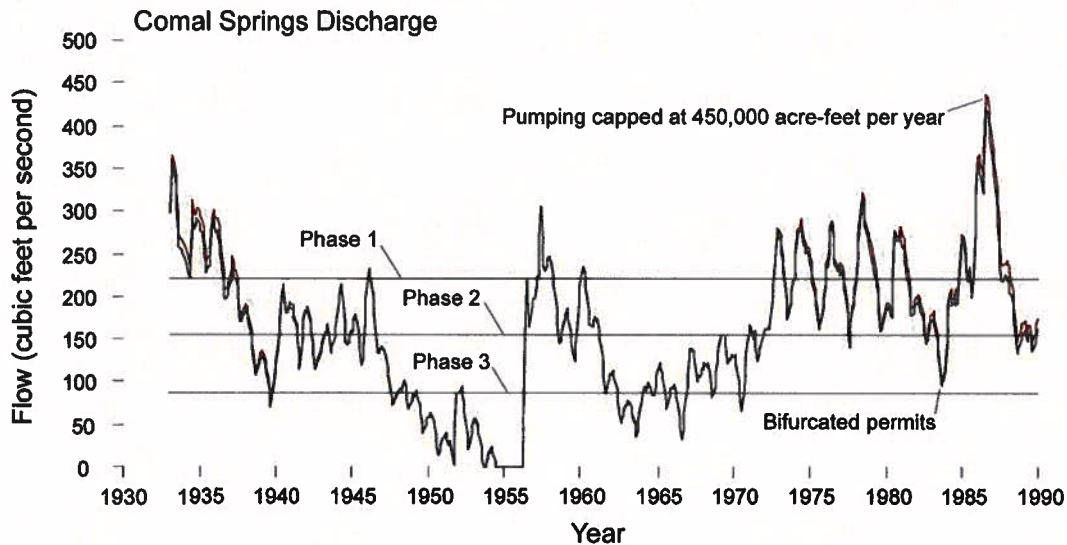
Kunianski, E. L., 1989, Precipitation, streamflow, and baseflow in West-Central Texas, December 1974 through March 1977: U. S. Geological Survey Water-Resources Investigations Report 89-4208, 2 sheets.

Mace, R. E., Chowdhury, A. H., Anaya, R., and Way, S.-C., 2000, A numerical groundwater flow model of the Upper and Middle Trinity aquifer, Hill Country area: Texas Water Development Board Open File Report 00-02, 62 p.

Maclay, R. W., and Land, L. F., 1988, Simulation of flow in the Edwards aquifer, San Antonio Region, Texas, and refinements of storage and flow concepts: U. S. Geological Survey Water-Supply Paper 2336, 48 p.

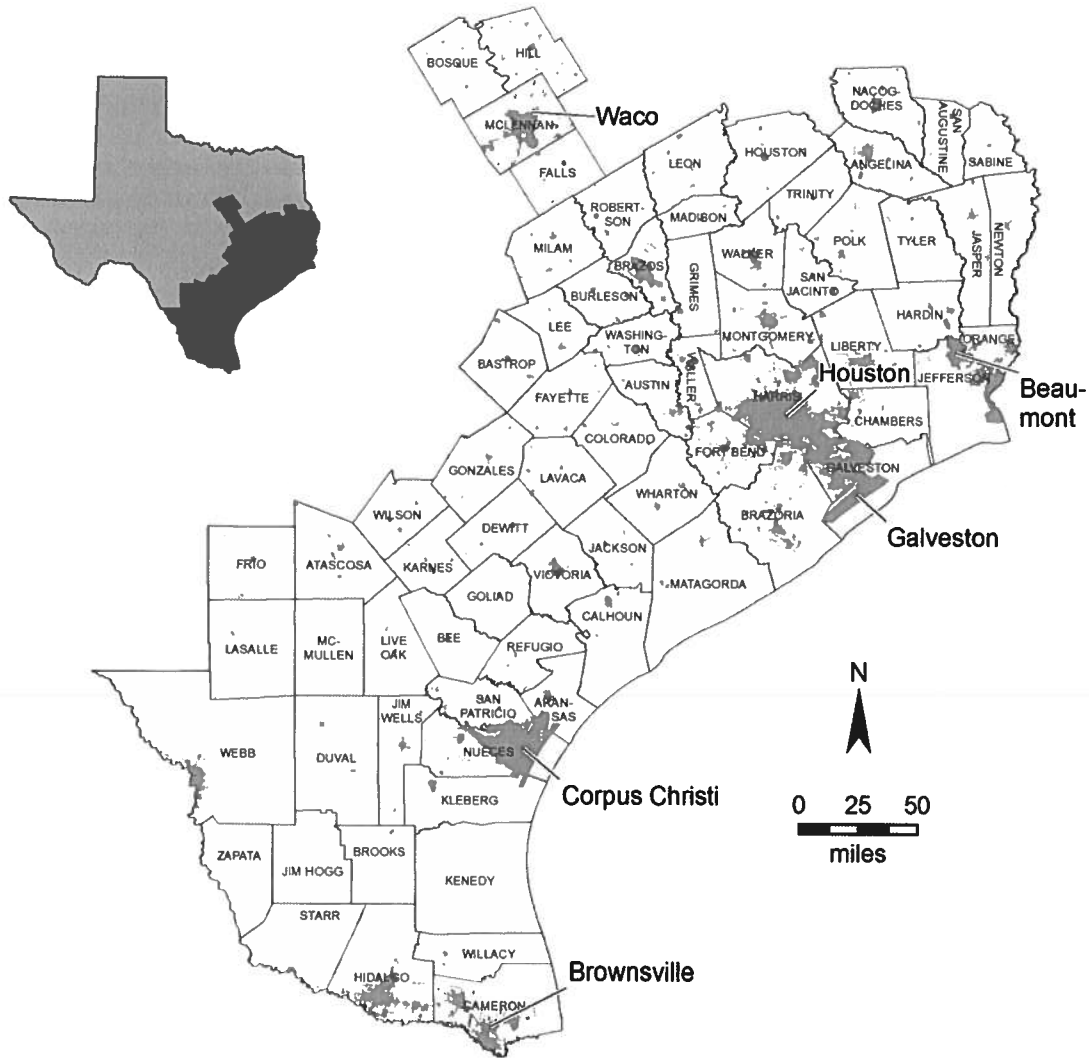
For more examples of references, see p. 239-241 of "Suggestions to Authors of the Reports of the United States Geological Survey" at <https://pubs.usgs.gov/unnumbered/7000088/sta28.pdf>.

## 10.0 Examples of figures

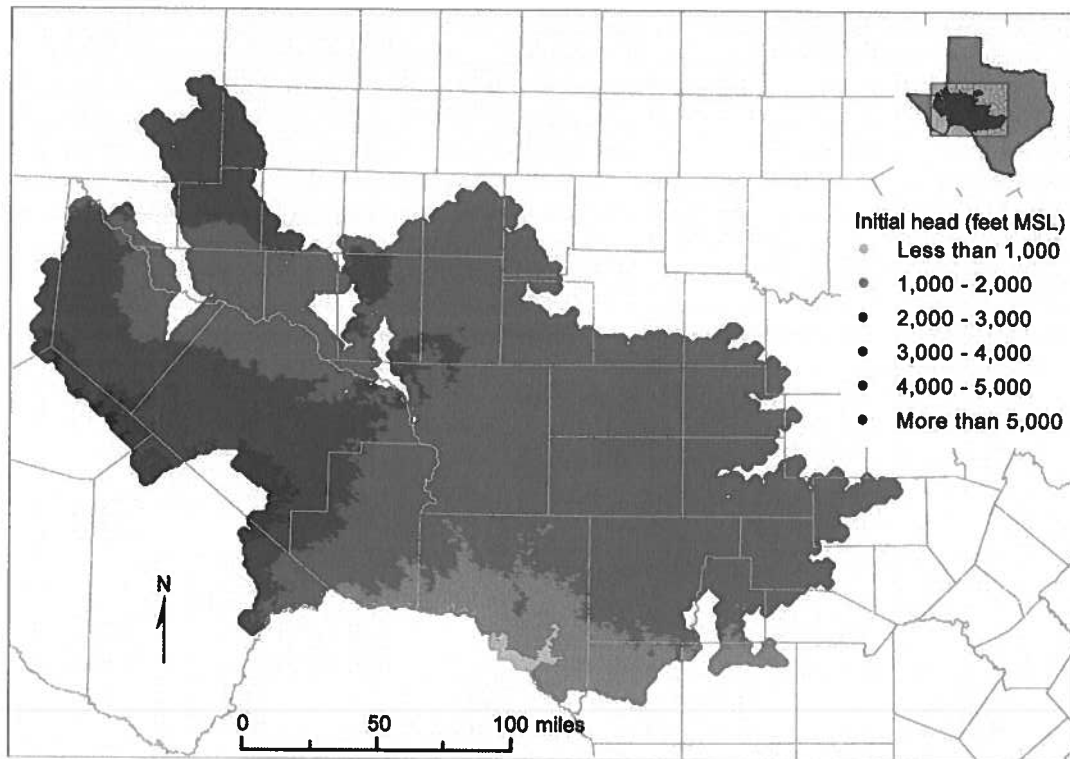


**Figure 1.** A sample figure showing only the information needed to help the reader understand the data. Font size for figure callouts or labels should never be less than 6 point.





**Figure 2. A sample subject area map, giving the reader enough information to understand the location being discussed in this conference. For map figures, be sure to include a north arrow to orient the reader, a scale, and, if needed, a submap that places the figure in greater geographic context. Be sure that text is readable and that any citations listed on the figure or in the figure caption are included in the reference list. Font size should never be less than 6 point.**



**Figure 3. Initial hydraulic heads used in model simulations for layer 1. Note the use of grayscale shading to show differences.**



## EXHIBIT E

### TWDB GUIDELINES FOR A PROGRESS REPORT

---

Texas Water Development Board Borrowers/Grantees are required by their contracts to provide Progress Reports according to the *"Payment Request Schedule"*.

The progress report should contain the following standard elements:

- **Date:** Date the memo is sent
- **To:** Name and position of the reader
- **From:** Name and position of the writer
- **Subject:** TWDB Contract Number and the period that this report covers (i.e. Progress Report 09/01/18 – 11/30/18)

**In-Kind Services:** (please include a value and description of any in-kind services provided during the reporting period)

**Work Completed:** (Explain what work has been done during the reporting period by Scope of Work task. Specify the dates of the reporting period and use active voice verbs to report progress made. Please include any updates on special conditions.)

**For Example:**

**Task 1:** Completed 3 draft chapters and all appendices. Met with sub consultants on their chapters.

**Task 2:** Completed sample collection throughout river reach.

**Task 3:** No work completed in reporting period.

**Problems:** (If the reader is likely to be interested in the glitches you have encountered along the way, mention the problems you have encountered and explain how you have solved them. If there are problems you have not yet been able to solve, explain your strategy for solving them and tell the reader when you think you will have them solved.)



**Information**

**Agenda Item**

**Resolution - Engineering:** Consider a resolution authorizing the Mayor to execute Construction Service Contract 15944, with Garney Companies, Inc., for improvements at Pump Station No. 4, including pumps, motors, and starters.

**Item Summary**

Pump Station No.4 is a critical part of the water supply system in Lubbock, and as demand for water grows, the equipment at this station needs to be updated to provide reliable and efficient supply for the years to come. Two of the four current pumps will be replaced with more efficient 15 million-gallon-per day centrifugal units. The motor control center will also be replaced to ensure reliable and safe pump startup and operation. Garney Companies, Inc. will install and set up the new pumps, motors, starters and motor control centers.

In response to RFP 21-15944-TF, proposals were opened on September 8, 2021, and were as follows:

Contractor	Amount
Garney Companies, Inc., North Kansas City, Missouri	\$1,504,000

Staff recommends the award of the contract to Garney Companies, Inc. Garney was the only bidder for this project and the evaluation committee agreed that the price proposed was within the proposed budget for this project, and the contractor has shown to be qualified to perform the work outlined in the plans and technical specifications.

Time for substantial completion is 450 calendar days and final completion is 510 calendar days. Liquidated damages are set to \$1,000 per day and will increase to \$2,000 per day after substantial completion.

**Fiscal Impact**

This contract in the amount of \$1,504,000 is funded in Capital Improvements Project 92513, Pumping System Improvements Phase II.

**Staff/Board Recommending**

Jesica McEachern, Assistant City Manager

**Attachments**

- Resolution
- Construction Contract
- Location Exhibit
- Budget Detail

CIP Detail  
Project Summary Sheet

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Public Works Contract No. 15944 for replacement pumps, motors, and starters for Pump Station No. 4 as per RFP 21-15944-TF, by and between the City of Lubbock and Garney Companies, Inc. of North Kansas City, Missouri, and related documents. Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**PROPOSAL SUBMITTAL FORM  
PRICE PROPOSAL CONTRACT**

DATE: September 8, 2021

PROJECT NUMBER: **RFP 21-15944-TF Replacement Pumps, Motors, and Starters for Pump Station No. 4**

Proposal of Garney Companies, Inc. (hereinafter called Offeror)

To the Honorable Mayor and City Council City of Lubbock, Texas (hereinafter called Owner)

Ladies and Gentlemen:

The Offeror, in compliance with your Request for Proposals for the **Replacement Pumps, Motors, and Starters for Pump Station No. 4** having carefully examined the plans, specifications, instructions to offerors, notice to offerors and all other related contract documents and the site of the intended work, and being familiar with all of the conditions surrounding the construction of the intended project including the availability of materials and labor, hereby intends to furnish all labor, materials, and supplies; and to construct the project in accordance with the plans, specifications and contract documents, within the time set forth therein and at the price stated. The price to cover all expenses incurred in performing the work required under the contract documents.

**Required Substantial Completion Date of the Project Equipment**

Required Substantial Completion Date of the project equipment is December 16, 2022. If Bidder Proposes to Accelerate the Schedule, then the Guaranteed Substantial Completion Date Shall Be Spelled Out in Words Below and Written Numerically in the Blank to the Right. <b>If awarded the Contract, then the Date Written in Will Become the Contractual Date.</b>	<u>12 / 16 / 2022</u>
<u>December Sixteenth, Two Thousand Twenty-Two.</u>	

**PROPOSED CONSTRUCTION TIME:**

1. Contractors proposed CONSTRUCTION TIME for completion:

**TOTAL CONSECUTIVE CALENDAR DAYS:** 450 (to Substantial Completion)

**TOTAL CONSECUTIVE CALENDAR DAYS:** 510 (to Final Completion)

**(not to exceed 450 consecutive calendar days to Substantial Completion / 510 consecutive calendar days to Final Completion).**

Offeror hereby agrees to commence the work on the above project on a date to be specified in a written "Notice to Proceed" of the Owner and to **substantially complete** the project within **450 Consecutive Calendar Days** with **final completion** within **510 Consecutive Calendar Days** as stipulated in the specification and other

**City of Lubbock, TX  
Public Works  
RFP 21-15944-TF  
Replacement Pumps, Motors, and Starters for Pump Station No. 4**

**Garney Companies, Inc. of North Kansas City, MO**

<b>Item</b>	<b>Description</b>	<b>QTY (+/-)</b>	<b>UoM</b>	<b>Unit Cost</b>	<b>Extended Cost</b>
#0-1	Furnish and install two (2) Horizontal Split Case Pumping Units including motor and base at rated capacity as specified with each pump running individually to produce 15.0 MGD at 185 feet TDH with guaranteed wire-to-water efficiency as stated in Attachment A of specification 43 23 21.13. The guaranteed wire to water efficiency of each pump and motor at the rated flow and head, as stated in Specification 43 23 21.13 Attachment A, shall be submitted. This efficiency does not include losses in the starters because they will be provided by others.	2	EA	\$541,000	1,082,000
#0-2	Furnish one (1) 5KV Motor Control Center	1	LS	340,000	340,000
#0-3	Replacement of Pumps and Motors for Pump Station No. 4 completely as shown in the specifications excluding Pay Items: 1 and 2	1	LS	32,000	32,000
#0-4	Add(+) or Deduct (-) Provision is made for Offeror to include an addition or deduction in his proposal, if he wishes, to reflect any last-minute adjustments in price. This addition or subtraction will be applied to pay item 3.	1	LS	-	-
<b>Alternate 1</b>					
#1-1	Contractor Installation of 5KV Motor Control Center (To include unloading; storage; warranty period removal, loading, and re-installation; installation; and field testing of the 5KV Motor Control Center)	1	LS	50,000	50,000
				<b>Total: \$</b>	<b>1,504,000</b>

contract documents. Offeror hereby further agrees to pay to Owner as liquidated damages in the sum of **\$1,000** for each consecutive calendar day after **substantial completion** and liquidated damages in the sum of **\$2,000** for each consecutive calendar day after **final completion** set forth herein above for completion of this project, all as more fully set forth in the General Conditions of the Agreement.

Offeror understands and agrees that this proposal submittal shall be completed and submitted in accordance with instruction number 28 of the General Instructions to Offerors. Offeror understands that the Owner reserves the right to reject any or all proposals and to waive any formality in the proposing. The Offeror agrees that this proposal shall be good for a period of **sixty (60)** calendar days after the scheduled closing time for receiving proposals.

The undersigned Offeror hereby declares that he has visited the site of the work and has carefully examined the plans, specifications and contract documents pertaining to the work covered by this proposal, and he further agrees to commence work on the date specified in the written notice to proceed, and to substantially complete the work on which he has proposed; as provided in the contract documents.

Offerors are required, whether or not a payment or performance bond is required, to submit a cashier's check or certified check issued by a bank satisfactory to the City of Lubbock, or a proposal bond from a reliable surety company, payable without recourse to the order of the City of Lubbock in an amount not less than five percent (5%) of the total amount of the proposal submitted as a guarantee that offeror will enter into a contract, obtain all required insurance policies, and execute all necessary bonds (if required) within ten (10) days after notice of award of the contract to him.







As required by SECTION 1, Chapter 2051, SUBCHAPTER D, GEOSPATIAL DATA PRODUCTS of the Government Code, the City of Lubbock hereby provides notice that the data on this map was created by the City of Lubbock. Any data that appears to represent property boundaries is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

## Pump Station 4





**City of Lubbock, TX  
Capital Project  
Project Cost Detail  
October 26, 2021**

Capital Project Number:	92513
Capital Project Name:	Pump System Improvements Phase II

<i>Encumbered/Expended</i>	<b>Budget</b>
City of Lubbock Staff Time	\$ 3,773
Pump System Improvements - In House	120,627

*Agenda Items, October 26, 2021*

Contract 15944 - Replacement Pumps, Motors, and Starters for Pump Station No. 4	1,504,000
<b><i>Encumbered/Expended To Date</i></b>	<b>1,628,400</b>

*Estimated Costs for Remaining Appropriation*

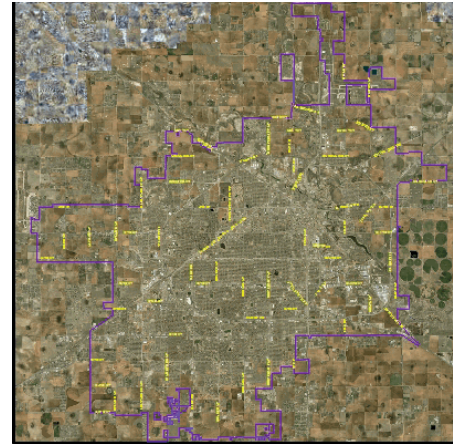
Pump Station Improvements	371,600
<b><i>Remaining Appropriation</i></b>	<b>371,600</b>
 <b>Total Appropriation</b>	 <b>\$ 2,000,000</b>

*Managing Department* **Pumping & Control**

*Project Manager* **Michael Lowe**

*Project Classification* **Upgrade/Major Maintenance**

*Project Status* **Approved**



*Project Scope*

This project is for the purchase and installation of equipment, and the modification and/or rehabilitation of existing equipment and pumping systems. This project also includes other emergency repairs not included in operating budget.

March 2021 - Purchase of two low head pumps, motors, and electrical equipment to be installed at Pump Station #4 to allow flexibility in pumping and allowing water to be transported to Pump Station 16 where it will disburse as needed to other parts of the City's water distribution system. Bid for this purchase currently in progress. Estimated cost - \$2,200,000. Additional funds in later years to be used to replace aging pumps and motors at Pump Station #8.

The installation of these low head pump was evaluated and recommended by an engineering consultant.

Ongoing maintenance, repairs, or replacement as needed.

*Project Justification*

Replacing and updating aged infrastructure decreases emergency maintenance expenditures and reduces system failures.

*Project History*

\$500,000 was appropriated in the FY 2017-18 Budget, Ord. No. 2017-00111, October 1, 2017.

\$500,000 was appropriated in the FY 2018-19 Budget, Ord. No. 2018-00109, October 1, 2018.

\$500,000 was appropriated in the FY 2019-20 Budget, Ord. No. 2019-00129, October 1, 2019.

\$500,000 was appropriated in the FY 2020-21 Budget, Ord. No. 2020-00123, October 1, 2020.

<i>Appropriation Detail</i>	Appropriation to Date	Unappropriated Planning Years						Total Project Amount
		FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	
Construction	2,000,000	500,000	500,000	500,000	500,000	500,000	500,000	5,000,000
<b>Total Project Appropriation</b>	2,000,000	500,000	500,000	500,000	500,000	500,000	500,000	5,000,000

Funding Detail	Funding to Date	Unappropriated Planning Years						Total Funding
		FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	
FY 2015 Water Revenue CO's	0	1,099	0	0	0	0	0	1,099
FY 2018 Water/Wastewater Cash	500,000	0	0	0	0	0	0	500,000
FY 2019 Water/Wastewater Cash	500,000	0	0	0	0	0	0	500,000
FY 2020 Water/Wastewater Cash	500,000	0	0	0	0	0	0	500,000
FY 2021 Water/Wastewater Cash	500,000	0	0	0	0	0	0	500,000
FY 2022 Water/Wastewater Cash	0	498,901	0	0	0	0	0	498,901
FY 2023 Water/Wastewater Cash	0	0	500,000	0	0	0	0	500,000
FY 2024 Water/Wastewater Cash	0	0	0	500,000	0	0	0	500,000
FY 2025 Water/Wastewater Cash	0	0	0	0	500,000	0	0	500,000
FY 2026 Water/Wastewater Cash	0	0	0	0	0	500,000	0	500,000
FY 2027 Water/Wastewater Cash	0	0	0	0	0	0	500,000	500,000
<b>Total Funding Sources</b>	<b>2,000,000</b>	<b>500,000</b>	<b>500,000</b>	<b>500,000</b>	<b>500,000</b>	<b>500,000</b>	<b>500,000</b>	<b>5,000,000</b>

Operating Budget Impact	Unappropriated Planning Years						Total Impact
	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	
No Impact Anticipated	0	0	0	0	0	0	0
<b>Total Operating Budget Impact</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>



## **Purchasing and Contract Management**

### **Project Summary**

#### **RFP 21-15944-TF**

#### **Replacement Pumps, Motors, and Starters for Pump Station No. 4**

Notice was published in the Lubbock Avalanche Journal on July 25 & August 1, 2021.

Notice was published on the Purchasing Web Site under Bid Opportunities.

Notice was published on BidSync.com and Bonfire.com from July 26 to September 8, 2021.

13 individuals attended the pre-proposal meeting.

122 vendors viewed using BidSync.com and Bonfire.com.

77 vendors downloaded the documents.

10 vendors were notified separately.

1 vendor submitted a proposal.



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## Information

### Agenda Item

**Resolution - Public Works:** Consider a resolution authorizing the Mayor to execute Change Order No. 1 to Contract 15875, with MH Civil Constructors, Inc., for the construction of the brick paving project at the intersection of 13th Street and Texas Avenue.

### Item Summary

Contract No. 15875 was awarded to MH Civil Constructors, Inc. on June 8, 2021, in response to RFP 21-15875-TF, for the reconstruction of the 13th Street and Texas Avenue intersection, to smooth out the ride of the roadway, address drainage, and rebuild aging infrastructure.

This change order will fully reconcile all quantities for final payout of the project, and balance project over and under run quantities. The change order amount is for an additional \$68,813 and is 9.53% of the original contract amount of \$722,000. Final completion of the project was accomplished on October 8, 2021.

### Fiscal Impact

The cost of Change Order No. 1 is \$68,813 and is funded in Capital Improvement Project 92697, Street Maintenance 2021.

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager

L. Wood Franklin, P.E., Division Director of Public Works

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## Attachments

Resolution

Change Order

Budget Detail

CIP Detail

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Change Order No. 01 to that certain Contract No. 15875 by and between the City of Lubbock and MH Civil Constructors, for the brick paving project on 13th street and Texas Avenue as per RFP 21-15875-TF, and related documents. Said Change Order No. 01 is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

## Office of Purchasing and Contract Management Change Order

Contract No: 15875	Contractor: MH Civil Constructors, Inc.
Change Order No: 1	Contract Title: Brick Paving Project 13 <sup>th</sup> Street and Texas Avenue
Bid/RFP No: 21-15875-TF	Project No: 92697

“Change Order” means a written order to a Contractor, executed by the Owner, in accordance with the Contract authorizing an addition to, deletion from, or adjustment or revision of the requirements of the Contract documents, or an adjustment to the compensation payable to the Contractor, or to the time for performance of the Contract and completion of the project, or a combination thereof, which does not alter the nature of project and is an integral part of the project objective. Adjustments to “Estimated Quantities” to a line item in a Unit Price Contract do not require a Change Order. All work that alters the nature of the construction or that is not an integral part of the project objective must be let out for public bid.

**Description of Change (alteration, deviation, addition, or deletion) caused by conditions encountered during construction not covered by the specifications and drawings of the project (attached additional pages is necessary):**

This change order will delete line items 10 (-\$15,450.00) and 19 (-\$7,000.00) and add 10B (\$91,263.00) for a total of \$68,813.00. Item 10 includes curb & gutter & other misc. concrete removal as a unit of linear feet (LF). An existing 6-inch concrete layer was found under the brick that needed to be removed and priced in units of square yards (SY). Item 10B includes all concrete removal as a lump sum (LS) to include both LF and SY. Item 19 was deleted due to a field change request by the City.







Where the Change Order is negotiated, the Change Order must be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit and overhead. Where certain unit prices are contained in the initial Contract, no deviations are allowed in computing negotiated change order costs.

**ITEMIZED COSTS MUST BE FULLY DOCUMENTED AND ATTACHED TO THIS FORM.**

ITEM	DESCRIPTION	AMOUNT
A.	ORIGINAL CONTRACT VALUE:	\$ 722,000.00
B.	AMOUNT OF THIS CHANGE ORDER: <small>Note: Council approval required if (+/-) \$50,000</small>	\$ 68,813.00
	COST CENTER: 4545      ACCOUNT: 92697.9240.30000	
C.	PERCENT OF CONTRACT VALUE THIS CHANGE ORDER (B/A)	9.53 %
D.	AMOUNT OF PREVIOUS CHANGE ORDERS:	\$ 0
E.	TOTAL AMOUNT OF ALL CHANGE ORDERS (B+D)	\$ 68,813.00
F.	PERCENT OF CONTRACT OF ALL CHANGE ORDERS (E/A): (25% maximum)	9.53 %
G.	NEW CONTRACT AMOUNT (A+E):	\$ 790,813.00

It is mutually agreed that the above dollar amount and the time extension, as applicable, as set forth in this Change Order constitutes full compensation to the Contractor for all costs, expenses and damages to the Contractor, whether direct, consequential or otherwise, in anyway incident to, or arising out of, or resulting directly or indirectly; from the work performed or modified by the Contractor under this Change Order.

**This Change Order is not valid without the following signatures (please sign in order and return 3 originals with the Contract Cover Sheet to Purchasing and Contract Management department):**

 _____ (1) Contractor	9/20/21 Date  _____ (2) Project Architect/Engineer	09/23/21 Date  _____ (3) Owner's Representative
 _____ (5) Capital Project Manager	09/23/21 Date  _____ (4) Director of Purchasing & Contract Management	9.28.21 Date  _____ (6) City Attorney
9/28/21 Date _____ (7) Mayor	9-28-21 Date _____ (8) City Secretary	

**Change Orders over \$50,000.00 require a Contract Cover Sheet and the following signatures:**

(7) Mayor	Date	(8) City Secretary	Date
Council Date: _____	Agenda Item #: _____	Resolution #: _____	



P2021-30

Lubbock, City of - Brick Paving - PCO#1

09/02/2021 2:14 PM

BID PROPOSAL

Bid Item	Description	Quantity	Units	Unit Price	Bid Total
10	Curb & gutter & other misc concrete rem. (credit)	1,545.000	LF	-10.00	-15,450.00
10B	Curb & gutter and other misc. concrete removal	1.000	LS	91,263.00	91,263.00
19	3" schedule 80 conduit & fittings (credit)	70.000	LF	-100.00	-7,000.00
	<b>Bid Total</b>				<b>\$68,813.00</b>

**City of Lubbock, TX  
Capital Project  
Project Cost Detail  
October 26, 2021**

Capital Project Number:	92697
Capital Project Name:	Street Maintenance 2021

<b><i>Encumbered/Expended</i></b>	<b>Budget</b>
Contract 15647 2021 Asphalt Repair	\$ 1,543,596
Contract 15648 2021 Concrete Repair	1,445,700
Contract 14517, Amendment Rejuvenator 2021	994,800
Contract 15772, 2021 MicroSurfacing	3,538,696
Contract 15778, Wausau Avenue (S. of 82nd St) Rebuild	337,471
Contract 15796, Nuisance Branches and Trees Service	
Contract- Asplundh Tree Expert LLC	29,962
Contract 15875, Brick Paving Project 13th and Texas-MH Civil Constructors Inc.	722,000
Contract 15964, MLK Ave. Rebuild	709,950
Contract 16027 Rebuild Frankford & Alcove Avenues	1,224,680
In-house Mill and Re-lay	500,000
Plotter	5,843
Bid Cost	933
City of Lubbock Staff Time	3,137

***Agenda Items, October 26, 2021***

Contract 15875 Change Order 1 - 13th & Texas	68,813
<b><i>Encumbered/Expended To Date</i></b>	<b>11,125,581</b>

Estimated Costs for Remaining Appropriation

Street Maintenance	10,729,434
<b><i>Remaining Appropriation</i></b>	<b>10,729,434</b>

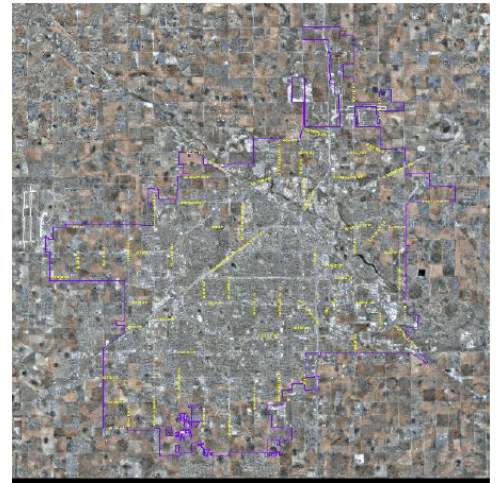
<b>Total Appropriation</b>	<b>\$ 21,855,015</b>
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*Managing Department* **Streets**

*Project Manager* **Mike Gilliland**

*Project Classification* **Upgrade/Major Maintenance**

*Project Status* **Approved**



*Project Scope*

Micro-surfacing, asphalt rejuvenation, asphalt milling, asphalt milling and overlay, full or partial depth pavement repair, total reconstruction, patching, crack sealing, concrete joint sealing, and brick street repair.

*Project Justification*

The project is a preventive maintenance program to help preserve and maintain our street infrastructure. The maintenance program is an essential tool to help extend the useful life of the pavement. Used early in a pavement's life, preventative maintenance corrects small problems before they become big problems, saves money, and improves safety and rideability. At some point, all roads require total rehabilitation as they near the end of their useful life. Total rehabilitation is completed when funding is available.

*Project History*

\$10,000,000 was appropriated in the FY 2020-21 Budget, Ord. No. 2020-O0123, October 1, 2020.

\$1,155,015 was appropriated in FY 2020-21, BCR# 2021-9, April 23, 2021.

Reduced appropriation by \$300,000 in FY 2020-21, BCR# 2021-13, May 17, 2021.

<i>Appropriation Detail</i>	Appropriation to Date	Unappropriated Planning Years						Total Project Amount
		FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	
Construction	10,855,015	11,000,000	12,000,000	13,000,000	14,000,000	15,000,000	0	75,855,015
<b>Total Project Appropriation</b>	10,855,015	11,000,000	12,000,000	13,000,000	14,000,000	15,000,000	0	75,855,015

<i>Funding Detail</i>	Funding to Date	Unappropriated Planning Years						Total Funding
		FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	
FY 2020 General Fund Cash	855,015	0	0	0	0	0	0	855,015
FY 2021 General Fund Cash	10,000,000	0	0	0	0	0	0	10,000,000
FY 2022 General Fund Cash	0	11,000,000	0	0	0	0	0	11,000,000
FY 2023 General Fund Cash	0	0	12,000,000	0	0	0	0	12,000,000
FY 2024 General Fund Cash	0	0	0	13,000,000	0	0	0	13,000,000
FY 2025 General Fund Cash	0	0	0	0	14,000,000	0	0	14,000,000
FY 2026 General Fund Cash	0	0	0	0	0	15,000,000	0	15,000,000
<b>Total Funding Sources</b>	10,855,015	11,000,000	12,000,000	13,000,000	14,000,000	15,000,000	0	75,855,015



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## Information

### Agenda Item

**Resolution - Public Works:** Consider a resolution authorizing the Mayor to execute an Advanced Funding Agreement, Contract 16170, between the City of Lubbock and the State of Texas, acting through the Texas Department of Transportation (TxDOT), for the Pedestrian and Bicyclist Connectivity Project inside Loop 289, at various locations.

### Item Summary

The Lubbock Metropolitan Planning Organization (MPO) approved the use of Category 9 "Transportation Alternatives" Program (TAP) funding, for the construction of the City of Lubbock Pedestrian and Bicyclist connectivity project within Loop 289. This is an Advanced Funding Agreement (AFA) between the City of Lubbock and the Texas Department of Transportation (TxDOT), which will allocate federal funds for this purpose. The costs will be allocated based on 80% federal funding with the remaining 20% funded by the City of Lubbock. The total cost of the project is estimated at \$1,000,962, and the City's 20% portion of the project is \$222,369.

### Fiscal Impact

The AFA allows for the use of MPO funding on this project through the City Capital Improvement Program.

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager

L. Wood Franklin, P.E., Division Director of Public Works

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## Attachments

Resolution

AFA Contract

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, an Advanced Funding Agreement Contract No. 16170 for the City of Lubbock Ped/Bike Connectivity Project, by and between the City of Lubbock and the Texas Department of Transportation, and related documents. Said Agreement is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:



\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<i>AFA Not Used For Research &amp; Development</i>	

**STATE OF TEXAS           §**

**COUNTY OF TRAVIS       §**

**ADVANCE FUNDING AGREEMENT  
FOR A TRANSPORTATION ALTERNATIVES  
SET-ASIDE (TASA) PROGRAM PROJECT  
MPO-Selected Off-System**

This Advance Funding Agreement for a Transportation Alternatives Set-Aside (TASA) Program Project (“Agreement”) is made between the State of Texas (State), acting through the Texas Department of Transportation, and the City of Lubbock (Local Government), acting through its duly authorized officials.

**WITNESSETH**

**WHEREAS**, federal law establishes federally funded programs for transportation improvements to implement its public purposes, and

**WHEREAS**, the Texas Transportation Code, Section 201.103 establishes that the State shall design, construct and operate a system of highways in cooperation with local governments, and Section 222.052 authorizes the Texas Transportation Commission to accept contributions from political subdivisions for development and construction of public roads and the state highway system within the political subdivision, and

**WHEREAS**, Federal law, 23 USC §134 and 49 USC §5303, requires that State and Metropolitan Planning Organizations (MPOs) develop transportation plans and programs for urbanized areas of Texas, and

**WHEREAS**, Federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds, and

**WHEREAS**, the Texas Transportation Commission has codified 43 TAC, Rules 15.50-15.56 that describe federal, state, and local responsibilities for cost participation in highway improvement and other transportation projects, and

**WHEREAS**, the rules and procedures for the Transportation Alternatives Set-Aside Program (TASA) are established in 23 USC §133(h), and 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418, and

**WHEREAS**, the Local Government prepared and submitted to the State or Metropolitan Planning Organization (MPO) a project nomination package for TASA funding consideration, which is briefly described as COL Ped/Bike Connectivity (Project), and

**WHEREAS**, the Texas Transportation Commission (Commission) passed Minute Order Number 115814 (MO) dated August 27, 2020 awarding funding for TASA projects in the TASA Program Call of the Lubbock MPO, including Project, and

**WHEREAS**, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated October 26<sup>th</sup> 2021, which is attached to and made a part of this Agreement as

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<i><b>AFA Not Used For Research &amp; Development</b></i>	

Agreement as Attachment A, Resolution or Ordinance. A map showing the Project location appears in Attachment B, Project Location Map, which is attached to and made a part of this Agreement, and

**NOW, THEREFORE**, the State and the Local Government agree as follows:

## **AGREEMENT**

### **1. Period of Agreement and Performance**

- A. Period of Agreement. This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided below.
- B. Period of Performance.
  - 1. The Performance Period for each phase of work begins on the date specified in the Federal Project Authorization and Agreement (FPAA) for that phase of work. Local Government may not begin work until issued the State Letter of Authority (SLOA) for that phase of work.
  - 2. The Performance Period for each phase of work ends on the date specified in the FPAA for that phase of work.

### **2. Scope of Work and Use of Project**

- A. The scope of work for Project consists of the installation of Pedestrian Hybrid Beacons, pavement markings, signs, curb ramps, and sidewalk tie-ins to make safer and more accessible multi-modal connections along the established pedestrian and bicycle routes along Canyon Lakes, Avenue U, 13th Street, and 26th Street..
- B. Any project changes proposed must be submitted in writing by Local Government to State. Substantive changes may also require an amendment to this Agreement and the approval of the FHWA, State, MPO, or the Commission. Any changes undertaken without written approval and amendment of this Agreement may jeopardize not only the federal funding for the changes, but the federal funding of the entire Project.

### **3. Project Sources and Uses of Funds**

The total estimated development cost of the Project is shown in Attachment C, Project Budget Estimate and Source of Funds (Attachment C).

- A. If Local Government will perform any work under this Agreement for which reimbursement will be provided by or through the State, the Local Government must complete training. If federal funds are being used, the training must be completed before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled "Local Government Project Procedures and Qualification for the Texas Department of Transportation" and retains qualification in accordance with applicable TxDOT procedures. Upon request, Local Government shall provide the certificate of qualification to State. The individual who receives the training certificate may be an employee of Local Government or an employee of a firm that has been contracted by Local Government to perform oversight of the Project. State in its discretion may deny reimbursement if Local Government has not continuously designated in writing a qualified individual to work actively on or to directly oversee the Project.

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<b><i>AFA Not Used For Research &amp; Development</i></b>	

- B. The total estimated project cost as shown in Attachment C includes the Local Government's estimated itemized cost of real property, utilities, environmental assessments, construction, and other construction related costs. To be eligible for reimbursement or as in-kind contribution, costs must have been included in the nomination form approved by the Texas Transportation Commission or MPO in consultation with State. Local Government must submit to State evidence of payment for eligible in-kind costs at least once per calendar quarter using the State's In-Kind Match Reporting form.
- C. State and the Federal Government will not reimburse Local Government for any work performed outside the Performance Period. After federal funds have been obligated, State will send to Local Government a copy of the formal documentation showing the obligation of funds including federal award information. Local Government is responsible for 100 percent of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- D. The Project budget and source of funds estimate based on the budget provided in the application is included in Attachment C. Attachment C shows the percentage and estimated dollar amounts to be contributed to Project by state and local sources, as well as the maximum amount in federal TASA funds assigned by the Commission or MPO in consultation with State. This Agreement may be amended from time to time as required to meet the funding commitments based on revisions to the TASA, FPAA, or other federal documents.
- E. State will be responsible for securing the federal share of funding required for the development and construction of Project, in an amount not to exceed 80 percent of the actual cost of the work up to the amount of funds approved for Project by the Texas Transportation Commission or MPO in consultation with State. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to issuance of the SLOA are not eligible for reimbursement.
- F. The Local Government will be responsible for all non-federal or non-State participation costs associated with the Project, unless otherwise provided for in this Agreement or approved otherwise in an amendment to this Agreement. For items of work subject to specified percentage funding, the Local Government shall only in those instances be responsible for all Project costs that are greater than the maximum State and federal participation specified in Attachment C and for overruns in excess of the amount specified in Attachment C to be paid by the Local Government.
- G. The budget in Attachment C will clearly state all items subject to fixed price funding, specified percentage funding, and the periodic payment schedule, when periodic payments have been approved by the State.
- H. When fixed price funding is used, the Local Government is responsible for the fixed price amount specified in Attachment C. Fixed prices are not subject to adjustment unless (1) differing site conditions are encountered; (2) further definition of the Local Government's requested scope of work identifies greatly differing costs from those estimated; (3) work requested by the Local Government is determined to be ineligible for federal participation; or (4) the adjustment is mutually agreed to by the State and the Local Government.
- I. Following execution of this Agreement, but prior to the performance of any plan review work by State, Local Government will pay to State the amount specified in Attachment C for plan review. At least 60 days prior to the date set for receipt of the construction bids, Local Government shall remit its remaining local match as specified in Attachment C for State's estimated construction oversight and construction cost.
- J. In the event State determines that additional funding is required by Local Government at any time during Project, State will notify Local Government in writing. Local Government is responsible for the percentage of the authorized Project cost shown in Attachment C and 100



<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<b>AFA Not Used For Research &amp; Development</b>	

percent of any overruns above the federally authorized amount. Local Government will make payment to State within 30 days from receipt of State's written notification.

- K. Whenever funds are paid by Local Government to State under this Agreement, Local Government will remit a warrant made payable to the "Texas Department of Transportation". The warrant will be deposited by State and managed by State. Funds may only be applied by State to Project.
- L. Upon completion of Project, State will perform a final accounting of Project costs. Any funds due to Local Government, State, or the Federal Government will be promptly paid by the owing party.
- M. In the event Project is not completed, State may seek reimbursement from Local Government of the expended federal funds. Local Government will remit the required funds to State within 60 days from receipt of State's notification.
- N. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than state or federal regulations, or if any other locally proposed changes, including but not limited to plats or re-plats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by Local Government. The cost of providing right of way acquired by State shall mean the total expenses in acquiring the property interests through negotiations, including, but not limited to, expenses related to relocation, removal, and adjustment of eligible utilities.
- O. The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the Agreement or indirectly through a contract or subcontract under the Agreement. Acceptance of funds directly under the Agreement or indirectly through a contract or subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- P. State will not pay interest on any funds provided by Local Government.
- Q. State will not execute the contract for the construction of Project until the required funding has been made available by Local Government in accordance with this Agreement.
- R. Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by State no more frequently than monthly, and no later than 90 days after costs are incurred. If Local Government submits invoices more than 90 days after the costs are incurred, and if federal funding is reduced as a result, State shall have no responsibility to reimburse Local Government for those costs.
- S. If Local government is an Economically Disadvantaged County (EDC) and if State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.

**4. Termination of the Agreement**

- A. This Agreement may be terminated by any of the following conditions:
  - 1. By mutual written consent and agreement of all parties;
  - 2. By any party with 90 days written notice; or
  - 3. By either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.
- B. If the potential termination of this Agreement is due to the failure of Local Government to fulfill its contractual obligations, State will notify Local Government that possible breach of contract

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	0905-06-120	<b>CFDA No.</b>	20.205
<b>District #</b>	LBB- 05	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	25650		
<b>Project Name</b>	COL Ped/Bike Connectivity	<i>AFA Not Used For Research &amp; Development</i>	

has occurred. Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.

- C. The Agreement may be terminated by the State because the parties are not able to execute a mutually agreeable amendment when the costs for Local Government requested items increase significantly due to differing site conditions, determination that Local government requested work is ineligible for federal or state cost participation, or a more thorough definition of the Local Government's proposed work scope identifies greatly differing costs from those estimated. The State will reimburse Local Government remaining funds to the Local Government within ninety (90) days of termination;
- D. If Local Government withdraws from Project after this Agreement is executed, Local Government shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system and with 2 CFR Part 200 recapture requirements.
- E. A project may be eliminated from the program as outlined below. If Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A project may be eliminated from the program, and this Agreement terminated, if:
  - 1. Local Government fails to satisfy any requirements of the program rules cited in 43 Texas Administrative Code, Part 1, Chapter 11, Subchapter G, §§11.400 – 11.418.
  - 2. The implementation of Project would involve significant deviation from the activities proposed in the nomination form and approved by the Texas Transportation Commission or MPO in consultation with State.
  - 3. Local Government withdraws from participation in Project.
  - 4. State determines that federal funding may be lost due to Project not being implemented and completed.
  - 5. Funds are not appropriated, in which case this Agreement shall be terminated immediately with no liability to either party. Payment under this Agreement beyond the current fiscal biennium is subject to availability of appropriated funds.
  - 6. A construction contract has not been awarded or construction has not been initiated within three years after the date that the Commission or MPO selected the project or by a letting date determined by the state and agreed to by the Local Government.
  - 7. Local Government fails to attend progress meetings at least twice yearly, as scheduled by State.
- F. State, at its sole discretion, may terminate this Agreement if State does not receive project invoice from Local Government within 270 days of FPAA.

## 5. Amendments

This Agreement may be amended due to changes in the work, the amount of funding required to complete Project, or the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

## 6. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

## 7. Utilities

Local Government shall be responsible for the adjustment, removal, or relocation of utilities or utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to State of a delay resulting from Local Government's failure to ensure that utilities or

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	0905-06-120	<b>CFDA No.</b>	20.205
<b>District #</b>	LBB- 05	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	25650		
<b>Project Name</b>	COL Ped/Bike Connectivity	<i>AFA Not Used For Research &amp; Development</i>	

utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. At the State’s discretion, State may reimburse Local Government for minor, incidental utility adjustments that are identified during the preliminary engineering phase if they are eligible for federal reimbursement. Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, Local Government shall provide, at State’s request, a certification stating that Local Government has completed the adjustment of all utilities that must be adjusted before construction begins. Additional utility work may be required due to unknown conditions discovered during construction. These costs may be eligible for TASA participation if the following conditions are met: (1) the activity is required to complete Project; (2) the cost is incidental to Project; and (3) TASA funding is available. Any change orders must be approved by State prior to incurring any cost for which reimbursement is sought.

**8. Environmental Assessment and Mitigation**

Development of Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The **Local Government** is responsible for the identification and assessment of any environmental problems associated with the development of Project.
- B. Local Government is responsible for the cost of any environmental problem’s mitigation and remediation. These costs will not be reimbursed or credited towards Local Government’s financial share of Project unless specified in the nomination form and approved by State or MPO in consultation with State.
- C. Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment, including any public hearing requirements that may be necessary when adding a bike lane.
- D. Before the advertisement for bids, Local Government shall provide to State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

**9. Compliance with Accessibility Standards**

All parties to this Agreement shall ensure that the plans for and the construction of all projects subject to this Agreement are in compliance with standards issued or approved by the Texas Department of Licensing and Regulation (TDLR) as meeting or consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**10. Architectural and Engineering Services**

- A. Architectural and engineering services for preliminary engineering will be provided by the **Local Government**. In procuring professional services, the parties to this Agreement must comply with federal requirements cited in 23 CFR Part 172 if Project is federally funded and Local Government will be seeking reimbursement for these services or if these services will be used as in-kind contributions; and with Texas Government Code Subchapter 2254.A., in all cases. Professional services contracts for federally funded projects must conform to federal requirements. For State-selected projects, architectural and engineering services are not eligible for TASA reimbursement.
- B. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior’s Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites and in consultation with the State Historic Preservation Officer, as

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<i>AFA Not Used For Research &amp; Development</i>	

applicable. The engineering plans shall be developed in accordance with State’s applicable Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges and the two American Association of State Highway and Transportation Officials’ (“AASHTO”) publications, “A Policy on Geometric Design of Highways and Streets” and “Guide for the Development of Bicycle Facilities,” as applicable. All design criteria for bicycle and pedestrian bridges must comply with TxDOT’s Bridge Design Manual and AASHTO’s Load and Resistance Factor Design (LRFD) Guide Specifications for the Design of Pedestrian Bridges (latest edition) as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges. The use of other systems of specifications shall be approved by State in writing in advance.

- C. When architectural and engineering services are provided by or through Local Government, Local Government shall submit any plans it has completed to State for review and approval on an agreed upon schedule. Local Government may also submit the plans to State for review any time prior to completion. Local Government shall make the necessary revisions determined by State. Local Government will not let the construction contract until all required plans have received State approval.
- D. When architectural and engineering services are provided by or through State, then the State is responsible for the delivery and performance of any required architectural or preliminary engineering work. Local Government may review and comment on the work, including any proposed changes to the scope of work, as required to accomplish Project purposes. State will cooperate with Local Government in accomplishing these Project purposes to the degree permitted by state and federal law.

**11. Construction Responsibilities**

- A. The **State** shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. To ensure federal funding eligibility, projects must be authorized by State prior to advertising for construction.
- B. All contract letting and award procedures must be approved by State prior to letting and award of the construction contract, whether the construction contract is awarded by State or by Local Government.
- C. All contract change order review and approval procedures must be approved by State prior to start of construction.
- D. If the Local Government is the responsible party, the State must review and approve change orders.
- E. Upon completion of Project, the party constructing Project will issue and sign a “Notification of Completion” acknowledging Project’s construction completion.
- F. For federally funded contracts, the parties to this Agreement will comply with federal construction requirements provided in 23 CFR Parts 633 and 635, and shall include the latest version of Form “FHWA-1273” in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Subpart 635.B.
- G. Any field changes, supplemental agreements, or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by State and Local Government prior to authorizing the contractor to perform the work. Prior to completion of

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	0905-06-120	<b>CFDA No.</b>	20.205
<b>District #</b>	LBB- 05	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	25650		
<b>Project Name</b>	COL Ped/Bike Connectivity	<i>AFA Not Used For Research &amp; Development</i>	

Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

**12. Project Maintenance**

- A. Upon completion of Project, Local Government will be responsible for maintaining the completed facility for public use. The property shall be maintained and operated for the purpose for which it was approved and funded for a period commensurate with the federal investment or State rules, whichever is greater. Should Local Government at any time after Project completion decide it can no longer maintain and operate Project for its intended purpose, Local Government shall consult with State and the FHWA as to the disposal or alternate uses, consistent with Project's original intent. State may require Local Government to return the federal funds in accordance with 2 CFR Part 200 federal recapture requirements. Should Local Government consider conveying the property, State and FHWA must be notified prior to the sale, transfer, or disposal of any property that received federal funds. Written concurrence of approval for the transaction, detailing any required recapture, must be obtained from FHWA prior to the transaction. Advance notice from Local Government of their intended action must be submitted to State for an FHWA review a minimum of 90 days prior to any action being taken by Local Government. Local Government shall be held responsible for reimbursement of all federal funds used or a portion of those funds based on a pro-rata amount, considering the original percentage of federal funds provided and the time elapsed from Project completion date. This same percentage of reimbursement also applies to any amount of profit that may be derived from the conveyance of the property, as applicable.
- B. Any manufacturer warranties extended to Local Government as a result of Project shall remain in the name of Local Government. State shall not be responsible for honoring any warranties under this Agreement.
- C. Should Local Government derive any income from the development and operation of Project, a portion of the proceeds sufficient for the maintenance and upkeep of the property shall be set aside for future maintenance. A project income report shall be submitted to State on a quarterly basis. Monies set aside according to this provision shall be expended using accounting procedures and with the property management standards established in 2 CFR Part 200.
- D. Should any historic properties be included in or affected by this federally funded Project, the historic integrity of the property and any contributing features must continue to be preserved regardless of any approved changes that may occur throughout the life of Project.

**13. Right of Way and Real Property Acquisition**

- A. Right of way and real property acquisition shall be the responsibility of Local Government. Title to right of way and other related real property must be acceptable to State before funds may be expended for the improvement of the right of way or real property.
- B. If Local Government is the owner of any part of Project site under this Agreement, Local Government shall permit State or its authorized representative access to occupy the site to perform all activities required to execute the work.
- C. Local Government will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC §4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to Local Government, and benefits applicable to the relocation of any displaced person as defined in 49

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<i><b>AFA Not Used For Research &amp; Development</b></i>	

CFR §24.2(g). Documentation to support such compliance must be maintained and made available to State and its representatives for review and inspection.

- D. Local Government shall assume all costs and perform all work necessary to obtain needed evidence of title or right of use to the real property required for development of Project. Evidence of title or right of use shall be acquired in the name of (1) State, if the real property is to be made part of the State Highway System, or (2) Local Government, if the real property is not to be made part of the State Highway System. The evidence of title or rights shall be acceptable to State, and be free and clear of all encroachments. Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop Project according to the approved Project plans. Local Government shall be responsible for securing any additional real property required for completion of Project.
- E. Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to State for approval prior to Local Government acquiring the real property. Tracings of the maps shall be retained by Local Government for a permanent record.
- F. Local Government shall determine property values for each real property parcel to be purchased with federal funds using methods acceptable to State and shall submit to State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations must list the parcel numbers, ownership, acreage, and recommended compensation. The tabulation must be accompanied by an explanation to support the estimated values, together with a copy of the documentation and reports used in calculating each parcel's value. Expenses incurred by Local Government in performing this work may be eligible for reimbursement after Local Government has received written authorization by State to proceed with determination of real property values. State will review the data submitted and will base its reimbursement for parcel acquisitions on these in determining the fair market values. Local Government will not be reimbursed for right-of-way costs on state-selected projects.
- G. For State-selected TASA projects, Local Government shall not use eminent domain or condemnation to acquire real property for this TASA Project.
- H. Reimbursement for real property costs will be made to Local Government for real property purchased in an amount not to exceed 80 percent of the cost of the real property purchased in accordance with the terms and provisions of this Agreement. Reimbursement will be in an amount not to exceed 80 percent of State's predetermined fair market value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to Local Government for necessary payments to appraisers for expenses incurred in order to assure good title. Local Government will not be reimbursed for right-of-way costs on state-selected projects.
- I. Local Government and current property owner are responsible for any costs associated with the relocation of displaced persons and personal property as well as incidental expenses incurred in acquiring property to implement Project. State will not pay any of these costs.
- J. If Project requires the use of real property to which Local Government will not hold title, a separate agreement between the owners of the real property and Local Government must be executed prior to execution of this Agreement. The separate agreement between Local Government and the current property owner must establish that Project will be dedicated for public use for a period of time not less than ten years after project completion and commensurate with the federal investment. For State-selected projects, this is outlined in 43 Tex. Admin. Code §11.417. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of Project after

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	0905-06-120	<b>CFDA No.</b>	20.205
<b>District #</b>	LBB- 05	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	25650		
<b>Project Name</b>	COL Ped/Bike Connectivity	<i>AFA Not Used For Research &amp; Development</i>	

completion. The separate agreement must be approved by State prior to its execution and a copy of the executed separate agreement shall be provided to State.

- K. Local Government shall execute individually or produce a legal document as necessary to provide for Project's continued use from the date of completion, and agrees to cause the same to be recorded in the land records of the appropriate jurisdiction.
- L. Local governments receiving federal funds must comply with 23 CFR Part 710 and 49 CFR Part 24, and with the procedures provided in Chapter 6 of the State's Local Government Project Policy Manual. Local Government agrees to monitor Project to ensure: (1) continued use of the property for approved activities, and (2) the repayment of the Federal funds, as appropriate. Local Government agrees to the review of their Project accounts and site visits by State during the development of Project at any time. Upon Project completion, State will continue to perform periodic visits to confirm Project's continued use and upkeep.
- M. Before the advertisement for bids, Local Government shall provide a certification to State that all real property has been acquired.

**14. Insurance**

- A. Should this Agreement authorize Local Government or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide State with a fully executed copy of State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and State may recover damages and all costs of completing the work.
- B. For projects including buildings, Local Government agrees to insure the building according to Department specifications and further agrees to name the Federal Government as a "Loss Payee" should the building be destroyed.

**15. Notices, Invoices, Payments, and Project Inquiries**

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

<b>Local Government:</b>	<b>State:</b>
City of Lubbock ATTN: Division Director of Public Works P.O. Box 2000 Lubbock, TX 79457	Texas Department of Transportation ATTN: Director of Contract Services 125 E. 11 <sup>th</sup> Street Austin, TX 78701

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

Invoicing, payment, and project inquiries must be sent to the following address, which the State may change by sending written notice of the change to the Local Government:

Texas Department of Transportation  
ATTN: Director of TP&D

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	0905-06-120	<b>CFDA No.</b>	20.205
<b>District #</b>	LBB- 05	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	25650		
<b>Project Name</b>	COL Ped/Bike Connectivity	<i>AFA Not Used For Research &amp; Development</i>	

135 Slaton Road  
Lubbock, TX 79404

All invoicing, payment, and project inquiries must include the following information:

County: Lubbock  
Local Government: City of Lubbock  
CSJ No.: 0905-06-120  
Project Name: COL Ped/Bike Connectivity  
Highway or Roadway: Various

**16. Legal Construction**

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

**17. Responsibilities of the Parties**

Neither party is an agent, servant, or employee of the other party and each party is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**18. Ownership of Documents**

Upon completion or termination of this Agreement, all documents prepared by State shall remain the property of State. All data prepared under this Agreement shall be made available to State without restriction or limitation on their further use. All documents produced or approved or otherwise created by Local Government shall be transmitted to State in the form of photocopy reproduction on a monthly basis as required by State. The originals shall remain the property of Local Government.

**19. Document and Information Exchange**

Local Government agrees to electronically deliver to State all general notes, specifications, contract provision requirements, and related documentation in a Microsoft Word or similar format. If requested by State, Local Government will use State's document template. Local Government shall also provide a detailed construction time estimate, including types of activities and month in which the activity will be completed, in the format required by State. This requirement applies whether Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of State, Local Government shall submit any information required by State in the format directed by State.

**20. Compliance with Laws**

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, Local Government shall furnish State with satisfactory proof of this compliance.

**21. Sole Agreement**

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the Agreement's subject matter.



<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	0905-06-120	<b>CFDA No.</b>	20.205
<b>District #</b>	LBB- 05	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	25650		
<b>Project Name</b>	COL Ped/Bike Connectivity	<i>AFA Not Used For Research &amp; Development</i>	

**22. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR Part 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to Project.

**23. Procurement and Property Management Standards**

The parties to this Agreement shall adhere to the procurement and property management standards established in 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and to the Texas Uniform Grant Management Standards. The State must pre-approve the Local Government’s procurement procedures for purchases to be eligible for state or federal funds.

**24. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the FHWA and the U.S. Office of the Inspector General or their duly authorized representatives for review and inspection at its office during the Agreement period and for seven (7) years from the date of final reimbursement by FHWA under this Agreement or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**25. Civil Rights Compliance**

The parties to this Agreement are responsible for the following:

- A. Compliance with Regulations: Both parties will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.
- B. Nondiscrimination: The Local Government, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government’s obligations under this Agreement and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<b>AFA Not Used For Research &amp; Development</b>	

so certify to the State or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this Agreement, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  1. withholding of payments to the Local Government under the Agreement until the Local Government complies and/or
  2. cancelling, terminating, or suspending of the Agreement, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

**26. Pertinent Non-Discrimination Authorities**

During the performance of this Agreement, each party, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the federal-aid recipients, subrecipients and contractors, whether such programs or activities are federally funded or not).
- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38.
- I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<i><b>AFA Not Used For Research &amp; Development</b></i>	

- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

**27. Disadvantaged Business Enterprise Program Requirements**

- A. The parties shall comply with the Disadvantaged Business Enterprise (“DBE”) Program requirements established in 49 CFR Part 26.
- B. Local Government shall adopt, in its totality, State’s federally approved DBE program.
- C. Local Government shall set an appropriate DBE goal consistent with State’s DBE guidelines and in consideration of Local market, project size, and nature of the goods or services to be acquired. Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D. Local Government shall follow all other parts of State’s DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation’s Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address: [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou\\_attachments.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).
- E. Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. State’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to Local Government of its failure to carry out its approved program, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and the Program Fraud Civil Remedies Act of 1986 (31 USC § 3801 et seq.).
- F. Each contract Local Government signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:  
 “The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.”

**28. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<b>AFA Not Used For Research &amp; Development</b>	

Executive Order 12549, "Debarment and Suspension." By executing this Agreement, Local Government certifies that it and its principals are not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, and further certifies that it will not do business with any party, to include principals, that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a contract, subcontract, or purchase order awarded under this Agreement to certify its eligibility to receive federal funds and, when requested by State, to furnish a copy of the certification.

If state funds are used, the parties are prohibited from making any award to any party that is debarred under the Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter G, Rule §20.585 and the Texas Administrative Code, Title 43, Part 1, Chapter 9, Subchapter G.

**29. Lobbying Certification**

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by 31 USC §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**30. Federal Funding Accountability and Transparency Act Requirements**

- A. Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B. Local Government agrees that it shall:
  - 1. Obtain and provide to State a System for Award Management (SAM) number (Federal Acquisition Regulation (FAR) Subpart 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://sam.gov/SAM/pages/public/index.jsf>



<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<b>AFA Not Used For Research &amp; Development</b>	

2. Obtain and provide to State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and
3. Report the total compensation and names of its top five executives to State if:
  - a. More than 80 percent of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
  - b. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

**31. Single Audit Report**

- A. The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR Part 200.
- B. If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street, Austin, TX 78701 or contact TxDOT's Compliance Division at [singleaudits@txdot.gov](mailto:singleaudits@txdot.gov).
- C. If expenditures are less than the threshold during Local Government's fiscal year, Local Government must submit a statement to TxDOT's Compliance Division as follows: *We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY\_\_\_\_\_.*
- D. For each year Project remains open for federal funding expenditures, Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or Project has been formally closed out and no charges have been incurred within the current fiscal year.

**32. Signatory Warranty**

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

Each party is signing this agreement on the date stated under that party's signature.

**THE LOCAL GOVERNMENT**

**THE STATE OF TEXAS**

Signature

Signature

Daniel M. Pope

Kenneth Stewart

Typed or Printed Name

Typed or Printed Name

Mayor

Director of Contract Services

Typed or Printed Title

Typed or Printed Title

Date

Date

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	0905-06-120	<b>CFDA No.</b>	20.205
<b>District #</b>	LBB- 05	<b>CFDA Title</b>	Highway Planning and Construction
<b>Code Chart 64 #</b>	25650		
<b>Project Name</b>	COL Ped/Bike Connectivity	<i>AFA Not Used For Research &amp; Development</i>	

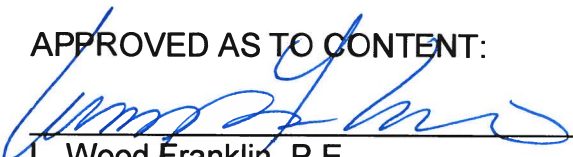
**THE LOCAL GOVERNMENT**

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
L. Wood Franklin, P.E.,  
Division Director of Public Works

\_\_\_\_\_  
Date

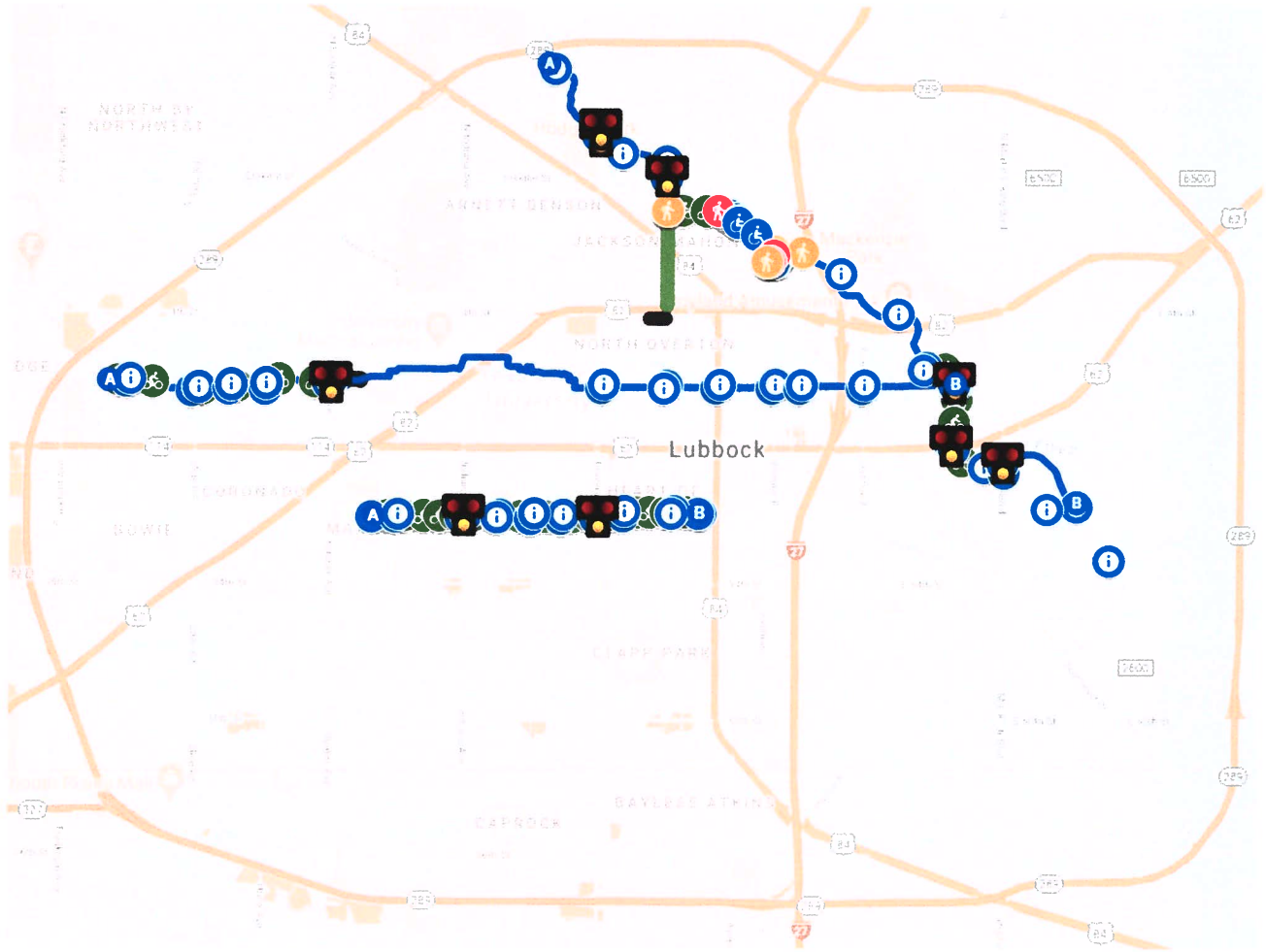
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

\_\_\_\_\_  
Date

<b>TxDOT:</b>		<b>Federal Highway Administration:</b>	
<b>CSJ #</b>	<b>0905-06-120</b>	<b>CFDA No.</b>	<b>20.205</b>
<b>District #</b>	<b>LBB- 05</b>	<b>CFDA Title</b>	<b>Highway Planning and Construction</b>
<b>Code Chart 64 #</b>	<b>25650</b>		
<b>Project Name</b>	<b>COL Ped/Bike Connectivity</b>	<i>AFA Not Used For Research &amp; Development</i>	

**ATTACHMENT B  
PROJECT LOCATION MAP**



**ATTACHMENT C  
PROJECT ESTIMATE AND SOURCE OF FUNDS**

LG Performs PE Work or Hires Consultant / State Lets Project for Construction

Work Performed by State (Local Participation paid up front by LG to TxDOT)									
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation		State Participation		Local Government Participation			
		%	Cost	%	Cost	%	Cost		
Construction Cost <sup>2</sup>	1,000,962								
Total Construction Value	\$1,000,962	80%	\$800,770	0%	\$0	20%	\$200,192		
<b>Work by LG Subtotal</b>	<b>\$1,000,962</b>		<b>\$800,770</b>		<b>\$0</b>		<b>\$200,192</b>		
Direct and Indirect State Costs Incurred for Review, Inspection, Administration & Oversight									
Description of Project Costs to be Incurred	Total Project Cost Estimate	Federal Participation		State Participation		Local Government (LG) Participation			
		%	Cost	%	Cost	%	Cost		
Preliminary Engineering <sup>1</sup>	\$40,037	80%	\$32,030	0%	\$0	20%	\$8,007		
Environmental Cost <sup>1</sup>	\$10,010	80%	\$8,008	0%	\$0	20%	\$2,002		
Right of Way <sup>1</sup>	\$0	0%	\$0	0%	\$0	0%	\$0		
Utilities <sup>1</sup>	\$0	0%	\$0	0%	\$0	0%	\$0		
Construction <sup>2</sup>	\$40,138	80%	\$32,110	0%	\$0	20%	\$8,028		
Direct State Costs Subtotal	\$90,185	80%	\$72,148	0%	\$0	20%	\$18,037		
Indirect State Cost <sup>1</sup>	\$4,140		\$0	0%	\$0	0%	\$4,140		
<b>TOTAL PARTICIPATION</b>	<b>\$94,325</b>		<b>\$872,918</b>		<b>\$0</b>		<b>\$222,369</b>		
<b>TOTAL LOCAL PARTICIPATION</b>							<b>\$222,369</b>		

- The estimated total participation by Local Government is \$222,369, plus 100% of overruns.
- <sup>1</sup>Local Government's first payment of \$14,149 is due to State within 30 days from execution of this contract.
- <sup>2</sup>Local Government's second payment of \$208,220 is due to State within 60 days prior to the Construction contract being advertised for bids.
- The local match must be 20%.
- This is an estimate; the final amount of Local Government participation will be based on actual costs.
- Maximum federal TASA funds available for Project are \$872,918.





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## Information

### Agenda Item

**Resolution - Water Utilities:** Consider a resolution authorizing the Mayor to execute the Third Amendment to the Raw Water Lease, between the City of Lubbock and the Lake Alan Henry Water District.

### Item Summary

In 2003, the 78th Texas Legislature passed Senate Bill 1941 creating the Lake Alan Henry Water District (LAHWD), a special law conservation and reclamation district. On May 8, 2008, the City of Lubbock executed a 20-year contract with the LAHWD and the South Garza Water Supply (SGWS) to provide up to 520 acre-feet (169 million gallons) of raw water each year to developments surrounding Lake Alan Henry within the LAHWD service area. Lubbock's raw water is supplied to SGWS, a private water system operating under a contract with LAHWD. SGWS constructed a pump station, transmission lines, a surface water treatment plant, and distribution lines, to provide treated water to lot owners in the Northridge Development located along the north side of the Lake. The SGWS began pumping raw water from Lubbock's intake structure in December 2009.

On November 1, 2018, the City Council executed a new raw water lease between the City and the LAHWD. The contract with LAHWD was designed to replace the existing raw water contract. LAHWD plans to purchase the SGWS facilities and extend the water system to other developments within their service area on both the north and south side of the Lake.

On October 21, 2019, the City Council executed the First Amendment to the Raw Water Lease. The amendment was necessary in order to meet the requirements of the U.S. Department of Agriculture's (USDA's) grant and low interest loan program, which will fund LAHWD's project. The amendment provided the City with the option to renew the contract for an additional 10 years (from 35 to 45 years).

On September 22, 2020, the City Council executed the Second Amendment to the Raw Water Lease. The amendment was necessary because the Original Raw Water Lease required the LAHWD to finalize the SGWS agreement within 730 days or by November 1, 2020. The amendment extended the deadline for LAHWD to execute the SGWS agreement until November 1, 2021.

This Third Amendment to the Raw Water Lease is needed in order to provide the LAHWD additional time to finalize the agreement to purchase the SGWS. Due to USDA grant/loan program delays, the LAHWD will not meet the contractual deadline of November 1, 2021, to finalize the SGWS agreement. Therefore, this amendment extends the deadline for LAHWD to execute the SGWS agreement for another 365 days or until November 1, 2022.

### Fiscal Impact

None

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager  
L. Wood Franklin, P.E., Division Director of Public Works

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**Attachments**

Resolution- LAHWD-RawWater-A3

Contract-LAHWD- RawWater- A3

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT** the Mayor of the City of Lubbock BE and is hereby authorized and directed to execute for and on behalf of the City of Lubbock, the Third Amendment to the Raw Water Lease by and between the City of Lubbock and the Lake Alan Henry Water District, and all related documents. Said Amendment is attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the City Council.

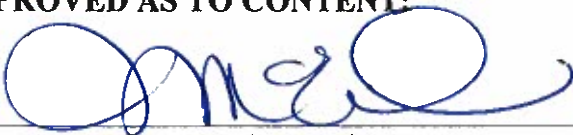
**Passed by the City Council on this \_\_\_\_\_.**

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Amy Sims, Deputy City Attorney

RES.Amendment 3-COL & LAHWD Raw Water Lease  
10.11.21

**THIRD AMENDMENT TO  
RAW WATER LEASE  
BETWEEN  
THE CITY OF LUBBOCK  
AND  
THE LAKE ALAN HENRY WATER DISTRICT**

The following provisions are intended by the parties to modify, amend, or clarify the Raw Water Lease between the City of Lubbock ("Lessor") and the Lake Alan Henry Water District ("Lessee") dated November 1, 2018, and attached hereto as Exhibit A. In the event it should be determined that any of the following provisions conflict with the language in the attached Raw Water Lease, the language in this Amendment shall govern as if the conflicting language in the printed document had been deleted.

Section II.B. Acquisition of South Garza System — Delete and replace with the following paragraph:

This Agreement shall be contingent upon the Lessee's acquisition of the South Garza Water Supply System (the "South Garza System"). If the Lessee fails to acquire the South Garza System within one thousand four hundred and sixty (1,460) days, then this Agreement shall automatically terminate.

By execution hereof, Lessor and Lessee agree to all of the above terms and conditions.

SIGNED ON THE DATES SHOWN BELOW:

CITY OF LUBBOCK

LAKE ALAN HENRY WATER DISTRICT

By: \_\_\_\_\_  
Daniel M. Pope, Mayor

By: Lindsay Masso  
Lindsay Masso, Board Chairperson

Date: \_\_\_\_\_

Date: 10-12-2021

ATTEST:

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

Ann Manning  
Ann Manning, Secretary

APPROVED AS TO CONTENT:

John L. Wood Franklin *for*  
L. Wood Franklin, P.E., Division Director of Public Works

Aubrey A. Spear  
Aubrey A. Spear, P.E., Director of Water Utilities

APPROVED AS TO FORM:

Amy Sims  
Amy Sims, Deputy City Attorney

Resolution No. 2018-R0393

Item No. 6.6

November 1, 2018

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock BE and is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Raw Water Lease by and between the City of Lubbock and the Lake Alan Henry Water District for the lease of raw water. Said Agreement is attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on the 1st day of November, 2018.

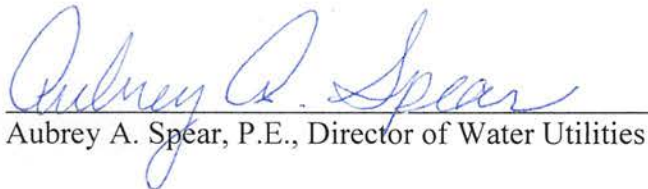


\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

  
\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Aubrey A. Spear, P.E., Director of Water Utilities

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Amy Sims, Deputy City Attorney

**RAW WATER LEASE  
BETWEEN  
THE CITY OF LUBBOCK  
AND  
THE LAKE ALAN HENRY WATER DISTRICT**

The City of Lubbock (hereinafter “Lessor”) and The Lake Alan Henry Water District (hereinafter “Lessee”) enter into this Raw Water Lease (“Lease”) on the   1st   day of November 2018, (the “Effective Date”).

**I. RECITALS**

**WHEREAS**, the Lessor is a home-rule municipality created pursuant to Article II, Section V of the Texas Constitution and its Charter; and

**WHEREAS**, the Lessee is a special law conservation and reclamation district created pursuant to the authority of Article XVI, Section 59 of the Texas Constitution through the passage of Senate Bill 1941, Regular Session, 78<sup>th</sup> Texas Legislature (2003) (the “Enabling Legislation”); and

**WHEREAS**, on September 25, 1984, Permit No. 4146 (the “Permit”) was issued to the City of Lubbock authorizing the construction, storage, diversion and use of water from Lake Alan Henry (the “Lake”); and

**WHEREAS**, on May 8, 2008 the Lessor and Lessee entered into a Raw Water Lease (the “Prior Lease”); and

**WHEREAS**, the Lessor and Lessee desire to terminate the Prior Lease and execute this Raw Water Lease (the “Lease”) with new terms and conditions herein, wherein the cost of water has been determined to be fair, just and reasonable pursuant to the Enabling Legislation; and

**WHEREAS**, by entering into this Lease, the Lessor has determined that this Lease will assist in fulfilling the Lessor’s financial obligations for the Lake; and

**WHEREAS**, the Lessor is providing the Lessee with an easement so that it may deliver the raw and/or treated water supplied pursuant to this Lease; and

**WHEREAS**, THE Lessor has an interest in the development around the Lake;

**NOW THEREFORE**, for and in consideration of the mutual promises, the adequacy of consideration being hereby acknowledged, the Lessor and the Lessee do hereby agree and covenant to each other the following:



## II. WATER SUPPLY

- A. Amount of Water Delivered - Lessee shall have the right to use from the Lake, in accordance with the Permit, up to a maximum of 280 acre-feet of raw water per annum. This quantity of raw water shall become the Annual Quantity for all purposes of this Lease. In addition, to the extent that Lessee is able to acquire and transfer certain water extraction license rights to Lessor in accordance with **Paragraph III.D** of this Lease, Lessee shall be credited and not charged for those amounts of raw water that are actually transferred to Lessor during the term of this Lease.

In addition to the Annual Quantity, the Lessor shall deliver to the Lessee the raw water required to meet the treated water needs of the Sam Wahl Recreation Area. This quantity of raw water shall become the Recreation Quantity for all purposes of this Lease. For accounting purposes, the City shall subtract the Recreation Quantity, as metered at the meter for the Recreation Area, from the Annual Quantity so as not to count against the amount of water supplied to the Lessee.

In the event the level of the Lake should decrease to the level of 2200 feet above mean sea level or below during the term hereof, the amount of Annual Quantity of water required to be delivered to Lessee by Lessor shall decrease in a corresponding manner for such time as the Lake shall be at such level, as set forth in **Exhibit "A"**. The reduced quantity of water shall be deemed to be the Annual Quantity during the term of such reduction. Once the level of the Lake has exceeded 2200 feet above mean sea level, the Annual Quantity shall revert to the original Annual Quantity prior to the reduction.

- B. Acquisition of South Garza System. - This Agreement shall be contingent upon the Lessee's acquisition of the South Garza Water Supply System (the "South Garza System"). If the Lessee fails to acquire the South Garza System within seven hundred thirty (730) days, then this Agreement shall automatically terminate.
- C. Source of Water Supply – Water supplied pursuant to this Lease will be water provided in accordance with the Permit.
- D. Rate of Diversion – Water supplied pursuant to this Lease will be diverted at the rate of diversion as authorized in the Permit and as provided herein.
- E. Purpose of Use – Lessee represents to Lessor and Lessor relies on such representation that all water supplied under this Lease will be utilized for retail water service and for municipal uses only, as such terms are defined by rules adopted by the Texas Commission on Environmental Quality (the "Commission"). Except as otherwise provided herein, Lessee is expressly prohibited from providing or selling raw water to any third party without the written consent of Lessor. The Lessee will supply treated water to the Sam Wahl Recreation Area, owned by the City of Lubbock. Lessee is expressly prohibited from providing or utilizing any water acquired pursuant to this agreement for commercial irrigation or industrial uses.



F. Place of Use – Water supplied pursuant to this Lease shall only be used by the Lessee to supply retail potable water within the boundaries of the Lessee as described in the Lessee's Enabling Legislation (the "Area of Service as may be amended from time to time).

G. Point of Delivery and Water Facilities –

1. Master Meter – Water supplied pursuant to this Lease will be delivered to Lessee at or near the stilling basin outlet works, on the downstream side of the dam, as approximately depicted in **Exhibit "B"**, attached hereto (the "Point of Delivery"), at a master-meter to be installed by Lessor pursuant to **Paragraph III.E**. Lessee shall pay for any and all expenses related to the installation of said master-meter.

2. Easement – The Lessee currently owns and operates certain water facilities and easements (the "Existing Facilities") on Lessor's property as depicted in Exhibit "C." Lessee agrees to notify the Lessor as to any modifications or repairs to the Existing Facilities on Lessor's property. The Lessee must obtain Lessor's approval from the Director of Water Utilities for any modification to the Existing Facilities on Lessor's property.

For new or proposed pipelines ("New Facilities") on Lessor's property, the Lessor shall grant the Lessee, upon its request, an easement for New Facilities over and across lands, upon payment of ten and no/100 Dollars (\$10) and other good and valuable consideration by Lessee to Lessor. The arrangement of the New Facilities are roughly depicted in **Exhibit "D"**, attached hereto. It is expressly agreed by Lessee and Lessor that the New Facilities may differ from that depicted if it is so deemed necessary or advisable by the Lessee or Lessor. Prior to construction, in the event it becomes necessary to alter the route of the pipeline due to archeology concerns, as determined by Lessor, Lessee stipulates that the Lessor may unilaterally alter said pipeline route and Lessee shall cooperate with Lessor to amend the survey and easement to so reflect the altered route. The construction of any New Facilities shall be constructed in a prudent manner and shall be supervised or provided with oversight by a duly licensed engineer as employed or contracted by the Lessee and may be supervised by the Lessor. The Lessee shall obtain all necessary licenses and permits regarding the construction of any pump station, related facilities, and pipeline(s). Further, the Lessee shall comply with all applicable laws, statutes, rules, regulations and ordinances regarding the construction, maintenance and operation of the New Facilities, including without limitation, the Clean Water Act (33 U.S.C. 1251 et seq.) and all rules and regulations promulgated thereunder or related thereto.

3. Modification of Connecting Facilities – If modifications to the existing improvements to Lessee's water system, including without limitation, plans for meter, saddle and tap, and the valve assembly (referred to collectively as the

“Connecting Facilities”) are made, the Lessee must allow the City to review and approve such modifications. Lessee shall ensure that modifications to its facilities are constructed in a professional manner so that there occurs no unreasonable water loss as a result of the pump station construction and operation. Lessor agrees to indemnify and hold Lessee harmless, to the fullest extent permitted by law, from any and all claims or liabilities or damages caused by the negligence of the Lessor or any of its employees, and agents related to the modification, operation and maintenance of the Connecting Facilities, (i) if the City would be liable in law for such claim; (ii) to the extent immunity, both from suit and liability, has been waived pursuant to the laws of the State of Texas; and (iii) to the extent limited by **Paragraph VI.S**. Nothing herein, or provided otherwise in the Agreement, shall be construed as a waiver by the City of any immunities from suit or liability, of any kind, whether provided by State or local statute, or otherwise.

Upon completion of any modifications to the Connecting Facilities, Lessor shall give notice to Lessee that the improvements have been completed.

4. Insurance Coverage for Construction – Lessee, and any other persons performing all or a part of its construction activities, shall procure and carry, at its sole cost and expense through the time of final completion of any and all construction activities contemplated by this Lease, insurance protection as hereinafter specified, in form and substance satisfactory to Lessor, carried with an insurance company authorized to transact business in the State of Texas, covering all aspects and risks of loss of all operations in connection with this Lease, including without limitation, the indemnity obligations set forth herein. Lessee shall obtain and maintain in full force and effect commercial general liability and automobile liability coverage with insurance carriers admitted to do business in the State of Texas. The insurance companies must carry a Best’s Rating of A-VII or better. The policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability:

Combined Single Limit: \$500,000 Per Occurrence

Automobile Liability:

Combined Single Limit for any auto: \$500,000 Per Occurrence

The Lessor shall be listed as additional insured and shall be granted a waiver of subrogation under the policies. Lessee will provide a Certificate of Insurance to the Lessor as evidence of coverage. The Certificate will provide 30 days’ notice of cancellation. A copy of the additional insured endorsement and waiver of subrogation attached to the policy will be included in the certificate.



Lessee shall elect to obtain or shall require its contractors, subcontracts, or other entities constructing, operating, and maintaining facilities described in this Lease on the Lessee's behalf to obtain worker's compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Further, Lessee shall comply or shall require its contractors, subcontracts, or other entities constructing, operating, and maintaining facilities described in this Lease on the Lessee's behalf to comply with all provisions of Title 5 of the Texas Labor Code to ensure that Lessee maintains said coverage. The Lessor shall be granted a waiver of subrogation under this policy.

If Lessee fails to maintain the required insurance in full force and effect, or if the Lessee fails to ensure that the required insurance is maintained in full force and effect by its contractors, subcontracts, or other entities constructing, operating, and maintaining facilities described in this Lease on the Lessee's behalf, the Lessor may terminate this Agreement in accordance with **Paragraph III.G.3.**

5. Inspections – The Parties agree that the Lessor has the right, but shall be under no obligation, to make inspections as it deems necessary or advisable during the construction phase of pipeline(s) and other water facilities being constructed on property owned by the Lessor. Any inspection rights provided herein to Lessor shall not relieve the Lessee of any of its obligations hereunder.

- H. Rate of Delivery – Lessor agrees to deliver water to Lessee at a rate not to exceed two times the daily average quantity on an annual basis measured over a 24-hour period. Lessor will not restrict the delivery pressure from the Lake, unless the restriction is necessary to comply with this provision or the terms of the Permit.
- I. Quality of Water – Lessor makes no representation as to the quality of the water supplied under this Lease, and Lessee hereby releases Lessor and agrees to hold it harmless from any and all claims that Lessee or Lessee's customers or users have or may have for any diminution in or impairment of the quality of water supplied under this Lease caused by any acts or omissions of Lessor.

### **III. ADMINISTRATION OF LEASE**

- A. Term of Lease – This Lease shall be for a term commencing on the Effective Date and ending on December 31, 2053.
- B. Computation of Rates for Leased Water – Lessee hereby acknowledges that the Enabling Legislation accurately and appropriately defines the components necessary for the computation of the rates to be charged by the Lessor to the Lessee for the water to be supplied hereunder. Lessee hereby acknowledges that such components, if applied correctly, will generate rates that are just, reasonable and non-discriminatory, as applied to Lessee and the supply of water made available hereunder. The Lessor agrees that the rates for the leased water shall not exceed that which is allowed by the Enabling Legislation.

- C. Terms of Payment – Lessee hereby covenants to pay Lessor the initial sum of \$3.65 per thousand gallons for the delivery of the Annual Quantity and the Recreation Quantity. Lessee shall be obligated to pay only for the water actually provided to it out of the Annual Quantity and the Recreation Quantity. Lessee expressly stipulates and agrees that the price for water paid to be delivered hereunder may be adjusted annually, effective for deliveries of raw water to Lessee on and after January 1 of each year of the term hereof, in accordance with the terms of **Paragraph III.B.** and the Enabling Legislation.

During the term of this Lease, Lessor will mail a statement monthly to Lessee showing the monthly diversions. Each statement submitted shall be paid to Lessor at its office in Lubbock, Texas, by check or bankwire, on or before thirty (30) days from the date of mailing of the statement to Lessee. In the event Lessee fails to make payment of that statement within said thirty (30) day period, Lessee hereby agrees to pay and shall then pay a late payment charge of five percent (5%) of the amount of the statement. For each calendar month or fraction thereof that the statement remains unpaid, Lessee hereby agrees to pay and shall pay interest at the rate of one and a half percent (1.5%) of the amount of the statement. If the statement has not been paid in the prescribed period, Lessee hereby further agrees to pay all costs of collection and reasonable attorney's fees, regardless of whether suit is filed for such collection.

At no time shall the interest rate and/or other fees, if applicable, described herein exceed the "Maximum Rate." The term "Maximum Rate," as used herein, shall mean the maximum nonusurious interest rate, if any, that at any time, or from time to time may be permitted by applicable law on such day or days.

Any provision herein notwithstanding, Lessor shall not in any event be entitled to receive or collect, nor shall any amounts received hereunder be credited, so that Lessor shall be paid, as interest, a sum greater than the Maximum Rate permitted by applicable law to be charged hereunder. If any construction of this Agreement indicates a different right given to Lessor to ask for, demand or receive any larger sum as interest, such is a mistake in calculation or wording which this clause shall override and control, it being the intention of the parties that this Agreement shall in all things strictly comply and conform with applicable law. In the event that the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this Agreement shall ever exceed the maximum nonusurious rate under applicable law, any sum in excess thereof shall be paid to the Lessee.

- D. Acquisition and Transfer of Water Rights – For the purpose of the acquisition of land and other property rights in order to construct Lake Alan Henry, the Lessor granted a water extraction license for certain landowners, including, but not limited to, Clyde Kitten, Le Wayne Fagan, Patsy Day, and John Huddleston to use a certain amount of raw water from Lake Alan Henry (the "Water Extraction Licenses"). It is the intention of Lessee to acquire the South Garza Water Supply water system from Clyde Kitten, one of the above-described landowners. In acquiring the South Garza Water Supply water system, it is the intent of Lessee to acquire the water extraction license from Clyde Kitten.



If Lessee offers to sell or receives a bona fide offer from a third party to buy all or any portion of the Water Extraction Licenses, Lessee will promptly give written notice to Lessor of the terms of the offer made or received and Lessee's willingness to sell for that price and on those terms. Upon receiving the notice, the Lessor may exercise the option, in the manner specified below, to purchase the Water Extraction Licenses described in the offer at the stated price and on the stated terms.

If the Lessor elects to accept Lessee's offer or meet the third-party's offer under the provisions of the preceding section, the Lessor will notify Lessee of that election, doing so in writing delivered to Lessee within sixty (60) days after the date of Lessee's notice to the Lessor of the offer. If the Lessor elects to refuse the offer or not to meet the third-party offer, the Lessor need take no action whatsoever. If the Lessor elects to refuse the offer, Lessee is free to sell or accept the offer to buy the property subject to the continuation of the leasehold estate created by this lease.

If for any reason the property is not sold by Lessee following an offer from a third-party, the right of first refusal granted and described in the preceding section shall continue in full force and effect, on the same terms and conditions.

- E. Metering of Delivered Water – To measure the amount of water delivered to Lessee hereunder, Lessor agrees to install such flow meters and recording devices to permit, within five percent (5%) accuracy, determination of quantities of raw water delivered hereunder in units of thousand (1,000) gallons. Lessee agrees to pay for meter purchase, installation, maintenance, calibration and replacement as more particularly set forth below.

Lessor shall provide Lessee and Lessee shall provide Lessor with reasonable access to the Meters for the purpose of making meter readings and/or periodic inspections. Lessee and Lessor shall have the right to make a reading of the Meters installed by Lessee on a monthly basis. The Lessor shall have the Meters tested for accuracy by qualified personnel at the expense of Lessee at least once each three (3) calendar years. The report of such test and calibration shall be furnished to the Lessor and the Lessee. Readings within five percent (5%) of accuracy shall be considered correct.

The Meters may be tested at any reasonable time by either party, provided that the party making the test shall notify the other party at least two (2) weeks in advance and allow the other party to witness the test. Either party may install, at its own expense, check meters of comparable quality and reliability as the meter utilized to measure the amount of water delivered to the Lessee at any time and may leave such check meters installed for such periods as the party deems to be reasonably necessary to determine the accuracy of the metering equipment. Lessor shall be required to take necessary steps to correct any meter inaccuracy discovered during any test of Lessor's meter.

In the event any question arises at any time as to the accuracy of any meter, such meter shall be tested by Lessor, the expense of such test to be borne by Lessee, if the meter is found to be correct or if it is found to be reading a lower amount of water used, and by

Lessor, if it is found to be reading a higher amount of water used. If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of five percent (5%) of accuracy), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon or, if no such period is known and agreed upon, a period extending back either one hundred twenty (120) days from the date of demand for the test or, if no demand for the test was made, one hundred twenty (120) days from the date of the test. If the meter was incorrectly reading a lower of the amount of water than was actually used, Lessee shall reimburse Lessor the difference as calculated above and if the meter was incorrectly reading a higher of the amount of water than was actually used, Lessor shall reimburse Lessee the difference as calculated above.

Lessee shall pay to Lessor a base monthly charge for the meter installed at the point of delivery equal to the rate established by the City Council of the City of Lubbock (City of Lubbock) for meters of equal size as set forth in Section 22.03.084 of Code of Ordinances of the City of Lubbock, as may be amended from time to time.

F. Water Conservation and Drought Contingency Measures – Pursuant to 30 Tex. Admin. Code Chapter 288, Lessee agrees to develop and implement water conservation and drought contingency measures consistent with, or more restrictive on water use than, Lessor’s water conservation plan (the “Conservation Plan”), and that the water delivered to Lessee pursuant to this Lease will be used in accordance with such Conservation Plan. Lessor, in accordance with applicable law, may from time to time modify the Conservation Plan. Lessee agrees to provide Lessor with copies of Commission approved water conservation and drought contingency plans prior to the delivery of water pursuant to this Lease.

G. Termination of the Lease – This Lease may be terminated hereto as follows:

1. Lessor, at its sole option, and in accordance with the terms and conditions set forth in **Paragraph III.H.**, “Non-Payment”, may terminate this Lease without recourse should Lessee fail to comply with the terms and conditions of this Lease for the payment of moneys owed to Lessor pursuant to **Paragraph III.C.**, “Terms of Payment” and/or **Paragraph III.E.**, “Metering of Delivered Water.”
2. This Lease may be terminated immediately by Lessor upon the declaration of bankruptcy by Lessee.
3. This Lease may be terminated should Lessee fail to comply with the terms and provisions of **Paragraphs II.F.7.** if Lessor notifies Lessee of Lessee’s default and Lessor’s intent to so terminate this Lease, and if Lessee fails to cure such default after thirty (30) days notice and opportunity to cure such default.

Lessee shall remain liable for all fees and charges accruing under the Lease through the date the Lease is terminated.



- H. Non-Payment – If Lessor determines that Lessee has not paid the full amount owed for any payment due under **Paragraph III.C.**, “Terms of Payment”, and/or **Paragraph III.E.**, "Metering of Delivered Water" hereof within the time provided therefore, Lessor shall give written notice to Lessee stating the amount due and unpaid. If Lessor gives notice as provided herein and Lessee fails to pay within thirty (30) days of the date such written notice was mailed the amounts claimed in such notice to be due and unpaid, Lessor may, at its sole option, upon giving ten (10) days additional written notice to Lessee, terminate this Lease without recourse. If Lessee should dispute Lessee’s obligation to pay all or any part of the amount stated in any statement or notice, Lessee shall, nevertheless pay such amount, in which case such amount shall be deposited by Lessor in an interest bearing account pending final resolution of such dispute. Nothing herein shall be construed to require the Lessor to exercise the remedy of termination and Lessor shall be entitled to exercise, concurrently or otherwise, other remedies as may be available by law, contract, equity or otherwise. All remedies shall be cumulative in nature and the exercise by either party of any right or remedy hereunder shall not preclude the concurrent or subsequent exercise of any other right or remedy.
- I. Notice – Each notice under this Lease shall be transmitted by certified mail, return receipt requested, and shall be effective on the date actually received. All notices and statements shall be addressed to:

Lake Alan Henry Water District  
Attention: Chairperson, Board of Directors  
P.O. Box 493  
Post, Texas 79356

City of Lubbock  
Attention: Director of Water Utilities  
P.O. Box 2000  
Lubbock, Texas 79457

Either party may change its address by giving written notice of such change to the other party.

- J. Assignment of Lease - Lessee may assign the rights to this Lease only upon obtaining the written approval of Lessor. Lessor may assign its rights to this Lease, in whole or in part, at any time and from time to time, at its sole and absolute discretion. This clause does not prohibit the delegation of duties prescribed by this Agreement.
- J. Compliance with Commission Rules – Lessor agrees to file a copy of this Lease with the Executive Director of the Commission, it being fully recognized by the Lessee hereunder that the effectiveness of this Lease is dependent upon compliance with 30 Tex. Admin. Code Chapters 295 and 297.

#### IV. WATER SUPPLY PLANNING

- A. No Permanent Supply of Water – Lessee acknowledges that the supply of water pursuant to this Lease is for a specified term of years and that Lessor may need this water to meet its own future water supply needs. Lessee agrees that Lessor has no obligation to extend the Lease or enter into another Lease for the benefit of Lessee.
- B. Plan for Future Supply – Consistent with Water Code Section 11.036 and Government Code Section 791.026, Lessee agrees to plan for its water supply needs beyond the term of this Lease. In so doing, Lessee agrees to submit to Lessor, at least three (3) years before the expiration of this Lease, a list of identified reasonable alternative water management strategies approved in accordance with the Texas Water Development Board's State Water Plan and Chapter 16 of the Water Code. Furthermore, at least one (1) year before the expiration of this Lease, Lessee covenants that it will complete all land acquisition, construction, and physical improvements necessary to realize any such approved alternative water management supplies to replace the water supply provided through this Lease. The Lessor, at its option, may extend this lease.

#### V. RETAIL WATER SERVICE

- A. Service to City. At such time Lessee purchases or otherwise gains access and control of the South Garza Water Supply Co., Lessee shall make available to the City retail potable water service at delivery rates and volumes acceptable to City to the meter located south of the north boundary of the Sam Wahl Recreation Area, as approximately depicted on **Exhibit "E,"** attached hereto.
- B. Rates for Service. The total rate payable by the City to Lessee for such water shall be \$80 for the first 3,000 gallons of water and \$5.00 per thousand gallons thereafter.
- C. Termination of Service. The City may terminate retail water service to the Recreation Area at any time in accordance with the Tariff. However, to the extent the Recreation Area is certificated to Lessee, the City may not obtain retail water service from any other retail water service provider. However, the City may provide its own potable water service to the Recreation Area and Lessee hereby consents to such activity. Lessee shall take whatever action is necessary to allow for such activity by the City.

#### VI. GENERAL PROVISIONS

- A. Preamble – All matters stated in the preamble are found to be true and correct and are incorporated into the body of this Lease as if copied in their entirety.
- B. Hold Harmless and Indemnification – To the extent, and only to such extent allowed by law, and subject to **Paragraph VI.S.** herein, Lessor and Lessee will save and hold the other harmless from any and all claims or demands whatsoever to which either may be subjected by reason of any injury to any person or damage to any property resulting from



or in any way connected with any and all actions and activities (or failure to act) of the other party under this Lease.

- C. Force Majeure – The term “force majeure” as used herein, shall mean those situations or conditions which are beyond the control of Lessor or Lessee and which, after the exercise of due diligence to remedy such situation or condition, render Lessor or Lessee unable, wholly or in part, to carry out the covenants contained herein. Such force majeure includes, but is not limited to, acts of God, strikes, lockouts, acts of the public enemy, orders of any kind of the government of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or dams, partial or entire failure of water supply, insofar as each of the foregoing are beyond the reasonable control of the party in question. Lessor shall not be held liable or responsible for any damage that may be caused by its inability, after the exercise of due diligence, to make the supply of water available to Lessee due to any force majeure. Lessor shall use reasonable and timely diligence to repair or recondition the machinery, pipelines, or dams in the event such machinery, pipelines or dams are damaged or made unserviceable from any force majeure.
- D. Maintenance and Periodic Shutdowns – Lessee agrees that routine and emergency maintenance conditions may impact Lessor’s ability to deliver water pursuant to this Lease. Except in the case of force majeure, and to the extent reasonable, Lessor agrees to give 72 hours notice prior to any shutdown of equipment or infrastructure necessary to deliver water to Lessee.
- E. No Third Party Beneficiary – The parties hereto are entering into this Lease solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.
- F. No Rights or Title Acquired – Lessee agrees and acknowledges that it acquires by this Lease no rights or title to the water that is the subject of this Lease other than those rights explicitly set forth herein. Furthermore, nothing in this Lease shall be construed as an assignment of any diversion rights, equity, or financial obligations under the Agreement.
- G. Representations And Warranties – Both Lessor and Lessee represent and warrant to the other that this Lease has been duly executed by an authorized officer and constitutes a valid and binding contract, enforceable against it in accordance with its terms (except as such enforceability may be limited by bankruptcy laws or other similar laws relating to the enforcement of creditors’ rights generally and by general equitable principles).
- H. Amendment – This Lease may not be modified or amended except by an instrument in writing signed by authorized representatives of the parties.

- I. Binding in Effect – The terms of this Lease shall be binding upon, and inure to the benefit of, the parties and their, in the case of Lessor, successors and assigns, and in the case of Lessee, its permitted successors and assigns.
- J. Integrated Document – This Lease, together with all Exhibits attached hereto, constitutes the entire agreement of the parties relating to the subject matter of this Lease and supersedes all prior agreements or understandings with respect to the subject matter hereof, both oral and written, including but not limited to the May 11, 2006 Raw Water Lease between the City of Lubbock and the Lake Alan Henry Water District. Each party agrees that the other party (and their agents and representatives) have not made, and it has not relied upon, any representation, warranty, covenant or agreement to or with such party relating to the transactions contemplated hereunder other than those expressly set forth herein.
- K. Counterparts – This Lease may be executed by the parties in any number of separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. All signatures need not be on the same counterpart.
- L. Further Assurances – Each party agrees to do all acts and things and to execute and deliver such further written instruments, as may be from time to time reasonably required to carry out the terms and provisions of this Lease.
- M. Governing Law – This Lease and the rights and duties of the parties arising out of this Lease shall be governed by, and construed in accordance with, the laws of the State of Texas, without reference to the conflict of laws rules thereof. This Lease is performable, at least in part, in Lubbock County, Texas. Lessor and Lessee hereby irrevocably consent to Lubbock County as the exclusive venue for any action related hereto.
- N. Headings – The headings of the Articles and Paragraphs of this Lease are included for convenience only and shall not be deemed to constitute a part of this Lease.
- O. Exhibits – All Exhibits attached to this Lease are incorporated herein by this reference in their entirety and made a part hereof for all purposes.
- P. Interpretation and Reliance – No presumption will apply in favor of any party in the interpretation of this Lease or in the resolution of any ambiguity of any provisions thereof.
- Q. Relationship of Parties – Neither the execution nor delivery of this Lease, nor the consummation of the transactions contemplated hereunder, shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the parties, except for the contractual arrangements specifically set forth in this Lease. Except as is expressly agreed to in writing in this Lease, no party (or any of its agents, officers or employees) shall be an agent or employee of the other party, nor shall



a party (or any of its agents, officers or employees) have any power to assume or create any obligation on behalf of the other party.

- R. Severability – In the event that any provision of this Lease is held to be unenforceable or invalid by any court of competent jurisdiction, the parties shall negotiate an equitable adjustment to the provisions of this Lease with the view to effecting, to the extent possible, the original purpose and intent of this Lease, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- S. Actual Damages – A party shall be in default hereunder if any of the following shall occur and be continuing: (i) failure to perform and/or be in compliance with any covenant, warranty or agreement herein; or (ii) any representation shall prove to be untrue during the term hereof. In the event of default of this Lease by any party, the Non-defaulting party shall be entitled to seek damages, specific performance, injunctive relief, or any other remedy to which it might be entitled under this Lease, in law or at equity. Notwithstanding the foregoing, neither party shall be liable or have any responsibility to the other for any indirect, special, consequential, punitive or delay-related or performance-related damages including, without limitation, lost earnings or profits. Such limitation on liability shall apply to any claim or action, whether it is based on whole or in part on contract, negligence, strict liability, tort, statute or any other theory of liability.

Executed and effective as of the date identified above by the signatures of the parties below.

CITY OF LUBBOCK

BY:



Daniel M. Pope, Mayor

LAKE ALAN HENRY WATER DISTRICT

BY:



Lindsay Masso, Board Chairperson

ATTEST:



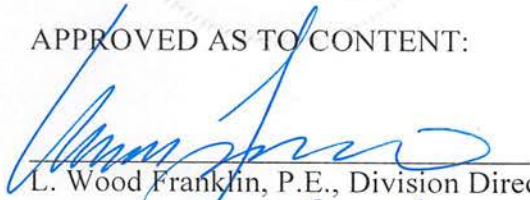
Rebecca Garza, City Secretary

ATTEST:

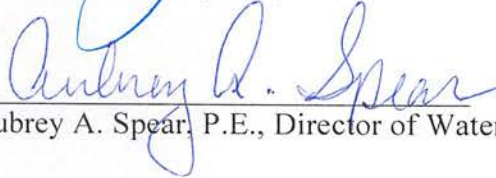


Ann Manning, Secretary

APPROVED AS TO CONTENT:

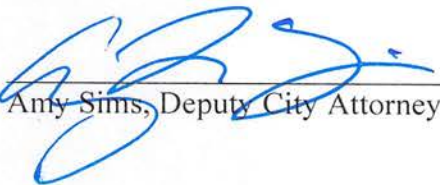


L. Wood Franklin, P.E., Division Director of Public Works



Aubrey A. Spear, P.E., Director of Water Utilities

APPROVED AS TO FORM:



Amy Sims, Deputy City Attorney

## **EXHIBITS**

- Exhibit A: Schedule of Reduced Water Allocation**
- Exhibit B: Raw Water Point of Delivery for LAH Water District**
- Exhibit C: Existing LAH Water District Facilities and Easements**
- Exhibit D: Proposed LAH Water District Easements**
- Exhibit E: Retail Meter Point of Delivery for Sam Wahl Recreational Area**

**Exhibit "A"**  
**Schedule for Reducing Water Allocation**

Lake Water Level Elevation (1)	Reduction in Base Annual Quantity
2200	10%
2195	20%
2190	30%
2185	40%
2180	60%
2175	80%

(1) Feet above mean sea level as measured at the intake tower USGS gauge on January 1<sup>st</sup> of each year





**EXHIBIT B**  
**POINT OF DELIVERY (POD)**

**Raw Water  
Point of  
Delivery**

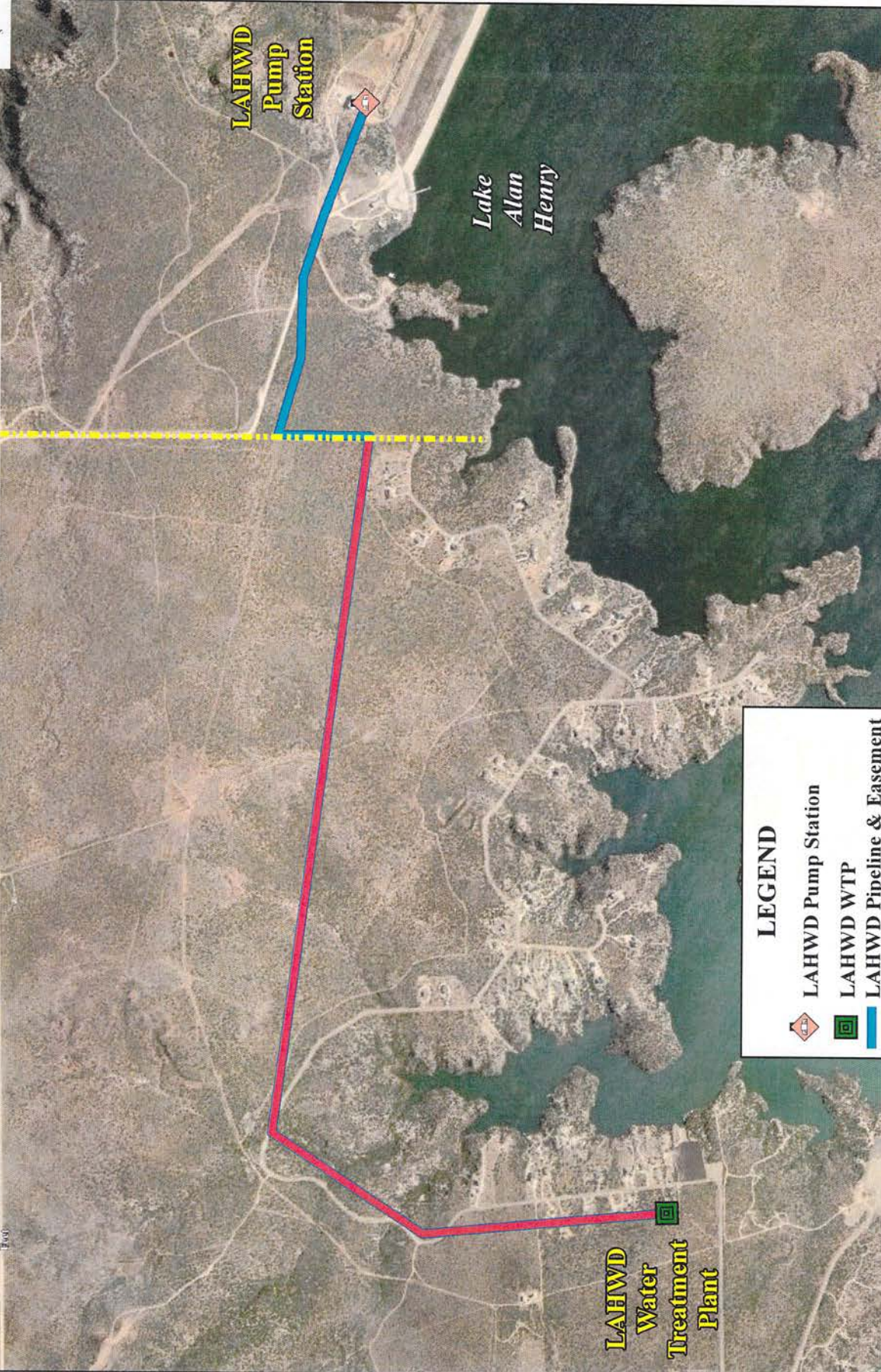
**LAHWWD  
Pump  
Station**

*Lake Alan Henry*










# EXHIBIT C EXISTING LAH WATER DISTRICT FACILITIES & EASEMENTS



### LEGEND

-  LAHWD Pump Station
-  LAHWD WTP
-  LAHWD Pipeline & Easement
-  LAHWD Pipeline
-  COL Property Line



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, Imagery, IGN, Intermap, Inc., Swisstopo, and the GIS User Community

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# EXHIBIT D PROPOSED LAH WATER DISTRICT EASEMENTS




**LAHWD  
Pump  
Station**

*Lake  
Alan  
Henry*



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, Imagery, IGN, Intermap, Inc., Swisstopo, and the GIS User Community

**LEGEND**

-  Pump/Substation
-  LAHWD Proposed Easement
-  COL Property Line



As shown on this map, the LAHWD is a public utility. The City of Lubbock, Texas, is the owner of the LAHWD. The City of Lubbock, Texas, is not responsible for the accuracy of the information shown on this map. The City of Lubbock, Texas, is not responsible for the accuracy of the information shown on this map. The City of Lubbock, Texas, is not responsible for the accuracy of the information shown on this map.







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## Information

### Agenda Item

**Resolution - Public Works Streets:** Consider a resolution authorizing the Mayor to execute Amendment No. 1 to Professional Services Agreement, Contract 15344, with Infrastructure Management Services, for an extension of time.

### Item Summary

Infrastructure Management Services (IMS) was awarded a contract in October 2020 to collect, analyze, and report road condition data on all asphalt and concrete streets in Lubbock. The data collected includes sophisticated laser scanning equipment that analyzes surface cracking, rutting, distresses, potholes, bleeding, and other surface irregularities for all streets, and dynamic load testing for Arterials and Collectors. The load testing will gather data on the strength of the road base, the load transfer capabilities, and overall pavement strength. This data will be used to arrive at an overall Pavement Condition Index or PCI score for all Lubbock streets.

This contract includes an integration with the City of Lubbock asset management and work order system, Cartegraph, and a multiyear maintenance, rehabilitation and budget development plan to address the findings in the data. The data collection, analysis, and quality control of that data are all complete, and final reports, maintenance, and budgeting plans are mostly developed. However, the integration with the Cartegraph system is just entering the beginning stages for both vendors, IMS, and Cartegraph.

This Amendment is an extension of six (6) months of time, making the new expiration date May 13, 2022. This contract original notice to proceed was dated December 1, 2020, and had one previous 6-month time extension. The previous time extension was based on extended periods of ice and snow during winter weather events and a wetter than usual spring. These events delayed the collection of quality data during the start of the project.

### Fiscal Impact

This amendment does not result in a change to the original contract pricing.

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager  
L. Wood Franklin, P.E., Division Director of Public Works

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## Attachments

Resolution - Infrastructure Mgmt. Extension  
Contract Extension - Infrastructure Mgmt.



**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Amendment No. 1 to the Professional Services Agreement, Contract No. 15344 for a municipal pavement management system, by and between the City of Lubbock and IMS Infrastructure Management Services, LLC, and related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.


Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**Amendment 1  
To Agreement Between  
The City of Lubbock, TX  
And  
IMS Infrastructure Management Services, LLC**

THIS IS THE FIRST AMENDMENT TO THE AGREEMENT Contract No. 15344 dated and entered into the 27th day of October 2020 by and between the City of Lubbock (“City”) and IMS Infrastructure Management Services, LLC (“IMS”), referenced collectively as “Parties”, for the provision of a municipal pavement management system (“Project”).

WITNESSETH:

WHEREAS, the original term of the Agreement was extended for 6 months by written agreement of the Parties on March 24, 2021.

WHEREAS, the City desires to extend the Agreement for an additional 6-month term for ongoing implementation of the Project, with the agreement terminating on May 13, 2022.

WHEREAS, all other portions of the original Agreement and previous Amendments, if any, shall remain in place and are not altered by this amendment.

NOW, THEREFORE, the City and IMS agree to the terms of this FIRST AMENDMENT:

IN WITNESS HEREOF, the parties have executed this Agreement as of this \_\_\_\_ day of \_\_\_\_\_ 2021.

CITY OF LUBBOCK

\_\_\_\_\_  
Daniel M. Pope, Mayor

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

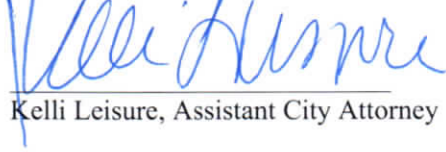
  
\_\_\_\_\_  
L. Wood Franklin, P.E., Director of Public Works

Amendment 1 – Paving Management System



Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM: \*



Kelli Leisure, Assistant City Attorney

IMS Infrastructure Management Services, LLC

By:  \_\_\_\_\_  
Derek Turner, Principal





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## Information

### Agenda Item

**Resolutions - Public Works Streets:** Consider two resolutions authorizing the Mayor to execute Contract 16197, with MUDco Ready Mix, LLC, and Contract 16093, with West Infrastructure Construction, LLC, to establish the annual pricing of concrete products.

### Item Summary

This contract establishes the annual pricing for certain concrete products used in the construction, maintenance, and repair of public streets, alleys, and utility installations. The term of this contract is 1 year, with the option of four 1-year extensions. In response to ITB-21-16093-TF, two bids were received from the following vendors and opened on the afternoon of September 29, 2021.

West Industries of Lubbock, Texas  
MUDco Ready Mix LLC of Lubbock, Texas

In order to ensure consistent service for the concrete needs of various City departments, staff recommends award as follows:

- Award contract items one through eight (1-8) and number ten (10) to West Industries as the first call primary vendor at an estimated cost of \$357,050.
- MUDco Ready Mix LLC would be the first call primary vendor for contract item number nine (9) at an estimated cost of \$150,000 and the secondary call for all other contract items. A call to the secondary vendor can only take place once the primary vendor verifies they cannot provide service at that time.

Both contracts are awarded by the unit price. The total amount of the award is estimated based on expected quantities and actual expenditures may be more or less depending on actual quantities. The price per unit will not change.

### Fiscal Impact

Funding of \$507,050 is available in Street Maintenance, Water, and Wastewater Operating Funds for this contract, and individual cost centers will be charged as product is used.

### Staff/Board Recommending

Jessica McEachern, Assistant City Manager  
L. Wood Franklin, P.E., Division Director of Public Works

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## Attachments

Resolution - MUDco Ready-Mix  
Contract - MUDco Ready-Mix  
Resolution - West Infrastructure  
Contract - West Infrastructure

Bid Tab Sheet - Concrete Products

Project Summary Sheet - Concrete Materials

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Service Contract No. 16197 for concrete materials, as per ITB 21-16093-TF, by and between the City of Lubbock and MUDco Ready-Mix, LLC, of Lubbock, Texas, and related documents. Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**City of Lubbock, TX  
Concrete Materials**

**THIS CONTRACT** made and entered into this \_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Lubbock ("City"), and **MUDco Ready-Mix, LLC**, ("Contractor").

**WITNESSETH:**

WHEREAS, the City of Lubbock duly advertised for bids for Concrete Materials and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said Concrete Materials.

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

1. In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, Concrete Materials and more specifically referred to as **Primary Contractor for item 0-9 and Secondary Contractor for items 0-1 through 0-6 and item 0-10** on the bid submitted by the Contractor or in the specifications attached hereto.
2. The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
3. The contract shall be for a term of one (1) year, with the option of four (4), one year extensions, said date of term beginning upon formal approval. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.
4. Prices quoted shall be set for a period for one (1) year, said date of term beginning upon City Council date of formal approval. The rate may be adjusted upward or downward at this time at a percentage not to exceed the effective change in Consumer Price Index (CPI) or Product Price Index (PPI), which ever is most appropriate for the specific contract for the previous 12-months at the City's discretion, the effective change rate shall be based on either the local or national index average rate for all items. If agreement cannot be reached, the contract is terminated at the end of the current contract period.
5. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written

notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.

6. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.

7. Insurance Requirements

**SECTION A.** Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.

**SECTION B.** The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

**SECTION C.** Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

TYPE OF INSURANCE	COMBINED SINGLE LIMIT	
<b>GENERAL LIABILITY</b>		
<input checked="" type="checkbox"/> Commercial General Liability	General Aggregate	1,000,000
<input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurrence	Products-Comp/Op AGG	X
<input checked="" type="checkbox"/> W/Heavy Equipment <input checked="" type="checkbox"/> XCU	Personal & Adv. Injury	X
<input checked="" type="checkbox"/> To Include Products of Complete Operation Endorsements	Contractual Liability	X
	Med Exp (Any one Person)	X
<b>AUTOMOTIVE LIABILITY</b>		
<input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos		
<input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos		
<input type="checkbox"/> Non-Owned Autos	Per Occurrence	1,000,000
<b>EXCESS LIABILITY</b>		
<input checked="" type="checkbox"/> Umbrella Form	Each Occurrence Aggregate	4,000,000
<input checked="" type="checkbox"/> WORKERS COMPENSATION – STATUTORY AMOUNTS OR OCCUPATIONAL MEDICAL AND DISABILITY		500,000
<input checked="" type="checkbox"/> EMPLOYERS' LIABILITY		1,000,000
<b>OTHER: COPIES OF ENDOSEMENTS ARE REQUIRED</b>		
<input checked="" type="checkbox"/> City of Lubbock named as additional insured on Auto/General Liability on a primary and non-contributory bases.		
<input checked="" type="checkbox"/> To include products of completed operations endorsement.		
<input checked="" type="checkbox"/> Waiver of subrogation in favor of the City of Lubbock on all coverages, except		

## **IMPORTANT: POLICY ENDORSEMENTS**

The Contractor will provide copies of the policies without expense, to the City and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Contractor.

## **REQUIRED PROVISIONS**

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

## **NOTICES**

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement **CERTIFICATE OF INSURANCE**.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management  
City of Lubbock  
1314 Avenue K, 9<sup>th</sup> Floor  
Lubbock, Texas 79401

**SECTION D.** Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

8. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
9. The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.



10. At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within 30 days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.
11. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
12. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
13. Contractor acknowledges by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between these terms and conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.
14. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.
15. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Contractor agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or (B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

16. Pursuant to Section 2271.002 of the Texas Government Code, a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.
17. The Contractor shall retain all information received from or concerning the City and the City's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the City, unless otherwise required by law.
18. The Contractor shall indemnify and save harmless the city of Lubbock and its elected officials, officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any kind, character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, to the extent arising out of, related to or occasioned by, the negligent acts of the Contractor, its agents, employees, and/or subcontractors, related to the performance, operations or omissions under this agreement and/or the use or occupation of city owned property. The indemnity obligation provided herein shall survive the expiration or termination of this agreement.
19. This Contract consists of the following documents set forth herein; Invitation to Bid No. 21-16093-TF and the Bid Form.

-----INTENTIONALLY LEFT BLANK-----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

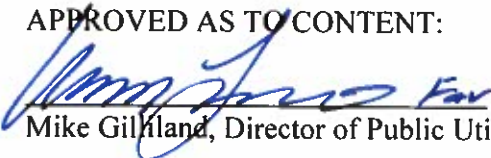
CITY OF LUBBOCK

\_\_\_\_\_  
Daniel M. Pope, Mayor

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
Mike Gililand, Director of Public Utilities

APPROVED AS TO FORM:

  
Kelli Leisure, Assistant City Attorney

CONTRACTOR

BY   
Authorized Representative

KAISTI EGENBACHER  
Print Name

404 E. LEKIGIT  
Address

Lubbock TX 79403  
City, State, Zip Code

**City of Lubbock, TX  
Purchasing and Contract Management  
Bid Submission Information**

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid, instructions to bidders, General Conditions of the Agreement, Specifications, and being familiar with the conditions to be met, hereby submits the following bid for furnishing the material, equipment, labor and everything necessary for providing the items listed and agrees to deliver said items at the locations and for the prices set forth on the bid form and/or the bid table associated with this bid.

A bid will be subject to being considered irregular and may be rejected if it shows omissions, **alterations of form**, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: **F.O.B. Destination, Freight Pre-Paid and Allowed**  
Where applicable, delivery days are: **Days After Receipt of Order (ARO)**

Please provide the minimum lead for delivery: 6 \_\_\_\_\_

Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-or-none basis for any item or group of items shown on the bid.

The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.

**PAYMENT TERMS AND DISCOUNTS** - Bidder offers a prompt payment discount of 0 %, net 30 calendar days. Discounts will not be considered in determining low bid. Unless otherwise indicated on the Bid Form, payment terms will be NET THIRTY DAYS. The City will pay the successful bidder within thirty days after the receipt of a correct invoice or after the date of acceptance, whichever event occurs later. Discounts for prompt payment requiring payment by the City within a stipulated number of days will be interpreted as applying within the stipulated number of calendar days after the date of receipt by the City of a correct invoice or after the date of acceptance that meets contract requirements, whichever event occurs later. Discounts for payment in less than ten days will not be considered.

**MOST FAVORED PRICING:** The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

**INTERLOCAL PURCHASING (optional):** The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?

City of Lubbock  
Public Works  
Bid Form  
ITB 21-16093-TF Concrete Materials

**MUDco Ready-Mix, LLC of Lubbock, TX**

Item	Description	QTY (+/-)	UOM	Unit Price	Total Cost	Delivery Days ARO
#0-1	Class A Concrete (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	118.00	23,600.00	1
#0-2	Class A Concrete with Fiber Reinforcement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	500	CY	124.00	62,000.00	1
#0-3	Class B Concrete (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	123.00	24,600.00	1
#0-4	Class B Concrete with Fiber Reinforcement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	129.00	25,800.00	1
#0-5	Class C Concrete (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	129.00	25,800.00	1
#0-6	Class C Concrete with Fiber Reinforcement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	135.00	27,000.00	1
#0-7	Class E Concrete (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	No Bid	No Bid	
#0-8	Class E Concrete with Fiber Reinforcement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	No Bid	No Bid	
#0-9	Type I, Type II or a Type I-II Bulk Cement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	500	TON	300.00	150,000.00	0
#0-10	Flowable Fill (1.5 sacks per cubic yard) (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	1,500	CY	92.00	138,000.00	1
#1-1	Additional demurrage charge after the first hour on location	1	HR	120.00	120.00	0
#1-2	Charge for a split load, forcing driver to clean and lift chute to move to new location	1	EA	75.00	75.00	0
#1-3	Delivery Charge: Monday - Friday during business hours	1	EA	0	0	0
#1-4	Delivery Charge: Saturday and Sunday	1	EA	No Bid	No Bid	
#1-5	Pour Charge: Monday-Friday	1	EA	0	0	0
#1-6	Pour Charge: Saturday and Sunday	1	EA	No Bid	No Bid	
<b>Total:</b>					<b>476,995.00</b>	

Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.

YES

NO

- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity will order their own materials/service as needed.

#### Addenda

Bidder acknowledges receipt of addenda issued in regard to this solicitation:

Addenda No. \_\_\_\_\_ Date \_\_\_\_\_  
Addenda No. \_\_\_\_\_ Date \_\_\_\_\_  
Addenda No. \_\_\_\_\_ Date \_\_\_\_\_  
Addenda No. \_\_\_\_\_ Date \_\_\_\_\_

#### Insurance Requirements

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

#### Suspension and Debarment Certification

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency. Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.



### TEXAS GOVERNMENT CODE SECTION 2252.152

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

### TEXAS GOVERNMENT CODE SECTION 2271.002

Company hereby certifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

- (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

### Vendor Acknowledgement

**In compliance with this solicitation, the undersigned bidder having examined the invitation to bid, instructions to bidders, documents associated with the invitation to bid, and being familiar with the conditions to be met, has reviewed the information regarding:**

- Insurance Requirements
- Suspension and Debarment Certification
- Texas Government Code Section 2252.152
- Texas Government Code Section 2271.002

An individual authorized to bind the company must sign the following section. Failure to execute this portion may result in bid rejection.

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Submission Information

THIS BID IS SUBMITTED BY MUDco Ready-Mix, LLC  
a corporation organized under the laws of the State of Texas, or a partnership consisting  
of \_\_\_\_\_ or individual trading as \_\_\_\_\_ of  
the City of \_\_\_\_\_

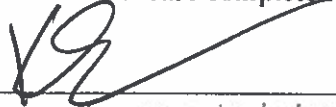
Tax ID No.: 82-4052843

Address: 404 E. Lehigh St.

City: Lubbock State: TX Zip: 79403

M/WBE Firm:	<input type="checkbox"/>	Woman	<input type="checkbox"/>	Black American	<input type="checkbox"/>	Native American
	<input type="checkbox"/>	Hispanic American	<input type="checkbox"/>	Asian Pacific American	<input type="checkbox"/>	Other (Specify)

Please complete the information below.

By:  Date: 9/14/2021  
*Authorized Representative - must sign by hand*

Officer Name and Title: Kristi Egenbacher, Chief Administrative Officer

Business Telephone Number 806.474.2721 FAX: n/a

E-mail Address: kristi@mudcoconcrete.com

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Service Contract No. 16093 for concrete materials, as per ITB 21-16093-TF, by and between the City of Lubbock and West Infrastructure Construction, LLC, of Lubbock, Texas, and related documents. Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

ccdcs/RES.ServiceContract 16093 West Infrastructure  
10.18.21

**City of Lubbock, TX  
Concrete Materials**

**THIS CONTRACT** made and entered into this \_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Lubbock ("City"), and **West Infrastructure Construction, LLC**, ("Contractor").

**WITNESSETH:**

WHEREAS, the City of Lubbock duly advertised for bids for Concrete Materials and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said Concrete Materials.

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

1. In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, Concrete Materials and more specifically referred to as **Primary Contractor for items 0-1 through 0-8 and item 0-10** on the bid submitted by the Contractor or in the specifications attached hereto.
2. The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
3. The contract shall be for a term of one (1) year, with the option of four (4), one year extensions, said date of term beginning upon formal approval. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.
4. Prices quoted shall be set for a period for one (1) year, said date of term beginning upon City Council date of formal approval. The rate may be adjusted upward or downward at this time at a percentage not to exceed the effective change in Consumer Price Index (CPI) or Product Price Index (PPI), which ever is most appropriate for the specific contract for the previous 12-months at the City's discretion, the effective change rate shall be based on either the local or national index average rate for all items. If agreement cannot be reached, the contract is terminated at the end of the current contract period.
5. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written

notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.

6. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.

7. Insurance Requirements

**SECTION A.** Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. **THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.**

**SECTION B.** The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

**SECTION C.** Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

TYPE OF INSURANCE	COMBINED SINGLE LIMIT	
<b>GENERAL LIABILITY</b>		
<input checked="" type="checkbox"/> Commercial General Liability	General Aggregate	1,000,000
<input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurrence	Products-Comp/Op AGG	X
<input checked="" type="checkbox"/> W/Heavy Equipment <input checked="" type="checkbox"/> XCU	Personal & Adv. Injury	X
<input checked="" type="checkbox"/> To Include Products of Complete Operation Endorsements	Contractual Liability	X
	Med Exp (Any one Person)	X
<b>AUTOMOTIVE LIABILITY</b>		
<input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos		
<input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos		
<input type="checkbox"/> Non-Owned Autos	Per Occurrence	1,000,000
<b>EXCESS LIABILITY</b>		
<input checked="" type="checkbox"/> Umbrella Form	Each Occurrence Aggregate	4,000,000
<input checked="" type="checkbox"/> WORKERS COMPENSATION – STATUTORY AMOUNTS OR OCCUPATIONAL MEDICAL AND DISABILITY		500,000
<input checked="" type="checkbox"/> EMPLOYERS' LIABILITY		1,000,000
<b>OTHER: COPIES OF ENDOSEMENTS ARE REQUIRED</b>		
<input checked="" type="checkbox"/> City of Lubbock named as additional insured on Auto/General Liability on a primary and non-contributory bases.		
<input checked="" type="checkbox"/> To include products of completed operations endorsement.		
<input checked="" type="checkbox"/> Waiver of subrogation in favor of the City of Lubbock on all coverages, except		

## **IMPORTANT: POLICY ENDORSEMENTS**

The Contractor will provide copies of the policies without expense, to the City and **all endorsements** thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Contractor.

## **REQUIRED PROVISIONS**

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

## **NOTICES**

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement **CERTIFICATE OF INSURANCE**.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management  
City of Lubbock  
1314 Avenue K, 9<sup>th</sup> Floor  
Lubbock, Texas 79401

**SECTION D.** Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

8. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
9. The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.



10. At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within 30 days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.
11. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
12. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
13. Contractor acknowledges by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between these terms and conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.
14. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.
15. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Contractor agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or (B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

16. Pursuant to Section 2271.002 of the Texas Government Code, a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.
17. The Contractor shall retain all information received from or concerning the City and the City's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the City, unless otherwise required by law.
18. The Contractor shall indemnify and save harmless the city of Lubbock and its elected officials, officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any kind, character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, to the extent arising out of, related to or occasioned by, the negligent acts of the Contractor, its agents, employees, and/or subcontractors, related to the performance, operations or omissions under this agreement and/or the use or occupation of city owned property. The indemnity obligation provided herein shall survive the expiration or termination of this agreement.
19. This Contract consists of the following documents set forth herein; Invitation to Bid No. 21-16093-TF and the Bid Form.

-----INTENTIONALLY LEFT BLANK-----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

CITY OF LUBBOCK

CONTRACTOR

\_\_\_\_\_  
Daniel M. Pope, Mayor

BY Misty Wilson  
Authorized Representative

ATTEST:

Misty Wilson  
Print Name

\_\_\_\_\_  
Rebecca Garza, City Secretary

2836 Clovis Rd  
Address

APPROVED AS TO CONTENT:

Lubbock, TX 79415  
City, State, Zip Code

Mike Gilliland  
Mike Gilliland, Director of Public Utilities

APPROVED AS TO FORM:

Kelli Leisure  
Kelli Leisure, Assistant City Attorney

**City of Lubbock, TX  
Purchasing and Contract Management  
Bid Submission Information**

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid, instructions to bidders, General Conditions of the Agreement, Specifications, and being familiar with the conditions to be met, hereby submits the following bid for furnishing the material, equipment, labor and everything necessary for providing the items listed and agrees to deliver said items at the locations and for the prices set forth on the bid form and/or the bid table associated with this bid.

A bid will be subject to being considered irregular and may be rejected if it shows omissions, **alterations of form**, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: **F.O.B. Destination, Freight Pre-Paid and Allowed**

Where applicable, delivery days are: **Days After Receipt of Order (ARO)**

<p>Please provide the minimum load for delivery: <u>5 CY + \$150 fee</u></p>
--

**Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-or-none basis for any item or group of items shown on the bid.**

**The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.**

**PAYMENT TERMS AND DISCOUNTS** - Bidder offers a prompt payment discount of n/a %, net n/a calendar days. Discounts will not be considered in determining low bid. Unless otherwise indicated on the Bid Form, payment terms will be NET THIRTY DAYS. The City will pay the successful bidder within thirty days after the receipt of a correct invoice or after the date of acceptance, whichever event occurs later. Discounts for prompt payment requiring payment by the City within a stipulated number of days will be interpreted as applying within the stipulated number of calendar days after the date of receipt by the City of a correct invoice or after the date of acceptance that meets contract requirements, whichever event occurs later. Discounts for payment in less than ten days will not be considered.

**MOST FAVORED PRICING:** The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

**INTERLOCAL PURCHASING (optional):** The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?

City of Lubbock  
Public Works  
Bid Form  
ITB 21-16093-TF Concrete Materials

**West Infrastructure Construction, LLC of Lubbock, TX**

Item	Description	QTY (+/-)	UOM	Unit Price	Total Cost	Delivery Days ARO
#0-1	Class A Concrete (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	115.00	23,000.00	1
#0-2	Class A Concrete with Fiber Reinforcement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	500	CY	121.50	60,750.00	1
#0-3	Class B Concrete (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	115.00	23,000.00	1
#0-4	Class B Concrete with Fiber Reinforcement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	121.00	24,200.00	1
#0-5	Class C Concrete (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	120.00	24,000.00	1
#0-6	Class C Concrete with Fiber Reinforcement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	126.50	25,300.00	1
#0-7	Class E Concrete (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	120.00	24,000.00	1
#0-8	Class E Concrete with Fiber Reinforcement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	200	CY	126.50	25,300.00	1
#0-9	Type I, Type II or a Type I-II Bulk Cement (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	500	TON	No Bid	No Bid	
#0-10	Flowable Fill (1.5 sacks per cubic yard) (refer to City of Lubbock Engineering Minimum Design Standards and Specifications, section 8.07)	1,500	CY	85.00	127,500.00	1
#1-1	Additional demurrage charge after the first hour on location	1	HR	100.00	100.00	1
#1-2	Charge for a split load, forcing driver to clean and lift chute to move to new location	1	EA	100.00	100.00	1
#1-3	Delivery Charge: Monday - Friday during business hours	1	EA	No Bid	No Bid	
#1-4	Delivery Charge: Saturday and Sunday	1	EA	No Bid	No Bid	
#1-5	Pour Charge: Monday-Friday	1	EA	No Bid	No Bid	
#1-6	Pour Charge: Saturday and Sunday	1	EA	No Bid	No Bid	
<b>Total:</b>					<b>357,250.00</b>	

**Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.**

YES  NO

- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity will order their own materials/service as needed.

### **Addenda**

Bidder acknowledges receipt of addenda issued in regard to this solicitation:

Addenda No. \_\_\_\_\_ Date \_\_\_\_\_  
Addenda No. \_\_\_\_\_ Date \_\_\_\_\_  
Addenda No. \_\_\_\_\_ Date \_\_\_\_\_  
Addenda No. \_\_\_\_\_ Date \_\_\_\_\_

### **Insurance Requirements**

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

### **Suspension and Debarment Certification**

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency. Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.



## **TEXAS GOVERNMENT CODE SECTION 2252.152**

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

## **TEXAS GOVERNMENT CODE SECTION 2271.002**

Company hereby certifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

- (1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
- (2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

### **Vendor Acknowledgement**

**In compliance with this solicitation, the undersigned bidder having examined the invitation to bid, instructions to bidders, documents associated with the invitation to bid, and being familiar with the conditions to be met, has reviewed the information regarding:**

- **Insurance Requirements**
- **Suspension and Debarment Certification**
- **Texas Government Code Section 2252.152**
- **Texas Government Code Section 2271.002**

An individual authorized to bind the company must sign the following section. Failure to execute this portion may result in bid rejection.

**-----Intentionally Left Blank-----**

**Submission Information**

THIS BID IS SUBMITTED BY West Infrastructure Construction, LLC  
a corporation organized under the laws of the State of Texas, or a partnership consisting  
of \_\_\_\_\_ or individual trading as \_\_\_\_\_ of  
the City of \_\_\_\_\_


Tax ID No.: 27-3204063

Address: 2836 Clovis Rd.

City: Lubbock State: TX Zip: 79415

M/WBE Firm:	<input type="checkbox"/>	Woman	<input type="checkbox"/>	Black American	<input type="checkbox"/>	Native American
	<input type="checkbox"/>	Hispanic American	<input type="checkbox"/>	Asian Pacific American	<input type="checkbox"/>	Other (Specify)

**Please complete the information below.**

By  Date: 9/28/21  
*Authorized Representative - must sign by hand*

Officer Name and Title: Misty Wilson-Material Sales Manager

Business Telephone Number: 806-771-6440 FAX: 806-771-6441

E-mail Address: misty@westindustries.net

City of Lubbock  
Public Works  
Bid Tabulation

**ITB 21-16093-TF Concrete Materials**

<b>Vendor/Description</b>	<b>Location</b>	<b>QTY (+/-)</b>	<b>UOM</b>	<b>Unit Price</b>	<b>Total Cost</b>	<b>Delivery Days ARO</b>
<b>#0-1 - Class A Concrete</b>						
West Infrastructure Construction, LLC	Lubbock, TX	200	CY	115.00	23,000.00	1
MUDco Ready-Mix, LLC	Lubbock, TX	200	CY	118.00	23,600.00	1
<b>#0-2 - Class A Concrete with Fiber Reinforcement</b>						
West Infrastructure Construction, LLC	Lubbock, TX	500	CY	121.50	60,750.00	1
MUDco Ready-Mix, LLC	Lubbock, TX	500	CY	124.00	62,000.00	1
<b>#0-3 - Class B Concrete</b>						
West Infrastructure Construction, LLC	Lubbock, TX	200	CY	115.00	23,000.00	1
MUDco Ready-Mix, LLC	Lubbock, TX	200	CY	123.00	24,600.00	1
<b>#0-4 - Class B Concrete with Fiber Reinforcement</b>						
West Infrastructure Construction, LLC	Lubbock, TX	200	CY	121.00	24,200.00	1
MUDco Ready-Mix, LLC	Lubbock, TX	200	CY	129.00	25,800.00	1
<b>#0-5 - Class C Concrete</b>						
West Infrastructure Construction, LLC	Lubbock, TX	200	CY	120.00	24,000.00	1
MUDco Ready-Mix, LLC	Lubbock, TX	200	CY	129.00	25,800.00	1
<b>#0-6 - Class C Concrete with Fiber Reinforcement</b>						
West Infrastructure Construction, LLC	Lubbock, TX	200	CY	126.50	25,300.00	1
MUDco Ready-Mix, LLC	Lubbock, TX	200	CY	135.00	27,000.00	1
<b>#0-7 - Class E Concrete</b>						
West Infrastructure Construction, LLC	Lubbock, TX	200	CY	120.00	24,000.00	1
<b>#0-8 - Class E Concrete with Fiber Reinforcement</b>						
West Infrastructure Construction, LLC	Lubbock, TX	200	CY	126.50	25,300.00	1
<b>#0-9 - Type I, Type II or a Type I-II Bulk Cement</b>						
MUDco Ready-Mix, LLC	Lubbock, TX	500	TON	300.00	150,000.00	1
<b>#0-10 - Flowable Fill (1.5 sacks per cubic yard)</b>						
West Infrastructure Construction, LLC	Lubbock, TX	1,500	CY	85.00	127,500.00	1
MUDco Ready-Mix, LLC	Lubbock, TX	1,500	CY	92.00	138,000.00	1



## **Purchasing and Contract Management**

### **Project Summary**

#### **ITB 21-16093-TF Concrete Materials**

Notice was published in the Lubbock Avalanche Journal on September 12 & September 19, 2021.  
Notice was published on the Purchasing Web Site under Bid Opportunities.  
Notice was published on BidSync.com and Bonfire.com from September 12 to September 29, 2021.  
0 individuals attended the pre-bid meeting.  
28 vendors viewed using BidSync.com and Bonfire.com.  
21 vendors downloaded the documents.  
13 vendors was notified separately.  
2 vendors submitted a bid.



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## Information

### Agenda Item

**Ordinance 1st Reading - Traffic Management:** Consider an ordinance amending Section 20.05.103 of the Code of Ordinances of the City of Lubbock, with regard to school zones.

### Item Summary

Chapter 20 of the Code of Ordinances, Section 20.05.103, establishes the locations of school zone reduced speed limits. Staff recommends amending this section of the ordinance to remove two (2) school zones at the following locations:

1) Guadalupe Elementary, 101 North Avenue P

Line Item 22: Remove 20 mph school zone on Avenue P, north and south of 1st Street

2) Jackson Elementary, 201 Vernon Avenue

Line Item 26: Remove 20 mph school zone on Avenue U, north and south of 2nd Street

Lubbock Independent School District has completed construction of the new Carmona-Harrison Elementary School located at 1910 Cesar E. Chavez Drive, consolidating three elementary schools: Guadalupe, Jackson and Wright. Thus, the school zones recommended for removal are no longer necessary.

### Fiscal Impact

None

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager

L. Wood Franklin, P.E., Division Director of Public Works

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## Attachments

Ordinance Amending School Zones

Redline Ordinance

**ORDINANCE NO.**

AN ORDINANCE AMENDING SECTION 20.05.103 OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS, WITH REGARD TO THE ESTABLISHMENT OF SCHOOL ZONES AND SPEED LIMITS; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council of the City of Lubbock deems it to be in the best interests of the health, safety and welfare of the citizens of the City of Lubbock to make the following amendment to Section 20.05.103 of the Code of Ordinances of the City of Lubbock, Texas; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK;

SECTION 1. THAT Section 20.05.103, Code of Ordinances of the City of Lubbock, Texas, is hereby amended to read as follows:

Sec. 20.05.103. School zone speed limits.

A reduced school speed zone as indicated herein shall be in effect when the designated school speed limit beacon is flashing during school hours or the reduced speed limit sign assembly is present upon the streets or highways or portions thereof within the city limits which shall be as follows:

Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
1	11th Place	E/W	Beginning at a point 95 feet East of Liberty Avenue extending to a point 230 feet East of LaSalle Avenue	Flashing Beacon	20	FISD Northridge Elementary
2	11th Street	E/W	Beginning at a point 100 feet West of Jason Avenue extending to a point 100 feet East of 8th Street	Sign Assembly	20	FISD Willow Bend Elementary
3	19th Street (US 62/SH 114)	E/W	Beginning at a point 145 feet West of Avenue U extending to a point 100 feet East of Avenue T	Flashing Beacon	20	Lubbock High School
4	East 24th Street	E/W	Beginning at a point 32 feet East of Oak Avenue extending to a point 677 feet West of Oak Avenue	Flashing Beacon	20	LISD Project Intercept
5	30th Street	E/W	Beginning at a point 214 feet East of Avenue N extending to a point 158 feet West of Avenue N	Flashing Beacon	20	Bean Elementary
6	34th Street	E/W	Beginning at a point 194 feet East of Avenue N extending to a point 251 feet West of Avenue N	Flashing Beacon	20	Bean Elementary
7	34th Street	E/W	Beginning at a point 214 feet East of Toledo Avenue extending to a point 200 feet West of Vicksburg Avenue	Flashing Beacon	20	Coronado High School
8	43rd Street	E/W	Beginning at a point 160 feet East of Milwaukee Avenue extending to a point 600 feet East of Milwaukee Avenue	Flashing Beacon	20	FISD Westwind Elementary



Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
9	50th Street	E/W	Beginning at a point 320 feet West of Avenue P extending to a point 308 feet East of Avenue P	Flashing Beacon	20	Hodges Elementary
10	50th Street	E/W	Beginning at a point 146 feet East of Gary Avenue extending to a point 219 feet West of Gary Avenue	Flashing Beacon	20	Monterey High School
11	58th Street	E/W	Beginning at a point 198 feet East of Avenue U extending to a point 136 feet West of Avenue V	Flashing Beacon	20	Bayless Elementary
12	58th Street	E/W	Beginning at a point 150 feet East of Peoria Avenue extending to a point 255 feet West of Peoria Avenue	Flashing Beacon	20	Evans Middle School
13	58th Street	E/W	Beginning at a point 169 feet East of Canton Avenue and extending to a point 158 feet West of Elgin Avenue	Flashing Beacon	20	Parsons Elementary
14	58th Street	E/W	Beginning at a point 85 feet West of 55th Drive extending to a point 209 feet East of Wayne Avenue	Flashing Beacon	20	Williams Elementary
15	68th Street	E/W	Beginning at a point 130 feet East of Oakridge Avenue extending to a point 55 feet West of 70th Street	Sign Assembly	20	FISD Oakridge Elementary
16	73rd Street	E/W	Beginning 200 feet East of Ironton Avenue extending to a point 200 feet West of Ironton Avenue	Flashing Beacon	20	Heritage Middle School
17	78th Street	E/W	Beginning at a point 188 feet West of Flint Avenue extending to a point 200 feet East of Elgin Avenue	Flashing Beacon	20	Waters Elementary
18	79th Street	E/W	Beginning at a point 221 feet West of Hope Avenue extending to a point 165 feet East of Hope Avenue	Flashing Beacon	20	FISD Crestview Elementary
19	108th Street	E/W	Beginning at a point 350 feet West of Gary Avenue extending to a point 350 feet East of Gary Avenue	Flashing Beacon	20	Lubbock-Cooper North Elementary
20	Avenue D	N/S	Beginning at a point 50 feet North of 40th Street extending to a point 50 feet South of 42nd Street	Sign Assembly	20	Harwell Elementary
21	Avenue L	N/S	Beginning at a point 15 feet South of 29th Street extending to a point 50 feet North of 30th St	Flashing Beacon	20	Bean Elementary
22	Avenue P	N/S	Beginning at a point 218 feet North of 79th Street extending to a point 58 feet North of 81st Street	Flashing Beacon	20	Roberts Elementary
23	Avenue Q (US 84)	N/S	Beginning at a point 210 feet North of 32nd Street extending to a point 135 feet South of 32nd Street	Flashing Beacon	30	O.L. Slaton Middle School
24	Avenue T	N/S	Beginning at a point 26 feet North of 20th Street extending to a point 40 feet South of 22nd Street	Flashing Beacon	20	Dupree Elementary

Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
25	Avenue U	N/S	Beginning at a point 90 feet North of 58th Street extending to a point 125 feet South of 53rd Street	Flashing Beacon	20	Atkins Middle School
26	Avenue U	N/S	Beginning at a point 115 feet South of 58th Street extending to a point 74 feet North of 62nd Street	Flashing Beacon	20	Bayless Elementary
27	Boston Avenue	N/S	Beginning at a point 161 feet North of 1st Street and extending to a point 135 feet North of 2nd Street	Flashing Beacon	20	McWhorter Elementary
28	Chicago Avenue	N/S	Beginning at a point 16 feet North of 16th Street extending to a point 16 feet South of 13th Street	Flashing Beacon	20	Hardwick Elementary
29	Chicago Avenue	N/S	Beginning at a point 145 feet South of 48th Street extending to a point 143 feet North of 46 <sup>th</sup> Street	Flashing Beacon	20	Wester Elementary
30	Chicago Avenue	N/S	Beginning at a point 56 feet South of 87th Street extending to a point 59 feet North of 89 <sup>th</sup> Street	Flashing Beacon	20	Smith Elementary
31	Dover Avenue	N/S	Beginning at a point 172 feet South of 27th Street extending to a point 228 feet North of 27th Street	Flashing Beacon	20	Lubbock Christian School
32	Elgin Avenue	N/S	Beginning at a point 150 feet North of 41st Street extending to a point 155 feet South of 42nd Street	Flashing Beacon	20	Wheelock Elementary
33	Elgin Avenue	N/S	Beginning at a point 260 feet North of 58th Street extending to a point 156 feet South of 42nd Street	Flashing Beacon	20	Parsons Elementary
34	Elgin Avenue	N/S	Beginning at a point 103 feet South of 78th Street extending to a point 40 feet of 75th Street	Flashing Beacon	20	Waters Elementary
35	Erskine Street	E/W	Beginning at a point 19 feet West of North Hartford Avenue extending to a point 134 feet East of North Gary Avenue	Flashing Beacon	20	Wolffarth Elementary
36	Flint Avenue	N/S	Beginning at a point 135 feet South of 39th Street extending to a point 134 feet South of 43rd Street	Flashing Beacon	20	Wheelock Elementary
37	Fulton Avenue	N/S	Beginning at a point 112 feet South of 100th Street extending to a point 295 feet North of 101st Street	Flashing Beacon	20	Lubbock-Cooper West Elementary
38	Glenna Goodacre Boulevard	E/W	Beginning at a point 50 feet West of Avenue U extending to a point 50 feet East of Avenue T	Flashing Beacon	20	Ramirez Elementary
39	Joliet Drive	N/S	Beginning at a point 106 feet West of Louisville Drive extending to a point 68 feet Southwest of 68th Street	Flashing Beacon	20	Miller Elementary
40	Dr. M. L. King, Jr., Boulevard*	N/S	Beginning at a point 106 feet South of East Erskine Street extending to a point 213 feet South of East Emory Street	Flashing Beacon	20	Estacado High School

Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
41	Dr. M. L. King, Jr., Boulevard*	N/S	Beginning at a point 220 feet South of East 29th Street extending to a point 230 feet North of East 29th Street	Flashing Beacon	20	Ervin Elementary
42	Memphis Avenue	N/S	Beginning at a point 135 feet North of 31st Street extending to a point 122 feet South of 28th Street	Flashing Beacon	20	Overton Elementary
43	Memphis Avenue	N/S	Beginning at a point 132 feet South of 46th Street extending to a point 242 feet North of 44th Street	Flashing Beacon	20	Maedgen Elementary
44	Memphis Avenue	N/S	Beginning at a point 115 feet North of 86th Street extending to a point 230 feet South of 86th Street	Flashing Beacon	20	Honey Elementary
45	Milwaukee Avenue	N/S	Beginning at a point 300 feet north of Lehigh Street extending to a point 60 feet south of Kemper Street	Flashing Beacon	30	Legacy Elementary
46	Norfolk Avenue	E/W	Beginning at a point 595 feet South of 130th Street extending to a point 200 feet South of 133rd Street	Sign Assembly	20	Lubbock-Cooper Central Elementary
47	Parkway Drive (US 82)	E/W	Beginning at a point 560 feet Southwest of Zenith Avenue extending 600 feet to a point 115 feet southwest of Walnut Avenue	Flashing Beacon	30	Alderson Elementary School
48	Quaker Avenue	N/S	Beginning at a point 213 feet North of 31st Street extending to a point 137 feet South of 31st Street	Flashing Beacon	20	Smylie Wilson Middle School
49	Teak Avenue	N/S	Beginning at a point 200 feet North of East 29th Street extending to a point 250 feet South of East 29th Street	Flashing Beacon	20	Ervin Elementary
50	Toledo Avenue	N/S	Beginning at a point 153 feet Northwest of 13th Street extending to a point 163 feet Southeast of 15th Street	Flashing Beacon	20	Rush Elementary
51	South Upland Avenue	N/S	Beginning at a point 100 feet North of 100th Street extending to a point 100 feet South of 103rd Street	Flashing Beacon	35	Upland Heights Elementary
52	North Upland Avenue	N/S	Beginning at a point 200 feet South of 12 <sup>th</sup> Street extending to a point 1000 feet North of 12 <sup>th</sup> Street	Flashing Beacon	35	Terra Vista Middle School
53	North University Avenue	N/S	Beginning at a point 212 feet South of Auburn Street extending to a point 156 feet North of Baylor Street	Flashing Beacon	20	Cavazos Middle School
54	North Utica Avenue	N/S	Beginning at a point 220 feet North of Kemper Street extending to a point 195 feet South of Kemper Street	Flashing Beacon	20	Centennial Elementary
55	Utica Avenue	N/S	Beginning at a point 94 feet North of 45th Street extending to a point 200 feet South of 48th Street	Flashing Beacon	20	Stewart Elementary

Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
56	Utica Avenue	N/S	Beginning at a point 163 feet North of 56th Street extending to a point 30 feet North of 59th Street	Flashing Beacon	20	Williams Elementary

SECTION 2. THAT should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 3. THAT violation of any provision of this Ordinance shall be a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00).

SECTION 4. THAT the City Secretary is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method of publication as provided by law.

AND SO IT IS ORDERED.

Passed by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

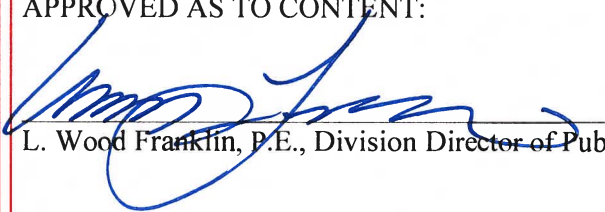
Passed by the City Council on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

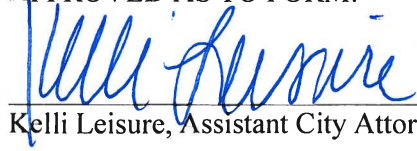
ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
L. Wood Franklin, P.E., Division Director of Public Works

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Kelli Leisure", is written over a horizontal line.

Kelli Leisure, Assistant City Attorney

Ord. Amended 2021 School Zone  
10.18.21



**ORDINANCE NO.**

AN ORDINANCE AMENDING SECTION 20.05.103 OF THE CODE OF ORDINANCES OF THE CITY OF LUBBOCK, TEXAS, WITH REGARD TO THE ESTABLISHMENT OF SCHOOL ZONES AND SPEED LIMITS; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; AND PROVIDING FOR PUBLICATION.

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Sec. 20.05.103. School zone speed limits.

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1	11th Place	E/W	Beginning at a point 95 feet East of Liberty Avenue extending to a point 230 feet East of LaSalle Avenue	Flashing Beacon	20	FISD Northridge Elementary
2	11th Street	E/W	Beginning at a point 100 feet West of Jason Avenue extending to a point 100 feet East of 8th Street	Sign Assembly	20	FISD Willow Bend Elementary
3	19th Street (US 62/SH 114)	E/W	Beginning at a point 145 feet West of Avenue U extending to a point 100 feet East of Avenue T	Flashing Beacon	20	Lubbock High School
4	East 24th Street	E/W	Beginning at a point 32 feet East of Oak Avenue extending to a point 677 feet West of Oak Avenue	Flashing Beacon	20	LISD Project Intercept
5	30th Street	E/W	Beginning at a point 214 feet East of Avenue N extending to a point 158 feet West of Avenue N	Flashing Beacon	20	Bean Elementary
6	34th Street	E/W	Beginning at a point 194 feet East of Avenue N extending to a point 251 feet West of Avenue N	Flashing Beacon	20	Bean Elementary



Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
7	34th Street	E/W	Beginning at a point 214 feet East of Toledo Avenue extending to a point 200 feet West of Vicksburg Avenue	Flashing Beacon	20	Coronado High School
8	43rd Street	E/W	Beginning at a point 160 feet East of Milwaukee Avenue extending to a point 600 feet East of Milwaukee Avenue	Flashing Beacon	20	FISD Westwind Elementary
9	50th Street	E/W	Beginning at a point 320 feet West of Avenue P extending to a point 308 feet East of Avenue P	Flashing Beacon	20	Hodges Elementary
10	50th Street	E/W	Beginning at a point 146 feet East of Gary Avenue extending to a point 219 feet West of Gary Avenue	Flashing Beacon	20	Monterey High School
11	58th Street	E/W	Beginning at a point 198 feet East of Avenue U extending to a point 136 feet West of Avenue V	Flashing Beacon	20	Bayless Elementary
12	58th Street	E/W	Beginning at a point 150 feet East of Peoria Avenue extending to a point 255 feet West of Peoria Avenue	Flashing Beacon	20	Evans Middle School
13	58th Street	E/W	Beginning at a point 169 feet East of Canton Avenue and extending to a point 158 feet West of Elgin Avenue	Flashing Beacon	20	Parsons Elementary
14	58th Street	E/W	Beginning at a point 85 feet West of 55th Drive extending to a point 209 feet East of Wayne Avenue	Flashing Beacon	20	Williams Elementary
15	68th Street	E/W	Beginning at a point 130 feet East of Oakridge Avenue extending to a point 55 feet West of 70th Street	Sign Assembly	20	FISD Oakridge Elementary
16	73rd Street	E/W	Beginning 200 feet East of Ironton Avenue extending to a point 200 feet West of Ironton Avenue	Flashing Beacon	20	Heritage Middle School
17	78th Street	E/W	Beginning at a point 188 feet West of Flint Avenue extending to a point 200 feet East of Elgin Avenue	Flashing Beacon	20	Waters Elementary
18	79th Street	E/W	Beginning at a point 221 feet West of Hope Avenue extending to a point 165 feet East of Hope Avenue	Flashing Beacon	20	FISD Crestview Elementary

Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
19	108th Street	E/W	Beginning at a point 350 feet West of Gary Avenue extending to a point 350 feet East of Gary Avenue	Flashing Beacon	20	Lubbock-Cooper North Elementary
20	Avenue D	N/S	Beginning at a point 50 feet North of 40th Street extending to a point 50 feet South of 42nd Street	Sign Assembly	20	Harwell Elementary
21	Avenue L	N/S	Beginning at a point 15 feet South of 29th Street extending to a point 50 feet North of 30th St	Flashing Beacon	20	Bean Elementary
<del>22</del>	<del>Avenue P</del>	<del>N/S</del>	<del>Beginning at a point 211 feet South of 1st Street extending to a point 218 feet North of 1st Street</del>	<del>Flashing Beacon</del>	<del>20</del>	<del>Guadalupe Elementary</del>
<del>22</del> <sup>23</sup>	Avenue P	N/S	Beginning at a point 218 feet North of 79th Street extending to a point 58 feet North of 81st Street	Flashing Beacon	20	Roberts Elementary
<del>23</del> <sup>24</sup>	Avenue Q (US 84)	N/S	Beginning at a point 210 feet North of 32nd Street extending to a point 135 feet South of 32nd Street	Flashing Beacon	30	O.L. Slaton Middle School
<del>24</del> <sup>25</sup>	Avenue T	N/S	Beginning at a point 26 feet North of 20th Street extending to a point 40 feet South of 22nd Street	Flashing Beacon	20	Dupree Elementary
<del>26</del>	<del>Avenue U</del>	<del>N/S</del>	<del>Beginning at a point 214 feet South of 2nd Street extending to a point 162 feet North of 2nd Street</del>	<del>Flashing Beacon</del>	<del>20</del>	<del>Jackson Elementary</del>
<del>25</del> <sup>27</sup>	Avenue U	N/S	Beginning at a point 90 feet North of 58th Street extending to a point 125 feet South of 53rd Street	Flashing Beacon	20	Atkins Middle School
<del>26</del> <sup>28</sup>	Avenue U	N/S	Beginning at a point 115 feet South of 58th Street extending to a point 74 feet North of 62nd Street	Flashing Beacon	20	Bayless Elementary
<del>27</del> <sup>29</sup>	Boston Avenue	N/S	Beginning at a point 161 feet North of 1st Street and extending to a point 135 feet North of 2nd Street	Flashing Beacon	20	McWhorter Elementary
<del>28</del> <sup>30</sup>	Chicago Avenue	N/S	Beginning at a point 16 feet North of 16th Street extending to a point 16 feet South of 13th Street	Flashing Beacon	20	Hardwick Elementary

Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
<del>29</del> 1	Chicago Avenue	N/S	Beginning at a point 145 feet South of 48th Street extending to a point 143 feet North of 46 <sup>th</sup> Street	Flashing Beacon	20	Wester Elementary
<del>30</del> 2	Chicago Avenue	N/S	Beginning at a point 56 feet South of 87th Street extending to a point 59 feet North of 89 <sup>th</sup> Street	Flashing Beacon	20	Smith Elementary
<del>31</del> 3	Dover Avenue	N/S	Beginning at a point 172 feet South of 27th Street extending to a point 228 feet North of 27th Street	Flashing Beacon	20	Lubbock Christian School
<del>32</del> 4	Elgin Avenue	N/S	Beginning at a point 150 feet North of 41st Street extending to a point 155 feet South of 42nd Street	Flashing Beacon	20	Wheelock Elementary
<del>33</del> 5	Elgin Avenue	N/S	Beginning at a point 260 feet North of 58th Street extending to a point 156 feet South of 42nd Street	Flashing Beacon	20	Parsons Elementary
<del>34</del> 6	Elgin Avenue	N/S	Beginning at a point 103 feet South of 78th Street extending to a point 40 feet of 75th Street	Flashing Beacon	20	Waters Elementary
<del>35</del> 7	Erskin Street	E/W	Beginning at a point 19 feet West of North Hartford Avenue extending to a point 134 feet East of North Gary Avenue	Flashing Beacon	20	Wolffarth Elementary
<del>36</del> 8	Flint Avenue	N/S	Beginning at a point 135 feet South of 39th Street extending to a point 134 feet South of 43rd Street	Flashing Beacon	20	Wheelock Elementary
<del>37</del> 9	Fulton Avenue	N/S	Beginning at a point 112 feet South of 100th Street extending to a point 295 feet North of 101st Street	Flashing Beacon	20	Lubbock-Cooper West Elementary
<del>38</del> 0	Glenna Goodacre Boulevard	E/W	Beginning at a point 50 feet West of Avenue U extending to a point 50 feet East of Avenue T	Flashing Beacon	20	Ramirez Elementary
<del>39</del> 1	Joliet Drive	N/S	Beginning at a point 106 feet West of Louisville Drive extending to a point 68 feet Southwest of 68th Street	Flashing Beacon	20	Miller Elementary
<del>40</del> 2	Dr. M. L. King, Jr., Boulevard*	N/S	Beginning at a point 106 feet South of East Erskine Street extending to a point 213 feet South of East Emory Street	Flashing Beacon	20	Estacado High School

Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
<del>41</del> <sup>43</sup>	Dr. M. L. King, Jr., Boulevard*	N/S	Beginning at a point 220 feet South of East 29th Street extending to a point 230 feet North of East 29th Street	Flashing Beacon	20	Ervin Elementary
<del>42</del> <sup>44</sup>	Memphis Avenue	N/S	Beginning at a point 135 feet North of 31st Street extending to a point 122 feet South of 28th Street	Flashing Beacon	20	Overton Elementary
<del>43</del> <sup>45</sup>	Memphis Avenue	N/S	Beginning at a point 132 feet South of 46th Street extending to a point 242 feet North of 44th Street	Flashing Beacon	20	Maedgen Elementary
<del>44</del> <sup>46</sup>	Memphis Avenue	N/S	Beginning at a point 115 feet North of 86th Street extending to a point 230 feet South of 86th Street	Flashing Beacon	20	Honey Elementary
<del>45</del> <sup>47</sup>	Milwaukee Avenue	N/S	Beginning at a point 300 feet north of Lehigh Street extending to a point 60 feet south of Kemper Street	Flashing Beacon	30	Legacy Elementary
<del>46</del> <sup>48</sup>	Norfolk Avenue	E/W	Beginning at a point 595 feet South of 130th Street extending to a point 200 feet South of 133rd Street	Sign Assembly	20	Lubbock-Cooper Central Elementary
<del>47</del> <sup>49</sup>	Parkway Drive (US 82)	E/W	Beginning at a point 560 feet Southwest of Zenith Avenue extending 600 feet to a point 115 feet southwest of Walnut Avenue	Flashing Beacon	30	Alderson Elementary School
<del>48</del> <sup>50</sup>	Quaker Avenue	N/S	Beginning at a point 213 feet North of 31st Street extending to a point 137 feet South of 31st Street	Flashing Beacon	20	Smylie Wilson Middle School
<del>49</del> <sup>51</sup>	Teak Avenue	N/S	Beginning at a point 200 feet North of East 29th Street extending to a point 250 feet South of East 29th Street	Flashing Beacon	20	Ervin Elementary
<del>50</del> <sup>52</sup>	Toledo Avenue	N/S	Beginning at a point 153 feet Northwest of 13th Street extending to a point 163 feet Southeast of 15th Street	Flashing Beacon	20	Rush Elementary
<del>51</del> <sup>53</sup>	South Upland Avenue	N/S	Beginning at a point 100 feet North of 100th Street extending to a point 100 feet South of 103rd Street	Flashing Beacon	35	Upland Heights Elementary

Item	Lubbock Street Name (TxDOT Name)	Travel Direct.	School Zone Speed Limit Description	School Zone Type	Speed	School Name
<del>52</del> 4	North Upland Avenue	N/S	Beginning at a point 200 feet South of 12 <sup>th</sup> Street extending to a point 1000 feet North of 12 <sup>th</sup> Street	Flashing Beacon	35	Terra Vista Middle School
<del>53</del> 5	North University Avenue	N/S	Beginning at a point 212 feet South of Auburn Street extending to a point 156 feet North of Baylor Street	Flashing Beacon	20	Cavazos Middle School
<del>54</del> 6	North Utica Avenue	N/S	Beginning at a point 220 feet North of Kemper Street extending to a point 195 feet South of Kemper Street	Flashing Beacon	20	Centennial Elementary
<del>55</del> 7	Utica Avenue	N/S	Beginning at a point 94 feet North of 45th Street extending to a point 200 feet South of 48th Street	Flashing Beacon	20	Stewart Elementary
<del>56</del> 8	Utica Avenue	N/S	Beginning at a point 163 feet North of 56th Street extending to a point 30 feet North of 59th Street	Flashing Beacon	20	Williams Elementary

SECTION 2. THAT should any paragraph, section, sentence, phrase, clause or word of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

SECTION 3. THAT violation of any provision of this Ordinance shall be a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00).

SECTION 4. THAT the City Secretary is hereby authorized and directed to cause publication of the descriptive caption of this Ordinance as an alternative method of publication as provided by law.

AND SO IT IS ORDERED.

Passed by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Passed by the City Council on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

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Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

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L. Wood Franklin, P.E., Division Director of Public Works

APPROVED AS TO FORM:

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Kelli Leisure, Assistant City Attorney





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## Information

### Agenda Item

**Resolution - Business Development:** Consider a resolution approving the Upland Crossing Public Improvement District (PID) Board Bylaws, as reviewed and recommended by the Upland Crossing PID Advisory Board.

### Item Summary

The Upland Crossing PID was created by the City Council on October 8, 2019, with Resolution No. 2019-R0375. This resolution included the creation of a 5-member Advisory Board to make recommendations to the City Council on the service plan and other plans for the PID.

On July 15, 2021, during their annual Property Owners Meeting, an election was held to select the first members of the Advisory Board. On October 5, 2021, the Advisory Board held their first Regular Meeting, where they adopted bylaws. The Board recommends approval of the bylaws by the City Council.

### Fiscal Impact

None

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager  
Upland Crossing Public Improvement District Advisory Board

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## Attachments

Resolution - Upland Crossing PID  
Bylaws - Upland Crossing PID

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Bylaws approved and adopted by the Advisory Board of the Upland Crossing Public Improvement District at the first of its regularly scheduled meetings on October 5, 2021 are hereby approved by the City Council of the City of Lubbock. Said Bylaws are attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the Council.

Passed by the City Council on \_\_\_\_\_, 2021.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Brianna Gerardi, Business Development Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**Bylaws for City of Lubbock  
Upland Crossing  
Public Improvement District**

**ARTICLE I. NAME**

This Public Improvement District (PID) shall be governed by the City Council, which shall consider recommendations of the PID Advisory Board. The Advisory Board will hereinafter be referred to as the “Advisory Board” or “Board” for “City of Lubbock Upland Crossing Public Improvement District, hereinafter referred to as the “PID.”

**ARTICLE II. PURPOSE**

The purpose of the Advisory Board is to manage the affairs of the PID, as approved by the City Council, in accordance with the Public Improvement District Assessment Act, V.T.C.A., Local Government Code Section 372.001 et. seq. (the “Act”). The purpose of the PID is to fund improvement projects and special supplemental services including, but not limited to (i) the acquisition or construction of drainage facilities or improvements; the design, construction and maintenance of parks and greenspace, fences, ponds, together with any ancillary structures, features, or amenities such as playgrounds, splash pads, pools, athletic facilities, pavilions, community facilities, irrigation, walkways, lighting, benches, trash receptacles, community signage, and any similar items located therein, along with all necessary grading, drainage, and similar infrastructure involved in the maintenance of such parks and greenspace; landscape, hardscape and irrigation; and (ii) payment of costs of establishing, administering and operating the District, as detailed in the Petition Requesting Establishment of a Public Improvement District, hereinafter referred to as the “Petition” and Resolution No. 2019-R0375 creating the public improvement district.

**ARTICLE III. ADVISORY BOARD**

**Section 1. Advisory Board**

- A. Administration.** The PID will be administered and operated by the Governing Body of the City of Lubbock, the City Council. The City Council shall appoint an Advisory Board, which shall be subject to the restrictions imposed by law and these Bylaws. The City Council shall exercise all powers of the PID, and must approve these Bylaws prior to the Bylaws taking effect.
  
- B. PID Address.** The official address of the PID shall be: City of Lubbock Upland Crossing Public Improvement District, Attn: Director of Business Development, P.O. Box 2000, Lubbock, Texas 79457.

- C. Advisory Board Composition.** The Advisory Board shall consist of five (5) members, each of whom shall be nominated by the lot owners of the District and approved by the City Council. Each member of the Advisory Board shall be a lot owner or the representative of a lot owner within the District. Each lot shall be limited to a maximum of one (1) member serving concurrently.
- D. Lot owner.** An owner of undeveloped land or an undeveloped lot shall be considered a lot owner. An owner of a developed retail area shall be considered a lot owner. An owner of an improved residential lot shall be considered a lot owner.
- E. Nomination of Advisory Board members.** All lot owners shall be notified of the nomination process in sufficient time to allow lot owners to participate in the nomination process. All lot owners within the District will be eligible to run for any open position on the Advisory Board and vote for the Advisory Board nominees. Each lot owner will be allowed one ballot for each lot owned. On that ballot, the lot owner may cast one (1) vote for each open seat from a list of nominations for the Advisory Board.
- F. Term of Office.** Each member shall serve a three (3) year term that begins the month following election at the annual meeting and approval by the City Council. The Advisory Board shall stagger terms to maintain the continuity of the Board. For example, if one-half of the Advisory Board members end their term in two years, the other half of the members would end their term in the third year. At the initial meeting, determination of which members will serve the shorter term will be determined by a random, fair lottery of the Board's own choosing.
- G. Nomination Process.** The Director of Business Development shall appoint a Nomination Coordinator from City staff who shall administer the nomination process. The nomination schedule shall be as follows:
1. **Nominations accepted at the annual meeting.**
  2. **Voting shall take place at the annual meeting.**
  3. **Ballots counted at the annual meeting.**
  4. **New Advisory Board members shall take office on the first day of the month after the nomination process concludes if approved by the City Council.**
- H. Nomination discrepancies.** In the case of any other unresolved nomination discrepancies, the current Advisory Board will make the final decision.
- I. Vacancies.** A vacancy in any Advisory Board position shall be filled by the Advisory Board for the unexpired portion of the term of that office. A vacancy in the office of President or Vice President shall be filled by election

by the Advisory Board, from the remaining members for the unexpired portion of the term of that Advisory Board position.

**J. Write-In Candidates.** Write-in candidates are allowed. Write-in candidates who are nominated must be the current owner or the representative of a lot owner within the geographical boundaries of the Upland Crossing PID. A write-in candidate who is nominated but is not a current owner of a lot or the representative of a lot owner within the boundaries of the PID is not qualified, will not be allowed to take office, and those votes will be thrown out and considered invalid. In this case, the qualified candidate with the next highest number of votes will be determined to be the winner.

**Section 2. Compensation**

Advisory Board members, including the President and Vice President, shall receive no salary or compensation for their services.

**Section 3. Committees of the Advisory Board**

Committees of the Advisory Board shall be appointed by the Advisory Board as needed to address matters of specific interest and to make recommendations to the Advisory Board. A committee shall consist of but not be limited to one (1) Advisory Board member. Other lot owners from the district may also serve on the committee at the discretion of the Committee Chairperson. The Advisory Board reserves the right to exercise final action on committee recommendations.

**ARTICLE IV. OFFICERS**

The officers of the Advisory Board shall consist of one (1) President, and one (1) Vice-President. These members shall be nominated by the Advisory Board members annually at the first meeting of the newly nominated Advisory Board. The members shall have the following responsibilities:

**A. President.** The President shall preside at all meetings of the Advisory Board. The President shall call both regular and special meetings of the Advisory Board and establish the agenda for such; shall have the right to vote on all matters before the Advisory Board; shall perform all duties incident to the office and such other duties as shall be prescribed from time to time by the Advisory Board, subject to approval by the City Council; shall appear before the City Council on a periodic basis to give a report on the status of the activities of the District; and shall appear before the City Council, or be represented by his designee, regarding any item being considered by the City Council concerning the District.

**B. Vice President.** The Vice President shall assist the President, and shall exercise the powers of the President during that officer's absence or inability to act; and shall fill a vacancy in the office of the President. The Vice President

shall also perform other duties as from time to time may be assigned by the President or the Advisory Board.

## **ARTICLE V. ADMINISTRATION**

### **Section 1. Meetings**

**A. Yearly Budget and Nominations Meeting.** The PID shall be required to hold one lot owner meeting each year in a public building, and the Advisory Board may choose the location. The City will provide notice of the meeting to all PID property owners, and the PID will pay for such notification costs. The meeting agenda will include a presentation of the PID's plans for the coming year, the PID budget, and nominations of Advisory Board members. The Advisory Board may schedule other meetings as required and will notify the city liaison of their time and location. The City liaison will have the meetings posted on the City website; and in addition to this, the PID Advisory Board may advertise the meetings.

**B. Regular Advisory Board Meetings.** Notice of Advisory Board meetings shall be posted on the City website and district website homepage if available. Any member of the Advisory Board may have an item placed on the agenda by delivering the same in writing to the Director of Business Development no less than four (4) calendar days prior to the date of the Advisory Board meeting. Each agenda of an Advisory Board meeting shall contain an item titled "Citizens Comments" to allow public comment to be made by the general public concerning Advisory Board agenda items for that meeting. However, no official or formal action or vote may be taken on any comment made by citizens during Citizens Comments. The Advisory Board shall hold a minimum of one (1) regular meeting annually and special meetings as needed, within the corporate limits of the city at such place or places as the Advisory Board may from time to time determine.

### **Section 2. Attendance**

Regular attendance at the Advisory Board meetings is required of all members. The Advisory Board will be allowed to review, and at the Advisory board's discretion, recommend and remove any member who misses more than two (2) regular meetings of the Advisory Board (unexcused absences) in a twelve (12) month period.

### **Section 3. Quorum**

A quorum shall be a majority of the Advisory Board, and a quorum shall be present for the conduct of the official business of the District. The act of a majority of members at a meeting at which a quorum is in attendance shall constitute a recommendation of the Advisory Board, unless the recommendation



of a greater number is required by these Bylaws, policies/procedures of the Advisory Board, City Council resolution/ordinance, or state law.

**Section 4. Conflict of Interest**

In the event that a member is aware that he has a conflict of interest or a potential conflict of interest with regard to any particular matter of vote coming before the Advisory Board, the member shall bring the same to the attention of the Advisory Board and shall abstain from discussion and voting thereon.

**Section 5. Advisory Board Relationship with the Lot Owners of the District.**

- A. The Advisory Board shall make available to the lot owners of the district the current Bylaws of the Advisory Board.
- B. Each year the Advisory Board shall make available to the lot owners a current financial statement for the District.
- C. Each year, prior to the presentation of the annual budget and five (5) year plan at the required Public Hearing conducted by the City Council, the Advisory Board shall hold a meeting for the lot owners to present the proposed annual budget and five (5) year plan and to request input from the lot owners of the District.
- D. The City of Lubbock Business Development Specialist or other appointed member of City Staff shall keep minutes and records of all meetings of the Advisory Board and all such minutes and records shall be available to all lot owners at reasonable times and places. PID records shall be retained for at least three years.

**Section 6. Advisory Board Relationship with the City**

In accordance with state law, the Advisory Board will be responsible for the proper discharge of its duties as assigned herein and in the Public Improvement District Policies and Guidelines of the City of Lubbock. Any request for services made to the departments of the City shall be made by the Advisory Board or its designee in writing to the City Manager. The City Manager may approve such request for assistance from the Advisory Board when he finds that such requested services are available within the City and that the Advisory Board has agreed to reimburse the City for the cost of such services provided.

The City shall serve as Financial Manager for the District. City staff shall have the responsibility of the handling, custody, and security of all funds and securities of the District. The city shall see to the entry in the books of the District of full and accurate accounts of all moneys received and paid out on account of the District. The City shall submit a financial report to the Advisory Board at their

regularly scheduled board meetings. A financial report shall be provided to the City Council upon their request concerning activities of the district in a format consistent with other financial reports of the City.

## **ARTICLE VI. GENERAL**

### **Section 1. Annual Budget and Five (5) Year Plan**

After the PID assessment roll becomes available, the Advisory Board, with the assistance of City Staff shall prepare a proposed budget of expected revenues and proposed expenditures for the next ensuing fiscal year and a five (5) year plan. The fiscal year of the District shall commence on October 1 of each calendar year and end on September 30 of the following calendar year. The budget and five (5) year plan shall contain such classifications and shall be in such form as may be prescribed from time to time by the City Council. The budget and five (5) year plan proposed for adoption shall include budgetary information as required by the City Council for approval and adoption. The budget shall be considered adopted upon formal approval by the City Council. Any and all proposed deviations from the Council approved budget shall be submitted to City Council for consideration and approval.

### **Section 2. Financial Books, Records, Audits**

The City shall keep and properly maintain, in accordance with generally accepted accounting principles, complete financial books, records, accounts, and financial statements pertaining to the PID's fund, activities and affairs. The City may cause the District's financial books, records, accounts, and financial statements to be audited at least once each fiscal year in a manner consistent with other City funds.

### **Section 3. Gifts**

The Advisory Board may accept on behalf of the district any contribution, gift, or bequest for the general purpose or for any special purposes, of the District.

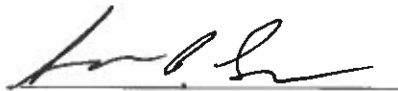
### **Section 4. Code of Ethics**

Each member of the PID, including its officers, employees and agents, shall abide by and be subject to the City Code of Ethics.

### **Section 5. Amendments to Bylaws**

These Bylaws may be amended or repealed and new Bylaws may be adopted by an affirmative vote of lot owners and approval of Lubbock City Council.

These Bylaws have been approved by a majority of the Advisory Board present at the Board Meeting on October 5, 2021.

  
\_\_\_\_\_  
President, Advisory Board  
Upland Crossing PID

APPROVED:  
CITY OF LUBBOCK

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

Date: \_\_\_\_\_



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## Information

### Agenda Item

**Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute Contract 16151, and all related documents, between the City of Lubbock Community Development Department and the U. S. Department of Housing and Urban Development, for the Community Development Block Grant.

### Item Summary

This is a contract for a Community Development Block Grant (CDBG) from the U. S. Department of Housing and Urban Development (HUD). The funds will be used for public service activities, non-public service activities, housing, direct delivery of services, and administration.

The Community Development & Services Board (CDSB) held a public hearing on July 14, 2021, followed by a public board meeting on August 11, 2021, to discuss and approve the 2021 Action Plan draft. The Action Plan is the document that was submitted to HUD and serves as the City's application for, and proposed use of CDBG funds. CDSB recommends to the City Council acceptance of the FY 2021 CDBG funding from HUD.

### Fiscal Impact

The maximum allocation of this grant is \$2,220,520, and there is no fiscal impact on the General Fund as the funds used originate from HUD.

### Staff/Board Recommending

Bill Howerton, Deputy City Manager  
Karen Murfee, Director of Community Development

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## Attachments

Resolution - CDBG from HUD

Contract - CDBG From HUD

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT** the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Community Development Block Grant Funding Agreement 16151 for public service activities, non-public service activities, housing, direct delivery of services, and administration, and all related documents, between the City of Lubbock and the U.S. Department of Housing and Urban Development (HUD). Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**


**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Karen Murfee, Community Development Director

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

# Funding Approval/Agreement

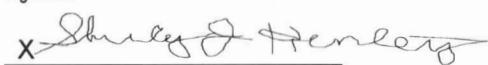
Title I of the Housing and Community Development Act (Public Law 930383)  
 HI-00515R of 20515R

U.S. Department of Housing and Urban Development  
 Office of Community Planning and Development  
 Community Development Block Grant Program

OMB Approval No. 2506-0193  
 exp 5/31/2018

1. Name of Grantee (as shown in item 5 of Standard Form 424) Lubbock	3a. Grantee's 9-digit Tax ID Number 756000590	3b. Grantee's 9-digit DUNS Number 058213893
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) Po Box 2000 Lubbock, TX 79457-0001	4. Date use of funds may begin 10/01/2021	
	5a. Project/Grant No. 1 B-21-MC-48-0022	6a. Amount Approved \$2,220,520
	5b. Project/Grant No. 2	6b. Amount Approved

**Grant Agreement:** This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Shirley J. Henley		Grantee Name (Contractual Organization) Lubbock (City of Lubbock)	
Title CPD Director (817) 978-5933		Title Daniel M. Pope, Mayor	
Signature 	Date (mm/dd/yyyy) 09/13/2021	Signature X	Date (mm/dd/yyyy)

7. Category of Title I Assistance for this Funding Action:  Entitlement, Sec 106(b)	8. Special Conditions (check one) <input type="checkbox"/> None <input checked="" type="checkbox"/> Attached	9a. Date HUD Received Submission 08/12/2021	10. check one <input checked="" type="checkbox"/> a. Orig. Funding Approval <input type="checkbox"/> b. Amendment Amendment Number
		9b. Date Grantee Notified 09/13/2021	
11. Amount of Community Development Block Grant		9c. Date of Start of Program Year (10/01/2021)	
a. Funds Reserved for this Grantee		FY 2021	
b. Funds now being Approved		\$2,220,520	
c. Reservation to be Cancelled (11a minus 11b)			

12a. Amount of Loan Guarantee Commitment now being Approved N/A	12b. Name and complete Address of Public Agency City of Lubbock Po Box 2000 Lubbock, TX 79457-0001
<b>Loan Guarantee Acceptance Provisions for Designated Agencies:</b> The public agency hereby accepts the Grant Agreement executed by the Department of Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.	12c. Name of Authorized Official for Designated Public Agency
	Title
	Signature X

### HUD Accounting use Only

Batch	TAC	Program	Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153											
	176											
			Y					Project Number		Amount		
			Y					Project Number		Amount		
Date Entered PAS (mm/dd/yyyy)	Date Entered LOCCS (mm/dd/yyyy)	Batch Number	Transaction Code	Entered By	Verified By							



8. Special Conditions.

- (a) The period of performance for the funding assistance specified in the Funding Approval (“Funding Assistance”) shall begin on the date specified in item 4 and shall end on September 1, 2028. The Grantee shall not incur any obligations to be paid with such assistance after September 1, 2028.
- (b) The Recipient shall attach a schedule of its indirect cost rate(s) in the format set forth below to the executed Agreement that is returned to HUD. The Recipient shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule. The schedule and any revisions HUD receives from the Recipient shall be incorporated herein and made a part of this Agreement, provided that the rate(s) described comply with 2 CFR part 200, subpart E.

<u>Administering Department/Agency</u>	<u>Indirect cost rate</u>	<u>Direct Cost Base</u>
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____

Instructions: The Recipient must identify each agency or department of the Recipient that will carry out activities under the grant, the indirect cost rate applicable to each department/agency (including if the de minimis rate is used per 2 CFR §200.414(f)), and the type of direct cost base to which the rate will be applied (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rates for subrecipients.

- (c) In addition to the conditions contained on form HUD 7082, the grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Data Universal Numbering System (DUNS); the System for Award Management (SAM.gov.); the Federal Funding Accountability and Transparency Act as provided in 2 CFR part 25, Universal Identifier and General Contractor Registration; and 2 CFR part 170, Reporting Subaward and Executive Compensation Information.
- (d) The grantee shall ensure that no CDBG funds are used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For the purposes of this requirement, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or

highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfield as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) shall be considered a public use for purposes of eminent domain.

- (e) The Grantee or unit of general local government that directly or indirectly receives CDBG funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another such entity in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.
- (f) E.O. 12372-Special Contract Condition - Notwithstanding any other provision of this agreement, no funds provided under this agreement may be obligated or expended for the planning or construction of water or sewer facilities until receipt of written notification from HUD of the release of funds on completion of the review procedures required under Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs, and HUD's implementing regulations at 24 CFR Part 52. The recipient shall also complete the review procedures required under E.O. 12372 and 24 CFR Part 52 and receive written notification from HUD of the release of funds before obligating or expending any funds provided under this agreement for any new or revised activity for the planning or construction of water or sewer facilities not previously reviewed under E.O. 12372 and implementing regulations.
- (g) CDBG funds may not be provided to a for-profit entity pursuant to section 105(a)(17) of the Act unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570 - "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements." (Source - P.L. 113-235, Consolidated and Further Continuing Appropriations Act, 2015, Division K, Title II, Community Development Fund).



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## Information

### Agenda Item

**Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute Contract 16152, and all related documents, between the City of Lubbock Community Development Department and the U.S. Department of Housing and Urban Development, for the Emergency Solutions Grant.

### Item Summary

This is a contract for the Emergency Solutions Grant (ESG) funding from the U.S. Department of Housing and Urban Development (HUD). The funds will be used for Emergency Shelter, Rapid Re-housing, Homeless Management Information System (HMIS) and Administration.

The Community Development & Services Board (CDSB) held a public hearing on July 14, 2021, followed by a public board meeting held on August 11, 2021, to discuss and approve the 2021 Action Plan Draft. The Action Plan is the document that was submitted to HUD and serves as the City's application for, and proposed use of the ESG funds. CDSB recommends acceptance by the City Council of FY 2021 ESG funding from HUD.

### Fiscal Impact

The maximum allocation of this grant is \$180,181, and there is no fiscal impact on the General Fund as the funds used originate from HUD.

### Staff/Board Recommending

Bill Howerton, Deputy City Manager  
Karen Murfee, Director of Community Development

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## Attachments

Resolution - ESG from HUD

Contract - ESG From HUD

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT** the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Funding Agreement 16152 for the Emergency Solutions Grant (ESG) for emergency shelter, rapid rehousing, and homeless management information system (HMIS) and administration, and all related documents, between the City of Lubbock and the U.S. Department of Housing and Urban Development (HUD). Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

**Passed by the City Council on \_\_\_\_\_.**

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Karen Murfee, Community Development Director

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney




# Funding Approval/Agreement

Emergency Solutions Grants Program  
 Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act,  
 42 U.S.C. 11371 et seq.  
 Assistance Listing Number 14.231

**U.S. Department of Housing and Urban  
 Development**  
 Office of Community Planning and Development

1. Recipient Name and Address City of Lubbock Po Box 2000 Lubbock, TX 79457-0001		2. Unique Federal Award Identification Number: E-21-MC-48-0022
		3. Tax Identification Number: 756000590
		4. Unique Entity Identifier (DUNS): 058213893
5. Fiscal Year (yyyy): 2021		
6. Previous Obligation (Enter "0" for initial Fiscal Year allocation)	\$ 0	
7. Amount of Funds Obligated or Deobligated by This Action (+ or -)	\$180,181	
8. Total Amount of Federal Funds Obligated	\$180,181	
9. Total Required Match		
10. Total Amount of Federal Award Including Match		
11. Start Date of Recipient's Program Year (mm/dd/yyyy) 10/01/2021	12. Date HUD Received Recipient's Consolidated Plan Submission 09/12/2021	13. Period of Performance and Budget Period Start Date/Federal Award Date (the date listed in Box 19 for initial Fiscal Year allocation) 09/13/2021
14. Type of Agreement (check applicable box) <input checked="" type="checkbox"/> Initial Agreement (Purpose #1 – Initial Fiscal Year allocation) <input type="checkbox"/> Amendment (Purpose #2 – Deobligation of funds) <input type="checkbox"/> Amendment (Purpose #3 – Obligation of additional funds)		15. Special Conditions and Requirements <input type="checkbox"/> Not applicable <input checked="" type="checkbox"/> Attached  16. Period of Performance and Budget Period End Date (24 months after the date listed in Box 13) 09/12/2023

**General Terms and Conditions:** This Agreement between the U.S. Department of Housing and Urban Development (HUD) and the Recipient is made pursuant to the authority of Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.) and is subject to the applicable annual appropriations act. The Recipient's Consolidated Plan submissions (including the Recipient's approved annual Action Plan and any amendments completed in accordance with 24 CFR Part 91), the Emergency Solutions Grants Program regulations at 24 CFR Part 576 (as now in effect and as may be amended from time to time), and this Agreement, including any special conditions attached to this Agreement, constitute part of this Agreement. Subject to the terms and conditions of this Agreement, HUD will make the funds for the specified Fiscal Year available to the Recipient upon execution of this Agreement by the Recipient and HUD. The funds may be used for costs incurred before the Budget Period under the conditions specified in HUD Notice CPD-21-02 or another prior written approval by HUD, or if the Recipient is not covered by Notice CPD-21-02, under the condition that the costs are otherwise allowable and were incurred on or after the dates listed in box 11 and box 12 or 90 calendar days before the date in box 13 (whichever is later). The Recipient agrees to assume responsibility for environmental review, decision making, and action under 24 CFR Part 58, except where the Recipient is a state and distributes funds to a unit of general local government, the Recipient must require the unit of general local government to assume that responsibility and must comply with the state's responsibilities under 24 CFR 58.4. Without the Recipient's execution of an amendment or other consent, HUD may amend this Agreement to provide additional funds to the Recipient for the specified Fiscal Year or to deobligate funds under this Agreement in accordance with applicable law. The Recipient must comply with the applicable requirements at 2 CFR part 200, as may be amended from time to time. Where any previous or future amendments to 2 CFR part 200 replace or renumber sections of part 200 that are cited specifically in 24 CFR part 576, activities carried out under the grant after the effective date of the part 200 amendments will be governed by the part 200 requirements as replaced or renumbered by the part 200 amendments. If the amount in Box 8 exceeds \$500,000, the Recipient must comply with Appendix XII to 2 CFR part 200—Award Term and Condition for Recipient Integrity and Performance Matters. Nothing in this Agreement shall be construed as creating or justifying any claim against the federal government or the Recipient by any third party.

17. For the U.S. Department of HUD (Name, Title, and Contact Information of Authorized Official) Shirley J. Henley, CPD Director (817) 978-5933	18. Signature 	19. Date (mm/dd/yyyy) 09/13/2021
20. For the Recipient (Name and Title of Authorized Official)  Daniel M. Pope, Mayor	21. Signature	22. Date (mm/dd/yyyy) / /

Funding Information (HUD Accounting Use Only):

PAS Code: 21HAES	Region: 06	Program Code: SOE
Appropriation: 00192	Office: (Fort Worth)	Allotment: 868
Appro Symbol: H		

## Special Conditions and Requirements for FY 2021 ESG Program

### Indirect Cost Rate

The Recipient shall attach a schedule of its indirect cost rate(s) in the format set forth below to the executed Agreement that is returned to HUD. The Recipient shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule. The schedule and any revisions HUD receives from the Recipient shall be incorporated herein and made a part of this Agreement, provided that the rate(s) described comply with 2 CFR part 200, subpart E.

*Instructions: The Recipient must identify each agency or department of the Recipient that will carry out activities under the grant, the indirect cost rate applicable to each department/agency (including if the de minimis rate is used per 2 CFR §200.414(f)), and the type of direct cost base to which the rate will be applied (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rates for subrecipients.*

<u>Recipient Department/Agency</u>	<u>Indirect cost rate</u>	<u>Direct Cost Base</u>
_____	_____ %	_____
_____	_____ %	_____
_____	_____ %	_____



## **Special Conditions and Requirements for FY 2021 ESG Program**

### **Serving Youth Who Lack 3rd Party Documentation or Live in Unsafe Situations**

Notwithstanding any contrary requirements under the McKinney-Vento Homeless Assistance Act or 24 CFR part 576, youth aged 24 and under who seek assistance (including shelter, services or rental assistance) shall not be required to provide third-party documentation that they meet the homeless definition in 24 CFR 578.3 as a condition for receiving assistance; and unaccompanied youth aged 24 and under (or families headed by youth aged 24 and under) who have an unsafe primary nighttime residence and no safe alternative to that residence shall be considered homeless for purposes of assistance provided by any private nonprofit organization whose primary mission is to provide services to youth aged 24 and under and families headed by youth aged 24 and under.



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## Information

### Agenda Item

**Resolution - Community Development:** Consider a resolution authorizing the Mayor to execute Contract 16153, and all related documents, between the City of Lubbock Community Development Department and the U. S. Department of Housing and Urban Development, for the Community Housing Development Organization.

### Item Summary

This is a contract for the HOME Grant from HUD. The funds will be used for Community Housing Development Organization (CHDO) Operations and Projects, Affordable Housing, and Administration.

The Community Development & Services Board (CDSB) held a public hearing on July 14, 2021, followed by a public board meeting on August 11, 2021, to discuss and approve the 2021 Action Plan draft. The Action Plan is the document that was submitted to HUD and serves as the City's application for, and proposed use of HOME Grant funds. CDSB recommends acceptance by the City Council, of the FY 2021 HOME Grant funding from HUD.

### Fiscal Impact

The maximum allocation of this grant is \$997,581, and there is no fiscal impact on the General Fund as the funds used originate from HUD.

### Staff/Board Recommending

Bill Howerton, Deputy City Manager  
Karen Murfee, Director of Community Development

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## Attachments

Resolution - HOME Grant from HUD for CHDO

Contract - HOME Grant from HUD for CHDO

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT** the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, HOME Investment Partnership and Funding Agreement 16153 for the Community Housing Development Organization (CHDO) operations, projects, and administration, and all related documents, between the City of Lubbock and the U.S. Department of Housing and Urban Development (HUD). Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

**Passed by the City Council on \_\_\_\_\_.**

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Karen Murfee, Community Development Director

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

# Funding Approval and HOME Investment Partnerships Agreement

Title II of the National Affordable Housing Act  
Assistance Listings #14.239 – HOME Investment Partnerships Program

1. Grantee Name (must match name associated with 3b.) and Address City of Lubbock  Po Box 2000  Lubbock, TX 79457-0001	2. Grant Number (Federal Award Identification Number (FAIN)) M21-MC480205
	3a. Tax Identification Number 756000590
	3b. Unique Entity Identifier (formerly DUNS) 058213893
	4. Appropriation Number 861/40205
	5. Budget Period Start and End Date FY 2021 through FY 2029

6. Previous Obligation (Enter "0" for initial FY allocation)	\$0.00
a. Formula Funds	\$
b. Community Housing Development Org. (CHDO) Competitive	\$

7. Current Transaction (+ or -)	\$997,581
a. Formula Funds	\$997,581
1. CHDO (For deobligations only)	\$
2. Non- CHDO (For deobligations only)	\$
b. CHDO Competitive Reallocation or Deobligation	\$

8. Revised Obligation	\$
a. Formula Funds	\$
b. CHDO Competitive Reallocation	\$

9. Special Conditions (check applicable box)	10. Federal Award Date (HUD Official's Signature Date)
<input checked="" type="checkbox"/> Not applicable <input type="checkbox"/> Attached	09/13/2021

11. Indirect Cost Rate*	12. Period of Performance															
<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Administering Agency/Dept.</th> <th style="text-align: left; border-bottom: 1px solid black;">Indirect Cost Rate</th> <th style="text-align: left; border-bottom: 1px solid black;">Direct Cost Base</th> </tr> </thead> <tbody> <tr><td>—</td><td>—%</td><td></td></tr> <tr><td>—</td><td>—%</td><td></td></tr> <tr><td>—</td><td>—%</td><td></td></tr> <tr><td>—</td><td>—%</td><td></td></tr> </tbody> </table>	Administering Agency/Dept.	Indirect Cost Rate	Direct Cost Base	—	—%		—	—%		—	—%		—	—%		Date in Box #10 - 09/01/2029
Administering Agency/Dept.	Indirect Cost Rate	Direct Cost Base														
—	—%															
—	—%															
—	—%															
—	—%															

\* If funding assistance will be used for payment of indirect costs pursuant to 2 CFR 200, Subpart E-Cost Principles, provide the name of the department/agency, its indirect cost rate (including if the de minimis rate is charged per 2 § CFR 200.414), and the direct cost base to which the rate will be applied. Do not include cost rates for subrecipients.

This Agreement between the Department of Housing and Urban Development (HUD) and the Grantee is made pursuant to the authority of the HOME Investment Partnerships Act (42 U.S.C. 12701 et seq.). The Grantee's approved Consolidated Plan submission/Application, the HUD regulations at 24 CFR Part 92 (as is now in effect and as may be amended from time to time) and this HOME Investment Partnership Agreement, form HUD-40093, including any special conditions, constitute part of this Agreement. Subject to the provisions of this Agreement, HUD will make the funds for the Fiscal Year specified, available to the Grantee upon execution of this Agreement by the parties. All funds for the specified Fiscal Year provided by HUD by formula reallocation are covered by this Agreement upon execution of an amendment by HUD, without the Grantee's execution of the amendment or other consent. HUD's payment of funds under this Agreement is subject to the Grantee's compliance with HUD's electronic funds transfer and information reporting procedures issued pursuant to 24 CFR 92.502. To the extent authorized by HUD regulations at 24 CFR Part 92, HUD may, by its execution of an amendment, deobligate funds previously awarded to the Grantee without the Grantee's execution of the amendment or other consent. The Grantee agrees that funds invested in affordable housing under 24 CFR Part 92 are repayable when the housing no longer qualifies as affordable housing. Repayment shall be made as specified in 24 CFR Part 92. The Grantee agrees to assume all of the responsibility for environmental review, decision making, and actions, as specified and required in regulation at 24 CFR 92.352 and 24 CFR Part 58.

The Grantee must comply with the applicable requirements at 2 CFR part 200 that are incorporated by the program regulations, as may be amended from time to time. Where any previous or future amendments to 2 CFR part 200 replace or renumber sections of part 200 that are cited specifically in the program regulations, activities carried out under the grant after the effective date of the part 200 amendments will be governed by the 2 CFR part 200 requirements as replaced or renumbered by the part 200 amendments.

The Grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Universal Numbering System and System for Award Management (SAM) requirements in Appendix I to 2 CFR part 200, and the Federal Funding Accountability and Transparency Act (FFATA) in Appendix A to 2 CFR part 170.

The Period of Performance for the funding assistance shall begin on the date specified in item 12 and shall end on September 1<sup>st</sup> of the 5<sup>th</sup> fiscal year after the expiration of the period of availability for obligation. Funds remaining in the account will be cancelled and thereafter not available for obligation or expenditure for any purpose. Per 31 U.S.C. 1552. The Grantee shall not incur any obligations to be paid with such assistance after the end of the Period of Performance.

13. For the U.S. Department of HUD (Name and Title of Authorized Official) Shirley J. Henley, CPD Director (817) 978-5933	14. Signature 	15. Date 09/13/2021
16. For the Grantee (Name and Title of Authorized Official) Daniel M. Pope, Mayor	17. Signature 	18. Date / /

19. Check one:  
 Initial Agreement     Amendment #

20. Funding Information: HOME			
Source of Funds	Appropriation Code	PAS Code	Amount
2021	861/40205	HMF (J)	\$990,911
2020	860/30205	HMF (H)	\$6,041
2019	869/20205	HMF (G)	\$ 629



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### Information

#### Agenda Item

**Resolution - Aviation:** Consider a resolution authorizing the Mayor to execute Amendment No. 6 to Contract 15200, with RS&H, Inc., for the Security Systems Upgrade at Lubbock Preston Smith International Airport.

#### Item Summary

The City of Lubbock (the Airport) has requested RS&H, Inc. under the on-call professional architectural/engineering agreement, to provide a scope and fee for the Security Systems Upgrade at Lubbock Preston Smith International Airport. The Access Control/CCTV system is a vital component of the airport's security system. Upgrades to technology are necessary to ensure compliance with federal regulations.

The following scope items will be included in the design: The existing Access Control System (ACS) will be replaced with a new system that is fully integrated with the existing Video Management System (VMS) headend, including new identity management system, servers, computers, controllers, card reader interface modules, replacement card readers, credentials, software, and ancillary equipment.

The design and bid phase tasks are as follows:

Scope	Amount
Task 1.0 Project Initiation and Investigation Phase	\$32,040
Task 2.0 60% Design Phase	31,920
Task 3.0 90% Design Phase	26,990
Task 4.0 Bid Documents	18,550
Task 5.0 Bid and Award Support Services	10,080
All Services - Lump Sum Total Amendment	\$119,580

Airport staff and Airport Advisory Board recommend approval of Amendment No. 6 with RS&H, Inc. of Jacksonville, Florida, for the Security System Upgrades at Lubbock Preston Smith International Airport. The project schedule is anticipated to take 10 months from the Notice to Proceed (NTP).

#### Fiscal Impact

The cost of Amendment No. 6 with RS&H, Inc. is \$119,580, and is funded in Capital Improvement Project 92361.

#### Staff/Board Recommending

Bill Howerton, Deputy City Manager  
Kelly Campbell, Executive Director of Aviation  
Airport Advisory Board

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### **Attachments**

Resolution Amendment 6- RS&H  
Amendment 6 RS&H  
Budget Detail - CIP 92361 RS&H  
CIP Detail



**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, a Sixth Amendment to that certain Professional Services Agreement dated May 12, 2020 by and between the City of Lubbock and RS&H, Inc., and related documents, in connection with a Security Systems Upgrade at Lubbock Preston Smith International Airport (LPSIA). Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

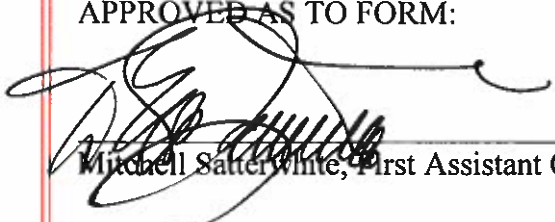
ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Kelly Campbell, Director of Aviation

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Mitchell Satterwhite, First Assistant City Attorney

ccdcs/RES.Contract-RS&H, Inc.  
September 22, 2021

## ***Security Systems Upgrade***

September 9, 2021

City of Lubbock Texas

Lubbock Preston Smith Int'l Airport

LBB Contract No.: 15200.6

RS&H Project No.: 223-1874-006

Prepared by *RS&H Inc.* at the  
direction of Lubbock Preston  
Smith International Airport

***RS&H***

## I PROJECT DESCRIPTION

The City of Lubbock (the Airport) has determined it desires to replace the existing access control system (ACS) and perform upgrades to the existing video management system (VMS) at Lubbock Preston Smith International Airport (LBB). This Work Plan describes the scope of services by RS&H, Inc., the Architect/Engineer (A/E) for the design/bid phase services associated with the Security Systems Upgrades project. This Work Plan includes anticipated Project Schedule and Project Proposal. The Project Schedule defines the durations of work that are the basis of the Work Plan and Project Proposal. The Project Proposal provides the basis of the estimate for the required compensation and defines the task efforts and deliverables required for the Project.

The existing ACS is antiquated and not functioning properly. The Airport wishes to make improvements to the existing VMS. The ACS and VMS are not fully integrated. The work under this project will be to design a replacement ACS that is fully compatible with the VMS and to make improvements to the VMS.

The following scope items will be included in the design:

- The existing ACS will be replaced with a new system that is fully integrated with the existing VMS headend, including new identity management system, servers, computers, controllers, card reader interface modules, replacement card readers, credentials, software, and ancillary equipment.
- The ACS will also integrate the existing gate intercom into the system.
- The existing VMS will have software and hardware upgrades, including replacement of the Pelco network switch and nine (9) associated switches with new Ubiquiti network switches, update firmware on all newer switches, replacement of fiber media converters, provisions for the Contractor to scrub the current system architecture to maximize stability, replacement, or update of the directory server to manage the entire system, and add another recording archiver.

**Project Duration** – The Project's schedule is defined in the accompanying Project Schedule. The actual schedule may vary significantly as the Project design progresses and the scope is further developed. Changes to the project schedule may require changes in the Consultant's efforts and require adjustments to the compensation indicated in this proposal.

## II PROJECT TASKS

Below identified by Task is the anticipated work provided under this work order.

### TASK 1 PROJECT INITIATION AND INVESTIGATION PHASE

Performance of this Task will confirm the general design parameters of scope, establish Airport expectations, review pertinent documentation, and complete a survey of existing conditions.

Specific task breakdowns are as follows:

#### **Task 1.1 Project Kick-Off Meeting**

A virtual kickoff meeting will be held to establish the project design goals, objectives, methods, work schedule, and budget. RS&H will prepare a written summary of the meeting for distribution to all attendees.

#### **Task 1.2 Documentation Review**

RS&H will work with the Airport to collect and review all existing as-built data, including recent projects. The Consultant will identify missing data that will be required to build the base drawings and assemble into a drawing package.

#### **Task 1.3 Survey**

RS&H will conduct an on-site survey to collect data on the existing conditions needed to document the existing security systems.

#### **Task 1.4 Project Management and Discipline Coordination**

Consultant will oversee scheduling, resource allocation, monitoring, oversight, direction, and control for all aspects of the team's efforts including assembly and coordination of all documentation. Schedule, develop agenda, conduct review meetings, issue minutes, and monitor concurrence with stakeholders.

### TASK 2 DESIGN DEVELOPMENT - 60% CONSTRUCTION DOCUMENTS

RS&H will produce a 60% design level of effort for review and comment by the Airport, including the following elements:

- Design drawings
- Draft technical specifications
- Cost estimate

#### **Task 2.1 60% Design Drawings**

Based on consultation with airport staff and the kickoff meeting minutes, RS&H will develop the following 60% drawings and submit for review electronically:

- Reference sheet
- Site plans
- Perimeter gate plans
- Demolition plans
- Terminal layout plans
- Enlarged plans
- Block diagrams
- Risers

**Task 2.2 60% Design Specifications**

RS&H will produce draft technical written specifications for Division 28 electronic security and associated Division 27 communications systems, raceway, and cabling for Owner review.

**Task 2.3 60% Engineers Opinion of Probably Construction Costs**

RS&H will produce an engineer's opinion of probable construction costs for the work. The opinion of probable construction cost represents the judgement of the estimators who have no control over the cost of labor, materials, or equipment, over the Contractor's methods of determining prices, or over competitive bidding, market or negotiating conditions. Accordingly, RS&H cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget, funding or from any estimate or evaluation by RS&H.

**Task 2.4 Quality Control Review**

The Consultant shall conduct in-house quality control reviews of this design development document stage submittal. The review shall cover the design plans and technical specifications prior to submittal to the Airport. The Quality Control review will be performed as follows:

- » Independent QC Review – An independent Architect/Engineer not actively involved in the Project will review for readability, accuracy, appearance, and acceptability.
- » Constructability Review – a comprehensive look at the Project to ensure alignment between plans and specifications, phasing impacts, potential conflicts, etc.

**Task 2.5 60% Design Review Meeting**

Prior to the review meeting, RS&H shall receive Owner review comments and respond in writing. RS&H will conduct a project review meeting via conference call with airport staff to review the 60% design documents, Owner-provided comments, and responses to comments. RS&H will provide a written summary of the meeting and distribute to all attendees. RS&H will incorporate all agreed upon changes into the documents as the design progresses into the next design phase.

**Task 2.6 Project Management**

Consultant will oversee scheduling, resource allocation, monitoring, oversight, direction, and control for all aspects of the team's efforts including assembly and coordination of all documentation.

### TASK 3 CONSTRUCTION DOCUMENTS - 90% DESIGN

RS&H will produce a 90% design level of effort for review and comment by the Airport, including the following elements:

- 90% construction document drawings
- Technical specifications
- Cost estimate

#### **Task 3.1 90% Design Drawings**

Based on results from the 60% design review meeting, RS&H will develop the following 90% drawings and submit for review electronically:

- Updated 60% drawings
- Cable interconnect diagrams
- Schedules
- Details

#### **Task 3.2 90% Design Specifications**

RS&H will produce updated technical written specifications for Division 28 electronic security and associated Division 27 communications systems, raceway, and cabling for Owner review.

#### **Task 3.3 90% Engineer's Opinion of Probable Construction Costs**

RS&H will update the engineer's opinion of probable construction costs for the work. The opinion of probable construction cost represents the judgement of the estimators who have no control over the cost of labor, materials, or equipment, over the Contractor's methods of determining prices, or over competitive bidding, market or negotiating conditions. Accordingly, RS&H cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget, funding or from any estimate or evaluation by RS&H.

#### **Task 3.4 Quality Control Review**

The Consultant shall conduct in-house quality control reviews of this construction document stage submittal. The review shall cover the design plans and technical specifications prior to submittal to the Airport. The Quality Control review will be performed as follows:

- » Independent QC Review – An independent Architect/Engineer not actively involved in the Project will review for readability, accuracy, appearance, and acceptability.
- » Constructability Review – a comprehensive look at the Project to ensure alignment between plans and specifications, phasing impacts, potential conflicts, etc.

#### **Task 3.5 90% Design Review Meeting**

Prior to the review meeting, RS&H shall receive Owner review comments and respond in writing. RS&H will conduct a project review meeting via conference call with airport staff to review the 90% design documents, Owner-provided comments, and responses to comments. RS&H will



provide a written summary of the meeting and distribute to all attendees. RS&H will incorporate all agreed upon changes into the documents as the design progresses into the next design phase.

#### **Task 3.6 Project Management**

Consultant will oversee scheduling, resource allocation, monitoring, oversight, direction, and control for all aspects of the team's efforts including assembly and coordination of all documentation.

### **TASK 4 BID DOCUMENTS**

RS&H will update the 90% construction documents to produce a set of final bid documents suitable for providing to potential bidders, including the following elements:

- Final bid document drawings
- Final specifications
- Final cost estimate

#### **Task 4.1 Final Bid Documents**

Based on results from the 90% design review meeting, RS&H will update the 90% construction document drawings to produce the final bid drawings.

#### **Task 4.2 Final Specifications**

RS&H will produce updated technical written specifications for Division 1 general, Division 28 electronic security and associated Division 27 communications systems, raceway, and cabling for bidding.

#### **Task 4.3 Final Engineer's Opinion of Probable Construction Costs**

RS&H will produce the final engineer's opinion of probable construction costs for the work. The opinion of probable construction cost represents the judgement of the estimators who have no control over the cost of labor, materials, or equipment, over the Contractor's methods of determining prices, or over competitive bidding, market or negotiating conditions. Accordingly, RS&H cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget, funding or from any estimate or evaluation by RS&H.

#### **Task 4.4 Project Management and Project Coordination**

Consultant will oversee scheduling, resource allocation, monitoring, oversight, direction, and control for all aspects of the design team's efforts including assembly and coordination of all documentation.

**TASK 5 BID AND AWARD SUPPORT SERVICES**

RS&H will assist the Airport with bidding and award support services after completion of the design as follows:

**Task 5.1 Pre-Proposal Conference**

RS&H will virtually attend a Pre-Proposal Conference conducted by the Airport, receive comments, and record minutes of the conference for distribution to the prospective contractors and other interested parties.

**Task 5.2 Addenda and Responses to Bidder Questions**

RS&H will prepare, and issue all required addenda to revise the project construction and contract documents prepared by RS&H to: (1) provide clarifications or (2) indicate approvals of substitutions.

**Task 5.3 Bid Analysis**

RS&H will evaluate the received bids for correctness, qualifications of the apparent low bidder, DBE participation goals, etc., and make recommendation of award based solely on the apparent qualified, low bidder. RS&H cannot and does not guarantee that bids will not vary from the opinion of probable construction cost estimate.

**Task 5.4 Project Management and Project Coordination**

Consultant will oversee scheduling, resource allocation, monitoring, oversight, direction, and control for all aspects of the design team’s efforts including assembly and coordination of all documentation.

**TASK 6 CONSTRUCTION ADMINISTRATION SERVICES**

CA services will be provided by follow-on Work Order once the contract is awarded to the successful Bidder by the City.

**III PROPOSED PROJECT SCHEDULE**

The Project’s schedule is anticipated as follows:

RS&H Receives Executed Agreement	NTP
Documentation Review and Survey	1 month after NTP
Completion of 60% Design	2 months additional
Owner Review	2 weeks additional
Completion of 90% Design	2 months additional
Owner Review	2 weeks additional
Completion of Bid Documents	1 month additional
City Approval	1 month additional (approx. pending City Processes)

Solicitation	1 month additional (approx. pending City Processes)
Pre-Proposal Conference and Addenda	2 weeks additional (approx. pending City Processes)
Receipt of Bids and Bid Analysis	2 weeks additional (after receipt of bids)
<b>Total Project Schedule</b>	<b>10 months from NTP (approx. pending City Processes)</b>

The actual schedule may vary significantly as the design progresses. Changes to the project scope may require changes to the project schedule. Although that is not anticipated, if such changes occur and are significant, it may require an increase to the compensation indicated in the Project Proposal. The fee for all tasks presented in this proposal is indicated in attachment B.

#### IV PROFESSIONAL SERVICES FEE AND FEE TYPE

RS&H will provide the above referenced services for a Fixed Lump Sum Fee of \$119,580 professional services. See Attachment B for a breakdown of costs.

Should scope items/activities/efforts/durations be modified at the request of the Airport or need to be adjusted based on design/construction scheduling, the Consultant Team will need to modify the fee to accommodate the changes. Such changes will be compensated through an amendment (through Additional Services requested by the Consultant) to the Task Order or similar vehicle. Effort, fee, and schedule adjustments resulting from a change in scope will be assessed and approved by the Airport prior to the execution of the change.

#### V ASSUMPTIONS AND EXCLUSIONS

This scope is based on the following:

1. The Airport will provide existing as-built data, including recent projects.
2. No major design revisions after the 90% submission.
3. Permitting is not included.
4. Services not explicitly defined in this scope of work are not included.

SCOPE OF WORK

CITY OF LUBBOCK

\_\_\_\_\_  
Daniel M. Pope  
Mayor

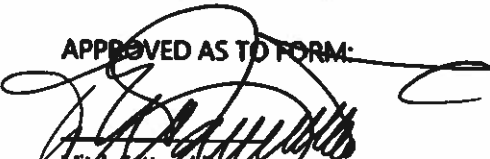
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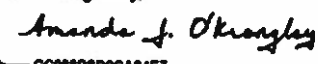
\_\_\_\_\_  
Rebecca Garza  
City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Kelly Campbell  
Executive Director of Aviation

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Mitch Satterwhite  
First Assistant

RS&H Inc.  
DocuSigned by:  
  
\_\_\_\_\_  
CC0888D9C84E7  
Amanda J. O'Krongley  
Vice President



SECURITY SYSTEMS UPGRADES

PROJECT PROPOSAL 15200.6  
PROJECT STAGE - DESIGN AND BID PHASE TASKS

SCOPE / TASK TITLE	Project Officers/ Directors	Project Manager	Senior Engineer	Engineer	Technician	SM Manager	Admin Asst's	TOTAL	
<b>Task 1.0 Project Initiation and Investigation Phase</b>									
Task 1.1 Project Kick-off Meeting	1		3	1			2	7	
Task 1.2 Documentation Review			16	15			2	34	
Task 1.3 Survey			32	32			2	66	
Task 1.4 Project Management	1		8				8	17	
<b>TOTAL HOURS</b>	<b>2</b>	<b>0</b>	<b>59</b>	<b>49</b>			<b>14</b>	<b>124</b>	
<b>RATE</b>	<b>\$367.62</b>	<b>\$244.67</b>	<b>\$302.65</b>	<b>\$178.66</b>	<b>\$108.96</b>	<b>\$216.00</b>	<b>\$89.16</b>		
<b>TOTAL DIRECT LABOR</b>	<b>\$ 735</b>	<b>\$ -</b>	<b>\$ 17,808</b>	<b>\$ 8,754</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,248</b>	<b>\$ 28,600</b>	
<b>OTHER DIRECT NON-SALARY COSTS</b>									
<b>SPECIALTY SUBCONSULTANTS</b>									
Survey								\$0	
<b>TOTAL SPECIALTY SUBCONSULTANTS</b>								<b>\$0</b>	
<b>TRAVEL</b>									
	#People	#Days	Airfare @	Car @	Lodging @	Per Diem @	No. of Times		
Survey	2	3	\$1,100	\$65	\$130	\$80	1	\$3,395	
<b>TOTAL TRAVEL</b>								<b>\$3,395</b>	
<b>MILEAGE</b>									
		Miles @	\$0.50						
	73							\$37	
<b>TOTAL ODC's</b>								<b>\$3,432</b>	
<b>Total Lump Sum Fee for:</b>									
Task 1.0 Project Initiation and Investigation Phase								16	32,040
<b>Task 2.0 60% Design Phase</b>									
Task 2.1 60% Design Drawings			8	48	24	8		88	
Task 2.2 Draft Technical Specifications			8	4			8	20	
Task 2.3 Cost Estimate			16	8				24	
Task 2.4 Quality Control			4			1		5	
Task 2.5 60% Design Review Meeting			4	2			2	8	
Task 2.6 Project Management	2		8					10	
<b>TOTAL HOURS</b>	<b>2</b>	<b>0</b>	<b>48</b>	<b>62</b>	<b>24</b>	<b>9</b>	<b>10</b>	<b>155</b>	
<b>RATE</b>	<b>\$367.62</b>	<b>\$244.67</b>	<b>\$302.65</b>	<b>\$178.66</b>	<b>\$108.96</b>	<b>\$216.00</b>	<b>\$89.16</b>		
<b>TOTAL DIRECT LABOR</b>	<b>\$ 735</b>	<b>\$ -</b>	<b>\$ 14,537</b>	<b>\$ 11,077</b>	<b>\$ 2,615</b>	<b>\$ 1,944</b>	<b>\$ 892</b>	<b>\$ 31,800</b>	
<b>OTHER DIRECT NON-SALARY COSTS</b>									
<b>REPRODUCTION</b>									
	# DWGS	# PAGES							
	@	@							
	\$0.96	\$0.10							
			#SETS						
Drawings	50		1					\$49	
Reports/Specifications		100	1					\$10	
<b>TOTAL REPRODUCTION</b>								<b>\$59</b>	
<b>POSTAGE/DELIVERY</b>									
	# PCKGS	# PCKGS							
	@	@							
	\$25.00	\$5.00							
Drawings and Specifications	2	2						\$50	
<b>TOTAL POSTAGE/DELIVERY</b>								<b>\$50</b>	
<b>TRAVEL</b>									
	#People	#Days	Airfare @	Car @	Lodging @	Per Diem @	No. of Times		
Design Review Meeting	1	1	\$1,100	\$65	\$130	\$80	0	\$0	
<b>TOTAL TRAVEL</b>								<b>\$0</b>	
<b>MILEAGE</b>									
		Miles @	\$0.50						
	0							\$0	
<b>TOTAL ODC's</b>								<b>\$119</b>	
<b>Total Lump Sum Fee for:</b>									
Task 2.0 60% Design Phase								15	31,920



SCOPE / TASK TITLE	Project Officer/ Director	Project Manager	Senior Engineer	Engineer	Technician	BIM Manager	Admin Asset's	TOTAL
<b>Task 3.0 90% Design Phase</b>								
Task 3.1 90% Design Drawings			8	40	12	2		62
Task 3.2 Technical Specifications			16	4			4	24
Task 3.3 Cost Estimate			8	4				12
Task 3.4 Quality Control			4			1		5
Task 3.5 90% Design Review Meeting			4	2			2	8
Task 3.6 Project Management	2		8					10
<b>TOTAL HOURS</b>	<b>2</b>	<b>0</b>	<b>48</b>	<b>50</b>	<b>12</b>	<b>3</b>	<b>6</b>	<b>104</b>
<b>RATE</b>	<b>\$367.62</b>	<b>\$244.87</b>	<b>\$302.85</b>	<b>\$178.66</b>	<b>\$108.96</b>	<b>\$218.00</b>	<b>\$89.16</b>	
<b>TOTAL DIRECT LABOR</b>	<b>\$ 735</b>	<b>\$ -</b>	<b>\$ 14,537</b>	<b>\$ 8,933</b>	<b>\$ 1,308</b>	<b>\$ 648</b>	<b>\$ 535</b>	<b>\$ 26,696</b>
<b>OTHER DIRECT NON-SALARY COSTS</b>								
<b>REPRODUCTION</b>	<b># DWGS</b>	<b># PAGES</b>						
	\$0.98	\$0.10	#SETS					
Drawings	100		2					
Reports/Specifications		200	2					
<b>TOTAL REPRODUCTION</b>			<b>\$238</b>					
<b>POSTAGE/DELIVERY</b>	<b># PCKGS</b>	<b># PCKGS</b>						
	\$25.00	\$5.00						
Drawings and Specifications	2	2						
<b>TOTAL POSTAGE/DELIVERY</b>			<b>\$60</b>					
<b>SPECIALTY SUBCONSULTANTS</b>								
Peer Review								
<b>TOTAL SPECIALTY SUBCONSULTANTS</b>	<b>\$0</b>							
<b>TRAVEL</b>	<b>#People</b>	<b>#Days</b>	<b>Airfare @</b>	<b>Car @</b>	<b>Lodging @</b>	<b>Per Diem @</b>	<b>No. of Times</b>	
Design Review Meeting	1	2	\$1,100	\$65	\$130	\$80	0	\$0
<b>TOTAL TRAVEL</b>								<b>\$0</b>
<b>MILEAGE</b>	<b>0</b>	<b>Miles @</b>	<b>\$0.50</b>					
<b>TOTAL ODC's</b>	<b>\$298</b>							
<b>Total Lump Sum Fee for Task 3.0 90% Design Phase</b>								
								<b>26,994</b>
<b>Task 4.0 Bid Documents</b>								
Task 4.1 Final Bid Document Drawings			8	32	4			44
Task 4.2 Final Specifications			12	2			4	18
Task 4.3 Final Cost Estimate			6	2				8
Task 4.4 Project Management	2		6					10
<b>TOTAL HOURS</b>	<b>2</b>	<b>0</b>	<b>34</b>	<b>36</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>72</b>
<b>RATE</b>	<b>\$367.62</b>	<b>\$244.87</b>	<b>\$302.85</b>	<b>\$178.66</b>	<b>\$108.96</b>	<b>\$218.00</b>	<b>\$89.16</b>	
<b>TOTAL DIRECT LABOR</b>	<b>\$ 735</b>	<b>\$ -</b>	<b>\$ 10,297</b>	<b>\$ 6,432</b>	<b>\$ 436</b>	<b>\$ -</b>	<b>\$ 357</b>	<b>\$ 18,256</b>
<b>OTHER DIRECT NON-SALARY COSTS</b>								
<b>REPRODUCTION</b>	<b># DWGS</b>	<b># PAGES</b>						
	\$0.98	\$0.10	#SETS					
Drawings	100		2					
Reports/Specifications		200	2					
<b>TOTAL REPRODUCTION</b>			<b>\$238</b>					
<b>POSTAGE/DELIVERY</b>	<b># PCKGS</b>	<b># PCKGS</b>						
	\$25.00	\$5.00						
Drawings and Specifications	2	2						
<b>TOTAL POSTAGE/DELIVERY</b>			<b>\$60</b>					
<b>SPECIALTY SUBCONSULTANTS</b>								
Peer Review								
<b>TOTAL SPECIALTY SUBCONSULTANTS</b>	<b>\$0</b>							
<b>TRAVEL</b>	<b>#People</b>	<b>#Days</b>	<b>Airfare @</b>	<b>Car @</b>	<b>Lodging @</b>	<b>Per Diem @</b>	<b>No. of Times</b>	
Submital Review with Airport	0	0	\$1,100	\$65	\$130	\$80	1	\$0
<b>TOTAL TRAVEL</b>								<b>\$0</b>
<b>MILEAGE</b>	<b>0</b>	<b>Miles @</b>	<b>\$0.50</b>					
<b>TOTAL ODC's</b>	<b>\$298</b>							
<b>Total Lump Sum Fee for Task 4.0 Bid Documents</b>								
								<b>18,554</b>



SCOPE / TASK TITLE	Project Officers/ Directors	Project Manager	Senior Engineer	Engineer	Technician	BIM Manager	Admin Asst's	TOTAL	
<b>Task 5.0 Bid and Award Support Services</b>									
Task 5.1 Pre-Proposal Conference			2					2	
Task 5.2 Addenda and Responses to Bidder Questions			8	12			2	22	
Task 5.3 Bid Analysis			4	2				6	
Task 5.4 Project Management	2		6					8	
<b>TOTAL HOURS</b>	<b>2</b>	<b>0</b>	<b>22</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>24</b>	
<b>RATE</b>	<b>\$367.62</b>	<b>\$244.67</b>	<b>\$302.85</b>	<b>\$178.66</b>	<b>\$108.96</b>	<b>\$218.00</b>	<b>\$89.16</b>		
<b>TOTAL DIRECT LABOR</b>	<b>\$ 735</b>	<b>\$ -</b>	<b>\$ 6,663</b>	<b>\$ 2,501</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 178</b>	<b>\$ 10,078</b>	
<b>TRAVEL</b>									
	#People	#Days	Airfare @	Car @	Lodging @	Per Diem @	No. of Times		
Bid Meeting	1	2	\$1,100	\$85	\$130	\$80	0	\$0	
<b>TOTAL TRAVEL</b>								<b>\$0</b>	
<b>MILEAGE</b>									
	0	Miles @	\$0.50					\$0	
<b>TOTAL ODC's</b>								<b>\$0</b>	
Total Lump Sum Fee for:	Task 5.0 Bid and Award Support Services							\$	10,000
<b>ALL SERVICES - LUMP SUM</b>								<b>\$ 119,580</b>	

**City of Lubbock, TX  
Capital Project  
Project Cost Detail  
October 26, 2021**

Capital Project Number: 92361  
 Capital Project Name: Terminal Building Improvements

	<b>Budget</b>
<i>Encumbered/Expended</i>	
RS&H Amendment #7 (original design development)	\$ 1,496,751
RS&H Amendment #8 (additional scope)	439,992
Hensel Phelps (preconstruction fee)	172,387
Kutchins & Groh (independent fee analysis)	4,525
Kutchins & Groh (independent fee analysis)	5,131
Procurement Expense	204
RS&H Amendment #11 (construction admin-GMP#1)	215,371
Hensel Phelps Amendment #1 (GMP#1)	4,221,550
Hensel Phelps Amendment #2 (GMP#2)	32,467,367
RS&H Amendment #12 (construction admin GMP#2)	2,997,888
Kutchins & Groh (independent fee analysis)	4,400
Par Kut International (deposit)	4,498
Arconas Corporation (gate counter podium w/ glass)	14,569
Par Kut International (6ft x 12ft building with canopy)	17,992
Procurement Expense	860
Procurement Expense	230
 <i>Agenda Item October 26, 2021</i>	
RS&H Amendment #6 (additional scope)	119,580
<b><i>Encumbered/Expended To Date</i></b>	<b>42,183,295</b>
 <i>Estimated Costs for Remaining Appropriation</i>	
Contingency	3,540,222
<b><i>Remaining Appropriation</i></b>	<b>3,540,222</b>
 <b>Total Appropriation</b>	 <b>\$ 45,723,517</b>



<i>Funding Detail</i>	Funding to Date	Unappropriated Planning Years						Total Funding
		FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	
Airport Capital Project Fund	1,177,761	0	0	0	0	0	0	1,177,761
Federal Grant Funding	18,088,646	0	0	0	0	0	0	18,088,646
FY 2014 Airport Revenue CO's	204,489	0	0	0	0	0	0	204,489
FY 2015 Airport Revenue CO's	2,342,250	0	0	0	0	0	0	2,342,250
FY 2015 PFC Revenue CO's	381,729	0	0	0	0	0	0	381,729
FY 2016 PFC Revenue CO's	283,605	0	0	0	0	0	0	283,605
FY 2019 Airport Revenue CO's	7,135,000	0	0	0	0	0	0	7,135,000
FY 2019 PFC Revenue CO's	15,340,000	0	0	0	0	0	0	15,340,000
<b>Total Funding Sources</b>	<b>44,953,480</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>44,953,480</b>

<i>Operating Budget Impact</i>	Unappropriated Planning Years						Total Impact
	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	
Facilities Maintenance and Custodial	100,000	60,000	0	0	0	0	160,000
<b>Total Operating Budget Impact</b>	<b>100,000</b>	<b>60,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>160,000</b>



**Information**

**Agenda Item**

**Resolution - Public Transit Services:** Consider a resolution authorizing the Mayor to execute Contract 15860, with Southern Tire Mart, LLC, for the supply of tires for Citibus paratransit vans and staff support vehicles.

**Item Summary**

Due to the ending of the Citibus tire agreement for paratransit vans and staff support vehicles a new agreement is needed for the purchase of tires. Citibus paratransit vans and staff support vehicles average a combined monthly mileage of 83,500 miles. Citibus is looking for the most cost efficient tires, per specification/delivery days, for the amount of tires Citibus purchases.

The City of Lubbock issued ITB 21-15860-KM for tires for Citibus, and in response, bids were received and opened on May 20, 2021, from six (6) vendors, as shown in the attached Bid Tabulation Sheets. The responsive companies only bid on the items for the tires that they are able to provide. Bids were broken down into individual line items for lowest bidder of each item. Contracts are awarded by line item and unit price. Therefore, multiple contracts will be awarded for this bid. Contracts are awarded for one year, with 2 one-year extensions. The total amount of the award is estimated based on expected quantities and actual expenditures may differ depending on actual quantities purchased. The price per unit will not change.

The following vendors submitted the low bids for each line item.

<b>Vendor</b>	<b>Line Item(s)</b>	<b>Annual Amount</b>	<b>3-Year Total</b>
McWhorters, Ltd., Lubbock, Texas	1 and 2	\$5,017.58	\$15,052.74
Bill Williams Tire, Lubbock, Texas	3 and 4	\$5,832.00	\$17,496.00
<b>***Southern Tire Mart, LLC, Columbia, Mississippi</b>	<b>5</b>	<b>\$19,400.00</b>	<b>\$58,200.00</b>

\*\*\*Only contracts that are expected to exceed \$50,000 over the life of the contract require City Council approval.

**Fiscal Impact**

The annual cost of this contract is \$19,400 (\$58,200 for three years), and is budgeted in the FY 2021-2022 Citibus budget. There will be no additional cost to the City of Lubbock.

**Staff/Board Recommending**

Bill Howeton, Deputy City Manager  
Chris Mandrell, General Manager of Citibus

## **Attachments**

Resolution - Tires - Southern Tire Mart

Citibus/Southern Tire Mart Contract

Citibus Tire Bid Tab

Citibus - Tires Project Summary



**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT** the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Contract No. 15860, as per ITB 21-15860-KM, to provide tires for Citibus, by and between the City of Lubbock and Southern Tire Mart, LLC of Columbia, Mississippi, and related documents. Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

**Passed by the City Council on \_\_\_\_\_.**

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Bill Howerton, Deputy City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Ryan Brooke, Assistant City Attorney

RES.Contract 15860-Citibus Tires  
9.3.21

**City of Lubbock, TX**  
**Contract for**  
**Tires for Citibus**

**THIS CONTRACT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Lubbock ("City"), and **Southern Tire Mart, LLC.** ("Contractor").

**WITNESSETH:**

WHEREAS, the City of Lubbock duly advertised for bids for **Tires for Citibus** and bids were received and duly opened as required by law; and

WHEREAS, after careful consideration of the bid submitted by Contractor, the City authorized the execution, in the name of the City of Lubbock a contract with said Contractor covering the purchase and delivery of the said **Tires for Citibus**.

NOW, THEREFORE, in consideration of the mutual agreement contained herein, as well as the financial consideration hereinafter referred to, the parties hereby covenant and agree as follows:

1. In accordance with City's specifications and Contractor's bid, copies of which are attached hereto and made part hereof, Contractor will deliver to the City, **Tires for Citibus** and more specifically referred to as Item five (5) on the bid submitted by the Contractor or in the specifications attached hereto.
2. The City promises and agrees to employ, and does employ, the Contractor to cause to be done the work provided for in this Contract and to complete and finish the same according to the attached specifications, offer, and terms and conditions contained herein.
3. The contract shall be for a term of one (1) year, with the option of two (2), one year extensions, said date of term beginning upon formal approval. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.
4. Prices quoted shall be set for a period for one (1) year, said date of term beginning upon City Council date of formal approval. The rate may be adjusted upward or downward at this time at a percentage not to exceed the effective change in Consumer Price Index (CPI) or Product Price Index (PPI), which ever is most appropriate for the specific contract for the previous 12-months at the City's discretion, the effective change rate shall be based on either the local or national index average rate for all items. If agreement cannot be reached, the contract is terminated at the end of the current contract period.
5. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written



notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.

6. Contractor shall at all times be an independent contractor and not an agent or representative of City with regard to performance of the Services. Contractor shall not represent that it is, or hold itself out as, an agent or representative of City. In no event shall Contractor be authorized to enter into any agreement or undertaking for or on behalf of City.

7. Insurance Requirements

**SECTION A.** Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. **THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.**

**SECTION B.** The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

**SECTION C.** Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

TYPE OF INSURANCE	COMBINED SINGLE LIMIT
<b>GENERAL LIABILITY</b>	
<input checked="" type="checkbox"/> Commercial General Liability	General Aggregate <u>\$1,000,000</u>
<input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurrence	Products-Comp/Op AGG <u>X</u>
<input type="checkbox"/> W/Heavy Equipment	Personal & Adv. Injury <u>X</u>
<input checked="" type="checkbox"/> To Include Products of Complete Operation Endorsements	Contractual Liability <u>X</u>
<b>AUTOMOTIVE LIABILITY</b>	
<input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos	
Owned Autos	Per Occurrence <u>\$1,000,000</u>
<input checked="" type="checkbox"/> WORKERS COMPENSATION – STATUTORY AMOUNTS OR OCCUPATIONAL MEDICAL AND DISABILITY	
<input checked="" type="checkbox"/> EMPLOYERS' LIABILITY	<u>\$1,000,000</u>
<b>OTHER: COPIES OF ENDOSEMENTS ARE REQUIRED</b>	
<input checked="" type="checkbox"/> City of Lubbock named as additional insured on Auto/General Liability on a primary and non-contributory bases.	
<input checked="" type="checkbox"/> To include products of completed operations endorsement.	
<input checked="" type="checkbox"/> Waiver of subrogation in favor of the City of Lubbock on all coverages, except _____	

**IMPORTANT: POLICY ENDORSEMENTS**

The Contractor will provide copies of the policies without expense, to the City and **all endorsements** thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Contractor.



## REQUIRED PROVISIONS

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

## NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management  
City of Lubbock  
1314 Avenue K, Floor 9  
Lubbock, Texas 79401

**SECTION D.** Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

8. Neither the City nor the Contractor shall assign, transfer or encumber any rights, duties or interests accruing from this Contract without the written consent of the other.
9. The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.
10. This agreement includes incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause Citibus to be in violation of the FTA terms and conditions.



11. At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within 30 days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.
12. All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
13. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.
14. Contractor acknowledges by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between these terms and conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.
15. The Contractor (i) does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, "foreign terrorist organization" shall have the meaning given such term in Section 2252.151, Texas Government Code.
16. **The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.**

To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Contractor agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the

entity; or (B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

17. Pursuant to Section 2271.002 of the Texas Government Code, a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.
18. The Contractor shall retain all information received from or concerning the City and the City's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the City, unless otherwise required by law.
19. The Contractor shall indemnify and save harmless the city of Lubbock and its elected officials, officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any kind, character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, to the extent arising out of, related to or occasioned by, the negligent acts of the Contractor, its agents, employees, and/or subcontractors, related to the performance, operations or omissions under this agreement and/or the use or occupation of city owned property. The indemnity obligation provided herein shall survive the expiration or termination of this agreement.
20. This Contract consists of the following documents set forth herein; Invitation to Bid No. 21-15860-KM, Specifications, and the Bid Form.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

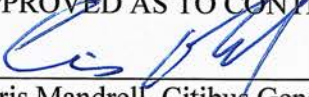
CITY OF LUBBOCK

\_\_\_\_\_  
Daniel M. Pope, Mayor

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Chris Mandrell, Citibus General Manager

APPROVED AS TO FORM

  
\_\_\_\_\_  
Ryan Brooke, Assistant City Attorney

CONTRACTOR

BY   
\_\_\_\_\_  
Authorized Representative

Richard Conwill  
\_\_\_\_\_  
Print Name

800 Highway 98  
\_\_\_\_\_  
Address

Columbia, MS 39429  
\_\_\_\_\_  
City, State, Zip Code

## II. GENERAL CONDITIONS

\*\*\*\* PLEASE READ CAREFULLY \*\*\*\*

These General Conditions apply to all bids and become a part of the terms and conditions of any bid submitted. The City shall mean the City of Lubbock.

- 1 Quantities: The quantities appearing in this Invitation to Bid are approximate only and the City reserves the right to increase, decrease or delete any or all items. If the quantities of materials to be furnished are increased, such increase shall be paid for according to the unit prices established for the item. In making its bid hereunder, the Seller expressly recognizes the rights of the City provided herein, and further recognizes that the Seller shall have no claims against the City for anticipated profits for the quantities called for, diminished or deleted.
- 2 Product Guarantee: Seller guarantees equipment or product offered will meet or exceed specifications identified in this bid invitation. The Seller shall, upon request, replace any equipment or product proved to be defective and make any and all adjustments necessary without any expense to the City. If at any time, the equipment or product cannot satisfactorily meet the requirements of the specifications, the Seller shall upon written request from the City, promptly remove such equipment or product without any further expense to the City. At the City's request, Seller will provide evidence sufficient to demonstrate such equipment or product meets the foregoing.
- 3 Invoices: Seller shall submit separate invoices, in duplicate, on each purchase order or purchase release after each delivery. Invoices shall indicate the purchase order or purchase release number and the supply agreement number if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable, shall be attached to the invoice. Mail to Accounts Payable, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457. Payment shall not be due unless and until the Seller shall not be in default under the terms of the contract, and until the above instruments are submitted after delivery. CITY MAY MAKE PAYMENTS FOR PURCHASES UNDER THIS CONTRACT USING THE CITY'S MASTERCARD PURCHASING CARD (PCARD). THE SELLER AGREES TO ACCEPT PCARD PAYMENTS WITHOUT ANY ADDITIONS OR SURCHARGES.
- 4 Delivery Delay: When delivery delay can be foreseen, the Seller shall give prior notice to the Purchasing Director, who shall have the right to extend the delivery date if reasons for delay appear acceptable. The Seller must keep the Purchasing Director informed at all times of the status of the order.
- 5 Damage Assessment: Default in any manner under the contract, including, but not limited to default on promised delivery, without acceptable reasons, or failure to meet specifications hereunder authorizes the Purchasing Director to purchase goods elsewhere and charge any increase in cost and handling to the defaulting Seller, and/or exercise any and all rights available to it by law, equity and/or under the terms of the contract. Every effort will be made by the Purchasing Office to locate the goods at the same or better price as than originally contracted.
- 6 Late Delivery Fee: The City will also have the option to charge the vendor a fee of \$50.00 per vehicle per day for late delivery. Late fee applies when vendor has not requested and received prior written permission and approval from the ordering entity to make delivery after the number of days established by the contract or the purchase.
- 7 Packaging: Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Seller's name and address. (b) Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable, (c) Container number and total number of containers, e.g., box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- 8 Delivery Time: Deliveries will be accepted only during receiving hours: 9:00 A.M. - 3:30 P.M., Monday through Friday, except on City holidays, at the designated location.
- 9 Damage: The City assumes no liability for goods delivered in damaged or unacceptable condition. The Seller must handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City.
- 10 No Warranty By The City Against Infringements: As part of the contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to the contract will give rise to the rightful claim of any third person by way of infringement of the like. The City makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall The City be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify the City to this effect in writing within two weeks after the signing of the contract. If the City does not receive notice and is subsequently held liable for the infringement or the like, Seller will save The City harmless. If Seller in good faith ascertains the production of the goods in accordance with the specifications will result in infringement or the like, the contract shall be null and void.
- 11 Material Safety Data Sheets: Seller shall provide the City of Lubbock with current Material Safety Data Sheets (MSDS) for each chemical defined as hazardous under the Texas Hazard Communication Act (every chemical bearing any manner of warning label on the container) to comply with provisions of the Texas Hazard Communication Act, Title 6, Subchapter D, Chapter 502, Texas Health and Safety Code Ann. (This Act is corollary to OSHA Standard 29 CRF 1910.1200, which is generally known as the Right to Know Law.)



- 12 Shipment Under Reservation Prohibited: Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
- 13 Title & Risk Of Loss: The title and risk of loss of the goods shall not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery as provided herein.
- 14 No Replacement of Defective Tender: Every tender of delivery of goods must fully comply with all provisions of the contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach of the contract and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may reasonably notify the City of his intention to cure and may then make a conforming tender within the Contract time but not afterward.
- 15 Gratuities: The City may, by written notice to the Seller, cancel the contract or purchase order without liability to Seller if it is determined by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the City of Lubbock with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
- 16 Special Tools & Test Equipment: If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filing this order, such special tooling or equipment and any process sheets related thereto shall become the property of the City and to the extent feasible shall be identified by the Seller as such.
- 17 Non-Arbitration: The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.
- 18 Warranty-Price: a. The price to be paid by the City shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by other parties for products of the kind and specification covered by the contract for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by other, or in the alternative. The City may cancel the contract without liability to Seller for breach or Seller's actual expenses. b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for commission, percentage brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the City shall have the right in addition to any other right or rights to cancel the contract without liability and to deduct from the Contract price, or otherwise recover the full amount of such claimed commission, percentage, brokerage, or contingent fee.
- 19 Safety Warranty: Seller warrants that the product sold to the City shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act of 1970 and/or any other governmental agency standards or regulations. In the event the product does not conform to each OSHA or other standards, Seller shall be in default hereunder, and the City may exercise and of the remedy provided for herein, including but not limited to return of the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by the City will be at the Seller's expense
- 20 Right of Inspection: The City shall have the right to inspect the goods at delivery before accepting them.
- 21 Vendor retrieval of Vehicles: Vendor shall remove noncompliant vehicles (s) from City premises within five working days after receiving written notification from the ordering entity. If vehicle is not removed by vendor within the five working days time frame, the city may arrange for vehicles to be removed and secured by a local towing and storage facility. Vendor will be responsible for payment of all related towing and storage charges. The City will not be responsible for payment of all related towing and storage charges. The City will not be responsible for liable for damage or loss of noncompliant vehicles with remain on City premises, or which are removed by towing company, five working days after vendor is notification.
- 22 Cancellation: The City shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent and/or files bankruptcy or has bankruptcy filed against it. Such right to cancellation is in addition to and not in lieu of any other remedies which the City may have in law, equity or hereunder.
- 23 Termination: the City may terminate the contract or purchase order in whole, or in part. Termination hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which the contract or purchase order is terminated and the date upon which such termination becomes effective. In the event of said termination, in whole or in part, provided that Seller shall not be in default under the Contract, the Seller shall be entitled to payment only for goods actually delivered, and/or services actually performed under and in compliance with the terms of the contract or purchase order.
- 24 Force Majeure: Neither party shall be held responsible for losses or damages hereunder, if the fulfillment of any terms of provisions of the contract is delayed or prevented by strike, walkouts, acts of God, or public enemy, fire, or flood.



- 25 Assignment-Delegation: No right or interest in the contract shall be assigned or delegation of any obligation made by Seller without the written permission of the City. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
- 26 Waiver: No claim or right arising out of a breach of the contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 27 Interpretation-Parole Evidence: This writing, plus any specifications for bids and performance provided by the City in its advertisement for bids and any other document provided by Seller as part of his bid, is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. Whenever a term defined by the Uniform Commercial Code is used in the contract, the definition contained in the Code is to control.
- 28 Applicable Law: The Contract shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of the contract.
- 29 Right To Assurance: Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 30 Indemnification: Seller shall indemnify, defend, keep and save harmless the City, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in anywise arise or accrue against the City in consequence of the granting of the contract or which may anywise result there from, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Seller or its employees, or of the subcontractor or assignee or its employees, if any, and the Seller shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith, and, if any judgment shall be rendered against the City in any such action, the Seller shall, at its own expenses, satisfy discharge the same. Seller expressly understands and agrees that any bond required by the contract, or otherwise provided by Seller, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City as herein provided.
- 31 Nonappropriation: All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of nonappropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
- 32 Time: It is hereby expressly agreed and understood that time is of the essence for the performance of the contract, and failure by Seller to meet the time specifications of the contract will cause Seller to be in default of the contract.
- 33 Silence of Specification: The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial products and practices are to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of the specifications in this bid shall be made on the basis of this statement. The items furnished under this contract shall be new, unused, of the latest product in production to commercial trade, and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these shall be experienced in design and construction of such items and shall be an established supplier of the item bid.
- 34 Environmental Stewardship

The City of Lubbock is fully committed to environmental excellence. It is the policy of the City to demonstrate sound environmental performance by controlling and mitigating the environmental impact of City activities, operations, and services. This commitment extends to the procurement and contracting process. Contractors and suppliers selected to provide services and materials to the City are required to uphold an equally high standard. To that end all contractors and suppliers hired by the City agree to maintain full compliance with any and all applicable environmental regulations. In addition, contractors and suppliers agree to implement whatever processes and procedures necessary to reduce and eliminate pollution and wastes and conserve natural resources while under contract with the City. To the greatest extent possible, while still delivering the highest quality service or material, City contractors and suppliers, as well as any sub-contractors under their supervision, will:

- minimize waste and pollution generation;
- conserve natural resources and energy;
- minimize the use of hazardous materials by choosing the least toxic - yet effective - materials and products;
- use the highest available post-consumer content materials and products;
- recycle and/or reuse as much as is possible, waste materials; and
- incorporate into project design energy efficient fixtures, appliances and mechanical equipment.

35. The City Right to Audit

At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within thirty (30) days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.

36. CONTRACTOR ACKNOWLEDGES.

Contractor acknowledges by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between these terms and conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.

37. CONFIDENTIALITY

The Contractor shall retain all information received from or concerning the City and the City's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the City, unless otherwise required by law.

38. INDEMNITY

The Contractor shall indemnify and save harmless the city of Lubbock and its elected officials, officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any kind, character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, to the extent arising out of, related to or occasioned by, the negligent acts of the Contractor, its agents, employees, and/or subcontractors, related to the performance, operations or omissions under this agreement and/or the use or occupation of city owned property. The indemnity obligation provided herein shall survive the expiration or termination of this agreement.



**City of Lubbock, TX**  
**Purchasing and Contract Management**  
**ITB 21-15860-KM**  
**Tires for Citibus**

**Specifications**

**INTENT**

The City of Lubbock seeks bids to select vendor(s) to provide Tires for Citibus. The City may select multiple vendors to provide the services desired, if multiple awards are determined to be in the best interest of Citibus.

**ALL TIRES SUPPLIED**

Tires will be new tires; no recaps allowed and be "regrooveable" in type. **ALL TIRES MUST BE STEEL BELTED AND STEEL SIDEWALLS**

**TIRE SUPPLY**

If at any time the bidder cannot supply tires in a timely manner, (verifiable 14-day lead time) Citibus can purchase tires without penalty.

**BILLING AND INVENTORY**

The bidder will supply at no charge their proper billing and inventory sheets to Citibus for their use during this agreement.

**SPECIFICATIONS**

Any catalog, brand name or manufacturer's reference in the specifications is descriptive and NOT restrictive, and are used to indicate type and quality level desired. Bids on brands of like nature and quality may be considered unless specifically excluded.

If bidding on other than reference or specifications, bid must show manufacturer, brand, trade name, catalog and/or lot number, etc., on article offered and certify article offered is equivalent to specifications. If other than specified brand of items are offered, specifications, catalog sheets, illustrations and complete descriptive literature must be submitted with bid.

Minor deviations from written specifications shall not necessarily disqualify a vendor's bid. The City of Lubbock specification committee will be the sole determiner of what constitutes a minor deviation. The City may deem it necessary to specify Approved Brands after conclusive testing, prior to usage or standardization. The City may test any sample(s), supplied free of charge, to qualify for the Approved Brand list. Each sample must be marked with bidder's name and address. At bidder's request and expense, the sample(s) not destroyed or used in examinations and testing will be returned.

When specifications call for samples to be submitted, samples shall be delivered by the bidder, at bidder's expense, five days prior to the opening of bids. Each sample shall be clearly tagged to show bidder's name and address and item number.

The City of Lubbock reserves the right to determine which specific items on any specification requirements require strict adherence, or are most important, and those that are not, or requiring a lesser degree of importance (i.e., the shade of paint is far less important than the horsepower of a motor). Such determination can and will be a basis for evaluating, recommending and making award. The City



will, at its sole discretion, assess warranty offered, and utilize life-cycle costing and/or performance factors as the evaluation method and basis for award. The low bid most closely meeting specifications is usually the bid given the award, although delivery time is sometimes a necessary factor (i.e., a low bid that best meets specifications will not do us much good if delivery is two years from now). Should a requested specification sheet not be submitted with a bid, this is considered non-responsive and therefore may not be considered. PLEASE READ AND RESPOND TO SPECIFICATION REQUIREMENTS CAREFULLY.

#### **CONTRACT TERM**

The contract shall be for a term of one (1) year, with the option of two (2), one-year extensions, said date of term beginning upon formal approval. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.

**This agreement includes incorporation of Federal Transit Administration (FTA) Terms. The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause Citibus to be in violation of the FTA terms and conditions.**

**City of Lubbock, TX**  
**Purchasing and Contract Management**  
**Bid Submission Information**

In compliance with the **Invitation to Bid**, the undersigned Bidder having examined the Invitation to Bid and Specifications, and being familiar with the conditions to be met, hereby submits the following Bid for furnishing the material, equipment, labor and everything necessary for providing the items listed below and agrees to deliver said items at the locations and for the prices set forth on this form and/or the bid table associated with this bid. A bid will be subject to being considered irregular and may be rejected if it shows omissions, **alterations of form**, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind. The Invitation to Bid is by reference incorporated in this contract.

Where applicable, prices are quoted as: **F.O.B. Destination, Freight Pre-Paid and Allowed**  
Where applicable, delivery days are: **Days After Receipt of Order (ARO)**

**Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-or-none basis for any item or group of items shown on the bid.**

**The City of Lubbock is seeking a contract for with one or more contractors. In order to assure adequate coverage, the City may make multiple awards, selecting multiple vendors to provide the products desired, if multiple awards are in the best interest of the City. A decision to make a multiple award of this Bid, however, is an option reserved by the City, based on the needs of the City.**

**PAYMENT TERMS AND DISCOUNTS** - Bidder offers a prompt payment discount of   0  %, net   30   calendar days. Discounts will not be considered in determining low bid. Unless otherwise indicated on the Bid Form, payment terms will be NET THIRTY DAYS. The City will pay the successful bidder within thirty days after the receipt of a correct invoice or after the date of acceptance, whichever event occurs later. Discounts for prompt payment requiring payment by the City within a stipulated number of days will be interpreted as applying within the stipulated number of calendar days after the date of receipt by the City of a correct invoice or after the date of acceptance that meets contract requirements, whichever event occurs later. Discounts for payment in less than ten days will not be considered.

**MOST FAVORED PRICING:** The Bidder certifies that the price quoted is not in excess of the lowest price charged anyone else, including its most favored customer, for like quality and quantity of the products/services; does not include an element of profit on the sale in excess of that normally obtained by the Bidder on the sale of products/services of like quality and quantity; and does not include any provision for discounts to selling agents. If at any time during the contract period, the supplier should sell or offer for sale to any other customer, an equal or less quantity of similar contract products of like or better quality, at a lower net price(s) than provided herein, supplier agrees to notify the City and sell same product(s) at the lower price(s) on all deliveries made during the period in which such lower price(s) is effective.

**INTERLOCAL PURCHASING (optional):** The City desires to make available to other local governmental entities of the State of Texas, by mutual agreement with the successful bidder, and properly authorized interlocal purchasing agreements as provided for by the Interlocal Cooperation Act (Chapter 791, Government Code), the right to purchase the same services, at the prices quoted, for the period of this contract. Each bidder shall indicate on the Bid Form in the space provided below if he/she will honor Political Subdivision orders in addition to orders from the City of Lubbock. Should these other governmental entities decide to participate in this contract, would you (the bidder) agree that all terms, conditions, specifications, and pricing would apply?



City of Lubbock  
 Bid Form  
 ITB 21-15860-KM  
 Southern Tire Mart, LLC

Vendor	Location	Estimated Qty (+/-)	Tire Brand	Credit for Reusable Casing	Delivery Days (ARO)	Unit Price per Tire	Extended Cost
<b>#0-1 - 225/60R16</b>							
<del>Southern Tire Mart, LLC</del>	<del>Columbia, MS</del>	<del>50</del>	<del>FIRESTONE 015607</del>	<del>0</del>	<del>1-7 DAYS</del>	<del>\$77.00</del>	<del>\$3,850.00</del>
<del>Southern Tire Mart, LLC</del>	<del>Columbia, MS</del>	<del>50</del>	<del>FIRESTONE 011525</del>	<del>0</del>	<del>1-7 DAYS</del>	<del>77.00</del>	<del>3,850.00</del>
<del>Southern Tire Mart, LLC</del>	<del>Columbia, MS</del>	<del>50</del>	<del>FIRESTONE 067911</del>	<del>0</del>	<del>1-7 DAYS</del>	<del>100.00</del>	<del>5,000.00</del>
<b>#0-2 - 265/70R17</b>							
<del>Southern Tire Mart, LLC</del>	<del>Columbia, MS</del>	<del>12</del>	<del>FIRESTONE 005374</del>	<del>0</del>	<del>1-7 DAYS</del>	<del>117.00</del>	<del>1,404.00</del>
<del>Southern Tire Mart, LLC</del>	<del>Columbia, MS</del>	<del>12</del>	<del>FIRESTONE 002768</del>	<del>0</del>	<del>1-7 DAYS</del>	<del>139.00</del>	<del>1,668.00</del>
<b>#0-3 - 255/70R22.5</b>							
<del>Southern Tire Mart, LLC</del>	<del>Columbia, MS</del>	<del>12</del>	<del>FIRESTONE 492982</del>	<del>0</del>	<del>1-7 DAYS</del>	<del>259.00</del>	<del>3,108.00</del>
<b>#0-4 - 245/70R19.5</b>							
<del>Southern Tire Mart, LLC</del>	<del>Columbia, MS</del>	<del>12</del>	<del>FIRESTONE 004192</del>	<del>0</del>	<del>1-7 DAYS</del>	<del>271.00</del>	<del>3,252.00</del>
<del>Southern Tire Mart, LLC</del>	<del>Columbia, MS</del>	<del>12</del>	<del>FIRESTONE 248443</del>	<del>0</del>	<del>1-7 DAYS</del>	<del>274.00</del>	<del>3,288.00</del>
<b>#0-5 - 225/75R16</b>							
Southern Tire Mart, LLC	Columbia, MS	200	FIRESTONE 005334	0	1-7 DAYS	97.00	19,400.00
<del>Southern Tire Mart, LLC</del>	<del>Columbia, MS</del>	<del>200</del>	<del>FIRESTONE 002760</del>	<del>0</del>	<del>1-7 DAYS</del>	<del>111.00</del>	<del>22,200.00</del>
<b>Total:</b>							<b>19,400.00</b>

**Other governmental entities that might have interests in this contract are Frenship Independent School District, Lubbock Housing Authority, Lubbock County, Lubbock County Hospital District, Lubbock Independent School District, South Plains Association of Governments, City of Texarkana, Texas Tech University, West Texas Municipal Power Agency, Lynn County, and City of Wolfforth.**

YES  X  NO \_\_\_\_\_

- If you (the bidder) checked YES, the following will apply:
- Governmental entities utilizing Interlocal Agreements for Cooperative Purchasing with the City of Lubbock will be eligible, but not obligated, to purchase materials/services under the contract(s) awarded as a result of this solicitation. All purchases by governmental entities other than the City of Lubbock will be billed directly to that governmental entity and paid by that governmental entity. City of Lubbock will not be responsible for another governmental entity's debts. Each governmental entity will order their own materials/service as needed.

**Addenda**

Bidder acknowledges receipt of addenda issued in regard to this solicitation by initialing  RC   
Bidder's Initials

**Submission Information**

THIS BID IS SUBMITTED BY  Southern Tire Mart, LLC   
a ~~corporation~~ <sup>LLC</sup> organized under the laws of the State of  Mississippi , or a partnership consisting of \_\_\_\_\_ or individual trading as \_\_\_\_\_ of the City of  Columbia

Address:  800 Highway 98   
City:  Columbia  State:  Mississippi  Zip:  39429

M/WBE Firm:	<input type="checkbox"/>	Woman	<input type="checkbox"/>	Black American	<input type="checkbox"/>	Native American
	<input type="checkbox"/>	Hispanic American	<input type="checkbox"/>	Asian Pacific American	<input type="checkbox"/>	Other (Specify)

**Please complete the information below for the person submitting this bid.**

Officer Name and Title:  Richard Conwill   
Business Telephone Number  877-786-4681  FAX:  601-651-0655   
E-mail Address:  richard.conwill@stmtires.com

City of Lubbock  
Citibus  
Bid Tabulation

ITB 21-15860-KM Tires for Citibus

<b>Vendor/Description</b>	<b>Location</b>	<b>Estimated Qty (+/-)</b>	<b>Unit Price per Tire</b>	<b>Extended Cost</b>
<b>#0-1 - 225/60R16</b>				
<b>McWhorters Ltd</b>	<b>Lubbock, TX</b>	<b>50</b>	<b>74.23</b>	<b>3711.50</b>
T&W Tire	Wichita Falls, TX	50	75.05	3752.50
Southern Tire Mart, LLC	Columbia, MS	50	77.00	3850.00
Southern Tire Mart, LLC	Columbia, MS	50	77.00	3850.00
Bill Williams Tire	Lubbock, TX	50	80.00	4000.00
Hometown Tire Pros	Sundown, TX	50	85.00	4250.00
Hometown Tire Pros	Sundown, TX	50	90.00	4500.00
Southern Tire Mart, LLC	Columbia, MS	50	100.00	5000.00
Williams Brake tune and tire L.L.C.	Lubbock, TX	50		*NQAS
<b>#0-2 - 265/70R17</b>				
<b>McWhorters Ltd</b>	<b>Lubbock, TX</b>	<b>12</b>	<b>108.84</b>	<b>1306.08</b>
T&W Tire	Wichita Falls, TX	12	114.55	1374.60
Hometown Tire Pros	Sundown, TX	12	116.00	1392.00
Southern Tire Mart, LLC	Columbia, MS	12	117.00	1404.00
Bill Williams Tire	Lubbock, TX	12	120.00	1440.00
Southern Tire Mart, LLC	Columbia, MS	12	139.00	1668.00
Williams Brake tune and tire L.L.C.	Lubbock, TX	12		*NQAS
<b>#0-3 - 255/70R22.5</b>				
<b>Bill Williams Tire</b>	<b>Lubbock, TX</b>	<b>12</b>	<b>242.00</b>	<b>2904.00</b>
T&W Tire	Wichita Falls, TX	12	249.00	2988.00
Southern Tire Mart, LLC	Columbia, MS	12	259.00	3108.00
Hometown Tire Pros	Sundown, TX	12	267.00	3204.00
McWhorters Ltd	Lubbock, TX	12	301.23	3614.76
Williams Brake tune and tire L.L.C.	Lubbock, TX	12	207.00	*NQAS
<b>#0-4 - 245/70R19.5</b>				
<b>Bill Williams Tire</b>	<b>Lubbock, TX</b>	<b>12</b>	<b>244.00</b>	<b>2928.00</b>
T&W Tire	Wichita Falls, TX	12	244.00	2928.00
McWhorters Ltd	Lubbock, TX	12	259.44	3113.28
Southern Tire Mart, LLC	Columbia, MS	12	271.00	3252.00
Southern Tire Mart, LLC	Columbia, MS	12	274.00	3288.00
Hometown Tire Pros	Sundown, TX	12	325.00	3900.00
Williams Brake tune and tire L.L.C.	Lubbock, TX	12	207.00	*NQAS

City of Lubbock  
Citibus  
Bid Tabulation

Vendor/Description	Location	Estimated Qty (+/-)	Unit Price per Tire	Extended Cost
#0-5 - 225/75R16				
<b>Southern Tire Mart, LLC</b>	<b>Columbia, MS</b>	<b>200</b>	<b>97.00</b>	<b>19400.00</b>
Southern Tire Mart, LLC	Columbia, MS	200	111.00	22200.00
Hometown Tire Pros	Sundown, TX	200	122.00	24400.00
Bill Williams Tire	Lubbock, TX	200	129.00	25800.00
T&W Tire	Wichita Falls, TX	200	131.14	26228.00
McWhorters Ltd	Lubbock, TX	200	239.00	47800.00
Williams Brake tune and tire L.L.C.	Lubbock, TX	200	97.00	*NQAS

**Item By Item:**

McWhorters, Ltd (Items 1 and 2)	Lubbock, TX	\$5,017.58
Bill Williams Tire (Items 3 and 4)	Lubbock, TX	5,832.00
Southern Tire Mart, LLC (Item 5)	Columbia, MS	19,400.00

\*NQAS- Not quoted as specified





**Purchasing and Contract Management  
Project Summary  
ITB 21-15860-KM Tires for Citibus**

Notice was published in the Lubbock Avalanche Journal on May 2 and May 9, 2021.

Notice was published on the Purchasing Web Site under Bid Opportunities.

Notice was published on BidSync.com from April 30, 2021 to May 20, 2021.

Notice was published on Bonfire-hub.com from April 30, 2021 to May 20, 2021.

23 vendors viewed using BidSync.com.

6 vendors downloaded the documents from Bidsync.com

16 vendors took documents from Bonfire-hub.com

10 vendors were notified separately.

6 vendors submitted a bid.

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## Information

### Agenda Item

**Resolution - Health Benefits:** Consider a resolution authorizing the Mayor to execute the renewal of Contract 14820, by and between the City of Lubbock and Dearborn National Life Insurance, to enhance services by adding the SelerixBenSelect benefits administration system.

### Item Summary

In July 2019, City staff issued a Request for Proposal (RFP) 2019-14820 for ancillary benefits, including group Term Life Insurance, Accidental Death and Dismemberment, Long-Term Disability, and Accident Insurance. Dearborn Life Insurance, now rebranded under BlueCross BlueShield of Texas (BCBSTX), was awarded the contract for a 5-year term beginning January 1, 2020.

BCBSTX is offering a technology subsidy to assist the City with implementing the Selerix online benefits enrollment system. The purpose of the subsidy is to lower the cost of the online system for the City and to offer a better service experience with BCBSTX. The subsidy paid by BCBSTX equals half the cost. The annual cost to the City is \$70,000.

The advantages of implementing an online enrollment system are:

- Eliminating manual, paper processes surrounding benefits enrollment and administration
- Data integrity – accuracy and consistency of data
- Common remitter system – City issues one check to Selerix – money and census sent to each vendor
- Full census extract to satisfy BCBSTX/Dearborn and other vendor billing requirements
- Specialized reporting tools to monitor and collect employee data
- Reduced administrative time for Benefits and Accounting staff
- Reduced possibility of premium payment discrepancies
- Real-time exchange of data for new hires, life events, terminations, and deductions
- Employees can review benefits from home or office and check their selections and benefits any time

Selerix also has an ACA module that can be added for \$22,000 per year. The 1095 processing is a cumbersome process for benefits and IT staff - at least one month of labor. The completed forms are sent to departments for distribution which jeopardizes protected information. The individual data needed for 1095 reporting is stored and mined from the Selerix system.

The Selerix solution replaces the City's legacy application developed in-house which is lacking functionality to meet the current and future needs of our organization. Saving time by automating processes allows City resources to concentrate on more strategic projects and initiatives.

Staff recommends adding the online enrollment capability to the Dearborn contract, based on the substantial need for an online benefits system, and the cost advantage of saved manual labor hours between the benefits and accounting staff.

**Fiscal Impact**

The annual cost to the City is \$70,000. Adding the ACA module increases the annual cost to \$92,000. Rates paid by the City and employees for life insurance, disability insurance, and voluntary products will remain the same.

**Staff/Board Recommending**

Bill Howerton, Deputy City Manager  
Clifton Beck, Director of Human Resources

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**Attachments**

Resolution - Dearborn Adding Selerix Admin System  
Contract - Dearborn Adding Selerix Admin System

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, the renewal of Contract 14820, by and between the City of Lubbock and Dearborn National Life Insurance to enhance services by adding the SelerixBenSelect (Selerix) benefits administration system, and related documents. Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Clifton Beck, Director of Human Resources

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Mitchell Satterwhite, First Assistant City Attorney



September 17, 2021

**Group Name:** City of Lubbock

**Group Number:** GFZ03192

**Proposed Effective Date:** January 1, 2022

Proposal is valid for 60 days following proposed effective date

**Coverages:** Basic Life/AD&D, Voluntary Life/AD&D, Voluntary Long-Term Disability, and Voluntary Accident.

**Requested Commission Changes:** Change commissions on all coverages listed above to a flat 6%. Enhance current contract to include SelerixBenSelect online enrollment services.

**Impact to Rates:** No impact to the current rates below.

Coverage	Current Rate
Basic Life - Actives	\$0.035 / \$1,000
Retiree Life - Prior to 4/1/988	\$0.060 / \$1,000
Retiree Life - On or After 4/1/1998	\$3.060 / \$1,000
Basic AD&D	\$0.012 / \$1,000
Voluntary Life - Actives	
Under Age 30	\$0.05 / \$1,000
Age 30 to 34	\$0.06 / \$1,000
Age 35 to 39	\$0.07 / \$1,000
Age 40 to 44	\$0.10 / \$1,000
Age 45 to 49	\$0.15 / \$1,000
Age 50 to 54	\$0.23 / \$1,000
Age 55 to 59	\$0.43 / \$1,000
Age 60 to 64	\$0.66 / \$1,000
Age 65 to 69	\$1.21 / \$1,000
Age 70 to 74	\$2.06 / \$1,000
Age 75 to 79	\$2.06 / \$1,000
Age 80 and Above	\$2.06 / \$1,000
Voluntary Life - Retirees	
Under Age 30	\$0.11 / \$1,000
Age 30 to 34	\$0.12 / \$1,000
Age 35 to 39	\$0.17 / \$1,000
Age 40 to 44	\$0.26 / \$1,000
Age 45 to 49	\$0.44 / \$1,000
Age 50 to 54	\$0.78 / \$1,000
Age 55 to 59	\$1.27 / \$1,000
Age 60 to 64	\$1.44 / \$1,000
Age 65 to 69	\$2.38 / \$1,000
Age 70 to 74	\$4.12 / \$1,000
Age 75 to 79	\$6.20 / \$1,000
Age 80 and Above	\$9.75 / \$1,000

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Coverage	Current Rate
Voluntary Spouse Life - Actives	\$0.80 / \$5,000
Voluntary Child Life - Actives	\$0.50 / \$2,500
Voluntary Dependent Life - Retiree	\$1.25 Per Unit
Voluntary AD&D	
Individual Plan	\$0.025 / \$1,000
Family Plan	\$0.038 / \$1,000
Voluntary Long-Term Disability Option 1	
Under Age 25	\$0.14 / \$100 MCP
Age 25 to 29	\$0.16 / \$100 MCP
Age 30 to 34	\$0.17 / \$100 MCP
Age 35 to 39	\$0.18 / \$100 MCP
Age 40 to 44	\$0.25 / \$100 MCP
Age 45 to 49	\$0.31 / \$100 MCP
Age 50 to 54	\$0.42 / \$100 MCP
Age 55 to 59	\$0.64 / \$100 MCP
Age 60 and Above	\$0.79 / \$100 MCP
Voluntary Long-Term Disability Option 2	
Under Age 25	\$0.16 / \$100 MCP
Age 25 to 29	\$0.18 / \$100 MCP
Age 30 to 34	\$0.20 / \$100 MCP
Age 35 to 39	\$0.21 / \$100 MCP
Age 40 to 44	\$0.28 / \$100 MCP
Age 45 to 49	\$0.36 / \$100 MCP
Age 50 to 54	\$0.49 / \$100 MCP
Age 55 to 59	\$0.74 / \$100 MCP
Age 60 and Above	\$0.91 / \$100 MCP
Voluntary Accident	
Employee Only	\$4.63 PEPM
Employee + Spouse	\$7.84 PEPM
Employee + Child	\$8.52 PEPM
Family	\$13.56 PEPM

**NOTE: All other plan provisions will remain unchanged.**

**Ancillary Account Manager: Tonja Shastid Phone #: 972-996-9352**

**Policyholder Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_**

**701 E. 22nd Street, Suite 300 | Lombard, IL 60148**





**Information**

**Agenda Item**

**Resolution - Facilities Management:** Consider a resolution authorizing the Mayor to execute Contract 16057 with BFD Interiors, dba Built for Dreams, for purchase and installation of furniture for the newly constructed Lubbock Power and Light GIS addition.

**Item Summary**

This contract consists of the purchase and installation of furniture for the newly constructed LP&L GIS addition.

In response to RFP 21-16057-TF, 3 firms submitted responses. The proposals were evaluated using the following criteria: Pricing - 20 points, Project Approach and Proposed Solution - 20 points, Qualifications and Experience - 20 points, Warranty - 20 points, and Customer Care Plan - 20 points.

After the proposals were evaluated, the following ranking was obtained:

<b>Contractor</b>	<b>Points</b>
BFD Interiors, Lubbock, Texas	94.00
Officewise, Lubbock, Texas	93.06
Tascosa Office Machines, Lubbock, Texas	89.40

Based on the evaluation, Facilities Management recommends awarding the contract to the highest ranked firm, BFD Interiors, dba Built for Dreams, of Lubbock, Texas, for \$63,243.19.

**Fiscal Impact**

This contract for \$63,243.19, is funded in Capital Improvement Project 92634, LP&L - GIS Office Renovations.

**Staff/Board Recommending**

Bill Howerton, Deputy City Manager  
Wesley Everett, Director of Facilities Management

**Attachments**

- Resolution - Built for Dreams
- Contract - Built for Dreams
- CIP 92634 Budget Detail - LPandL GIS Addition
- Project Summary
- CIP Detail



**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Service Contract No. 16057 for LP&L and GIS Addition Furniture as per RFP 21-16057-TF, by and between the City of Lubbock and BFD Interiors, dba Built for Dreams, of Lubbock, Texas, and related documents. Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR


ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Bill Howerton, Deputy City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**City of Lubbock, TX  
LP&L GIS Addition Furniture  
Agreement**

This Service Agreement (this "Agreement") is entered into as of the \_\_\_day of \_\_\_\_\_ 2021 ("Effective Date") by and between bfd interiors | blending furniture + design dba of Built for Dreams, Inc. (the Contractor), and the City of Lubbock (the "City").

**RECITALS**

WHEREAS, the City has issued a Request for Proposals 21-16057-TF, LP&L GIS Addition Furniture and

WHEREAS, the proposal submitted by the Contractor has been selected as the proposal which best meets the needs of the City for this service; and

WHEREAS, Contractor desires to perform as an independent contractor to provide LP&L GIS Addition Furniture, upon terms and conditions maintained in this Agreement; and

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the City and Contractor agree as follows:

City and Contractor acknowledge the Agreement consists of the following exhibits which are attached hereto and incorporated herein by reference, listed in their order of priority in the event of inconsistent or contradictory provisions:

1. This Agreement
2. Exhibit A – General Requirements
3. Exhibit B – Proposal Price Sheet
4. Exhibit C – Insurance Requirements

**Scope of Work**

Contractor shall provide the services that are specified in Exhibit A. The Contractor shall execute services as the named secondary provider. The Contractor shall comply with all the applicable requirements set forth in Exhibit B and Exhibit C attached hereto.

**Article 1**

- 1.1 The contractor acknowledges that this project begins with a written "Notice to Proceed" which will be issued for the Project. Upon receipt of notice to proceed, the Contractor will have ten (10) calendar days to start work for the next phase. Inclement weather shall be the only reason the work may not take place. Written approval and determination will be reviewed by the City. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.

- 1.2 Prices quoted shall be set for a period for one (1) year, said date of term beginning upon City Council date of formal approval. The rate may be adjusted upward or downward at this time at a percentage not to exceed the effective change in Consumer Price Index (CPI) or Product Price Index (PPI), whichever is most appropriate for the specific contract for the previous 12-months at the City's discretion, the effective change rate shall be based on either the local Price Index (PPI), whichever is most appropriate for the specific contract for the previous 12-months at the City's discretion, the effective change rate shall be based on either the local or national index average rate for all items. If agreement cannot be reached, the contract is terminated at the end of the current contract period.
- 1.3 The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement, whatsoever, without prior consent of the City.
- 1.4 All funds for payment by the City under this Agreement are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the Agreement, the City will terminate the Agreement, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the contractor on 30 days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this Agreement beyond the date of termination.
- 1.5 This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 30 day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.

**Article 2 Miscellaneous.**

- 2.1 This Agreement is made in the State of Texas and shall for all purposes be construed in accordance with the laws of said State, without reference to choice of law provisions.
- 2.2 This Agreement is performable in, and venue of any action related or pertaining to this Agreement shall lie in, Lubbock, Texas.
- 2.3 This Agreement and its Exhibits contains the entire agreement between the City and Contractor and supersedes any and all previous agreements, written or oral, between the parties relating to the subject matter hereof. No amendment or modification of the terms of this Agreement shall be binding upon the parties unless reduced to writing and signed by both parties.
- 2.4 This Agreement may be executed in counterparts, each of which shall be deemed an original.
- 2.5 In the event any provision of this Agreement is held illegal or invalid, the remaining provisions of this Agreement shall not be affected thereby.
- 2.6 The waiver of a breach of any provision of this Agreement by any parties or the failure of any parties otherwise to insist upon strict performance of any provision hereof shall not constitute a waiver of any subsequent breach or of any subsequent failure to perform.

- 2.7 This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives and successors and may be assigned by Contractor or the City to any successor only on the written approval of the other party.
- 2.8 All claims, disputes, and other matters in question between the Parties arising out of or relating to this Agreement or the breach thereof, shall be formally discussed and negotiated between the Parties for resolution. In the event that the Parties are unable to resolve the claims, disputes, or other matters in question within 30 days of written notification from the aggrieved Party to the other Party, the aggrieved Party shall be free to pursue all remedies available at law or in equity.
- 2.9 At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within 30 days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.
- 2.10 The City reserves the right to exercise any right or remedy to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this do.
- 2.11 The contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof of insurance from the Subcontractor that complies with all contract Insurance requirements document, this provision shall control.
- 2.12 Contractor acknowledges by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between these terms and conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.
- 2.13 Contractor acknowledges by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between these terms and conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.
- 2.14 Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code,



prohibits the City from entering into a contract with a vendor that is identified by The Comptroller as a company known to have contracts with or provide supplies or service with Iran, Sudan or a foreign terrorist organization.

- 2.15 Texas Public Information Act. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Contractor agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or (B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.
- 2.16 No Boycott of Israel. Pursuant to Section 2271.002 of the Texas Government Code, a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.
- 2.17 Confidentiality. The Contractor shall retain all information received from or concerning the City and the City's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the City, unless otherwise required by law.
- 2.18 Indemnify. The Contractor shall indemnify and save harmless the city of Lubbock and its elected officials, officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any kind, character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, to the extent arising out of, related to or occasioned by, the negligent acts of the Contractor, its agents, employees, and/or subcontractors, related to the performance, operations or omissions under this agreement and/or the use or occupation of city owned property. The indemnity obligation provided herein shall survive the expiration or termination of this agreement.

-----INTENTIONALLY LEFT BLANK-----

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written. Executed in triplicate.

CITY OF LUBBOCK

CONTRACTOR

\_\_\_\_\_  
Daniel M. Pope, Mayor

BY:

\_\_\_\_\_  
Alisha Gregg  
Authorized Representative

ATTEST:

\_\_\_\_\_  
Alisha Gregg  
Print Name

\_\_\_\_\_  
Rebecca Garza, City Secretary

\_\_\_\_\_  
2131 Baylor Dr.  
Address

APPROVED AS TO CONTENT:

\_\_\_\_\_  
WD Everett  
Wesley D. Everett, Director of Facilities

\_\_\_\_\_  
Lubbock, TX 79415  
City, State, Zip Code

APPROVED AS TO FORM

\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**City of Lubbock, TX  
RFP 21-16057-TF  
LP&L GIS Addition Furniture**

**GENERAL REQUIREMENTS**

**1. INTENT**

The City is requesting proposals for furniture for the LP&L GIS Renovation addition to include installation and related products and services offered. The intent of this Request for Proposals (RFP) is to provide the City meets the requirement. Therefore, Companies should have demonstrated experience in providing products and services as defined by these plans and specifications.

**2. SCOPE OF WORK**

- Refer to document dated August 3, 2021, and titled, "City of Lubbock GIS, Project #: 22004. Furniture Specifications."
- Please include assembly and delivery services.
- Project Manager to be on site for the duration of the installation.
- Please provide information about any proposed alternate items.
- Complete punch list work within 30 days, if punch list items cannot be resolved in 30 days, provide explanation and anticipated completion date.
- Vendor to participate in a pre-installation meeting prior to installation to become acquainted with each site and site conditions.
- Vendor to protect all interior surfaces and shall be liable for the repair or replacement of any damage thereto. Vendor to take special care and precautions to protect all flooring surfaces from any damage, soiling, marring, etc.
- Vendor is responsible for supplying their own trash removal containers and removing trash and debris from job site daily.

**2.1 Product Standards and Guidelines**

All products must be manufactured in compliance with all standards including warning labels and safety devices, guard and equipment required to meet the safety standards recognized by industry safety, councils or organizations to establish safety standards such as Occupational Safety and Health Administration (OSHA), National Fire Protection Association (NFPA), National Institute of Occupational Safety and Health (NIOSH), American National Standards Institute (ANSI), Underwriters Laboratories, Inc. (UL), Environmental Protection Agency (EPA), Business Institutional Furniture Manufacturers Association (BIFMA), etc. If a product proposed requires a Material Safety Data Sheet (MSDS) it must accompany each shipment.

**2.2 Pricing**

The Company must submit a cost proposal fully supported by cost and pricing data adequate to establish the reasonableness of the proposed fee firm fixed percentage (%) discount off a manufacturer price list for each.

**2.3 Delivery**

**2.3.1 Drop Ship:** All deliveries shall be delivered to the site. Company is responsible for unloading.

2.3.2 Inside Delivery: All deliveries shall be delivered to the site, unloaded and moved to a designated area in the building. Company is responsible for unloading.

## 2.4 Installation

2.4.1 Basic Installation: Basic installation includes inside delivery, uncrating, assembly, installation, removal of all debris from premises, installation documents and the bill of materials per the purchaser's approved plan and specifications.

2.4.2 Normal Hours: Normal hours are defined as 7:00 am – 5:00 pm local time (may be adjusted by City's Facilities' project team).

2.4.3 After Hours: After hours are defined as evenings, weekends and holidays.

2.4.4 Project Management: Company must have the ability to provide project management services to help City project team.

All products provided under this Contract that require assembly and installation should be performed by the awarded manufacturers' certified installers. All installation work must meet the manufacturer's specifications and industry standards. Company must provide the names and addresses of each certified installer/subcontractor. All work must be performed according to the standards established by the terms, specifications, and drawings for each substation and meet the manufacturer's specifications and industry standards. It shall be the obligation of the Installer to obtain clarification from the City Project Team concerning questions or conflicts in the specifications and drawings in a timely manner as to not delay the progress of the work.

## 3. SCHEDULE & LOCATION

Furniture installation schedule.

- LP&L GIS Addition , 404 Municipal Drive, Lubbock, TX

## 4. EVALUATION CRITERIA

The following criteria will be used to evaluate and rank submittals:

- a. Pricing – 20 Pts.
- b. Project Approach and Proposed Solution– 20 Pts.
- c. Qualifications and Experience – 20 Pts.
- d. Warranty – 20 Pts.
- e. Customer Care Plan – 20 Pts.

### 4.1 Pricing

Under this criterion, Proposals will be compared in terms of the most reasonable and effective pricing options. The Evaluation Committee will also take into consideration any indirect costs associated with the products and services.

### 4.2 Project Approach / Proposed Solution

Companies will be evaluated based upon their understanding, experience and qualifications in providing and performing the same or substantially similar products and services. The evaluation will include references regarding work for organizations with needs similar to the City's, and the feasibility of the Company's approach for the provision of the products and services. Approach/timeline after notice of award of the project.

### 4.3 Qualifications and Experience

Companies will be evaluated on the background and experience information provided.

#### 4.4 Warranty

Company must address each of the following:

- 4.4.1 Applicable warranty and/or guarantees of furniture and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.
- 4.4.2 Availability of replacement parts.
- 4.4.3 Life expectancy of furniture under normal use.
- 4.4.4 Detailed information as to proposed return policy on all furniture.

#### 4.5 Customer Care Plan

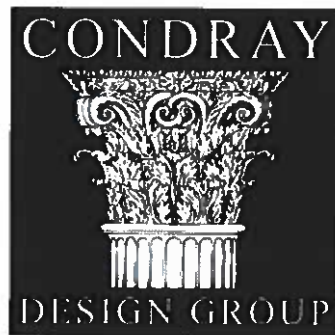
- 4.5.1 Provide a customer care plan to include primary and secondary contact information.

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# City of Lubbock GIS

Lubbock, TX



## BID SPECIFICATION PACKAGE





## FURNITURE SPECIFICATION:

CDG Code: D01 (Desk)

**Manufacturer:** KI  
**Dealer:**  
**Series:** Toggle Height-Adjustable Tables  
**Model No.:** Custom  
**Contract No.:**  
**Model Name:** Custom  
**Dimensions:** 30" x 72" x 72" 30" x 26"-52"H  
**Weight Capacity:** 264 lbs.  
**Options:** Legs: Black  
 Top Finish: Wilsonart Steel mesh 4879-38 Laminate  
 Edge Color: Black EBL  
 Switch System: Deluxe Electric Switch  
 Cord Management: R8 Undermount Power Module and Vertical Cable Manager  
**Warranty:** 10 Years  
**Lead Time:** 9-11 Weeks  
**Fabric:** Manufacturer:  
 Name:  
 Color:

Ship To:

Furn Code:	QTY:	Location:
D01	9	Offices (104-112)



Special Instructions: Basis of design



Laminate:  
Wilsonart Steel  
Mesh



Edge: Black



Base: Black



## FURNITURE SPECIFICATION:

CDG Code: D02 (Layout Table)

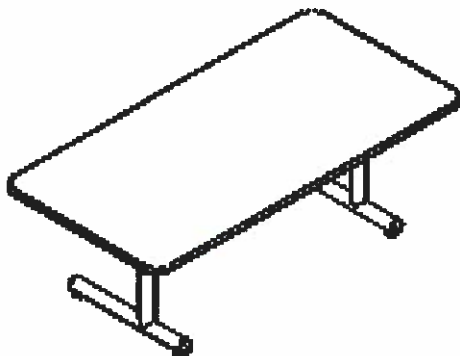
Manufacturer: National  
Dealer:  
Series: Waveworks  
Model No.: 29N3060TRT1L  
Contract No.:  
Model Name: Rectangle Training Table with Static Base  
Dimensions: 30" D x 60" W x 29" H  
Weight Capacity:

Options: Top: 793 Acorn Laminate  
Base: 462 Cinder Paint

Warranty: Lifetime  
Lead Time:  
Fabric: Manufacturer:  
Name:  
Color:

Ship To:

Furn Code:	QTY:	Location:
D02	9	Offices (104-112)



Top Laminate:  
Acorn



Base: Cinder Paint

Special Instructions: Basis of design





## FURNITURE SPECIFICATION:

CDG Code: C02 (Guest Chairs)

Manufacturer: National  
 Dealer:  
 Series: Tag  
 Model No.: N60SCW  
 Contract No.:  
 Model Name: Guest Chair with Wood Back and Arms  
 Dimensions: 23.5" W x 22.25" D x 31" H  
 Weight Capacity:

Options:	Seat Height Adjustment: Fixed	Seat Control: Fixed
	Seat Cushion: Upholstered	Seat Depth Adjustment: Fixed
	Back & Seat: Wood	Frame: Metal 462 Cinder
	Arms: Fixed	Glides: Standard
Warranty:	Lifetime	
Lead Time:	N/A	
Fabric:	Manufacturer: Designtex	
	Name: Hatchmark 3761-103	
	Color: Stucco	

Ship To:

Furn Code:	QTY:	Location:
C02	9	Offices (104-112)



Special Instructions: Basis of design



Wood: 793  
Acorn



Upholstery:  
Hatchmark Stucco



Frame: 462  
Cinder



Arms: Black



## FURNITURE SPECIFICATION:

CDG Code: C03 (Training Chairs)

Manufacturer: Sit On It  
 Dealer:  
 Series: Moví  
 Model No.: 1061 FT4 MB  
 Contract No.:  
 Model Name: Nester Chair with Fixed Loop Arms  
 Dimensions: 23" W x 22.75" D x 34.62" H  
 Weight Capacity: 300 lb.

Options:      Seat Height Adjustment: Fixed      Seat Control: Fixed  
                   Seat Cushion: Upholstered      Seat Depth Adjustment: Fixed  
                   Back: Mesh      Frame: Black  
                   Arms: Fixed Loop Arms      Casters: Carpet; Color: Black  
 Warranty:      Lifetime  
 Lead Time:     N/A  
 Fabric:          Manufacturer: Designtex  
                       Name:            Hatchmark 3761.103  
                       Color:            Stucco

Ship To:

Furn Code:	QTY:	Location:
C03	12	Training Room (116)



Mesh: Novo Nickel



Fabric: Hatchmark Stucco



Frame: Black

Special Instructions: Basis of design



## FURNITURE SPECIFICATION:

CDG Code: T01 (Round Table)

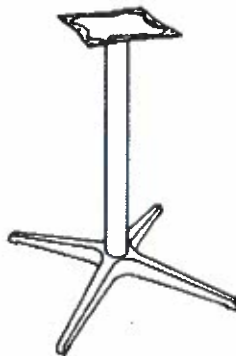
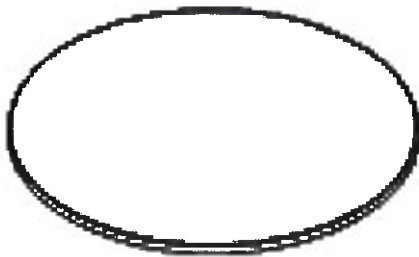
Manufacturer: National  
 Dealer:  
 Series: Epic  
 Model No.: 25N30RDL (Top)  
 Contract No.:  
 Model Name: Epic Round Top Softened Rim Table with 4-Prong Base  
 Dimensions: 30" D x 29" H  
 Weight Capacity:

Options: Top: Laminate 793 Acorn  
 Base: CBV2828P4BP  
 Base Color: 462 Cinder

Warranty: Lifetime  
 Lead Time:  
 Fabric: Manufacturer:  
 Name:  
 Color:

Ship To:

Furn Code:	QTY:	Location:
T01	2	Offices (109 & 106)



Top Laminate:  
Acorn



Base: 462 Cinder

Special Instructions: Basis of design





# FURNITURE SPECIFICATION:

CDG Code: T02 (Training Room Tables)

Manufacturer: KI  
 Dealer:  
 Series: Pirouette Tables  
 Model No.: PINR2460T-74P  
 Contract No.:  
 Model Name: Rectangular Top Nesting Training Table  
 Dimensions: 72" W x 24" D x 29" H  
 Weight Capacity:

Options:      Legs: Standard Training      Orientation: Folded  
                   Base: Nested                              Height: Standard 29"  
                   Modesty Panel: Fabric                      Feet: Casters  
                   Power: PowerUp with wire management  
 Warranty:      Lifetime  
 Lead Time:  
 Fabric:            Manufacturer:  
                          Name:  
                          Color:

Ship To:

Furn Code:	QTY:	Location:
T02	6	Training Room (116)



Top Laminate & Edge: River Cherry



Base: Black BL



Power & Grommet: Black



Modesty Panel: Black FMP

Special Instructions: Basis of design



## FURNITURE SPECIFICATION:

CDG Code: P01 (Freestanding Pedestal)

Manufacturer: National  
 Dealer:  
 Series: Waveworks  
 Model No.: WW2415PFBBFL  
 Contract No.: Freestanding Pedestal Box/Box/File with Top  
 Model Name: 15" W x 24" D x 28" H  
 Dimensions:  
 Weight Capacity:

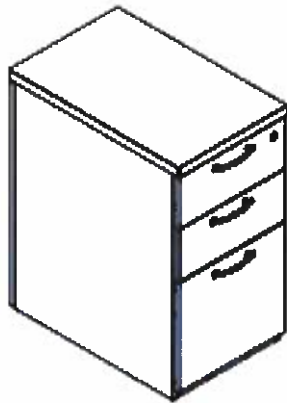
Options: Pulls: Balance Cinder  
 Mobile: No  
 Top: Laminate  
 Lock: Keyed Alike Within Each Office  
 Lifetime

Warranty:  
 Lead Time:  
 Fabric:

Manufacturer:  
 Name:  
 Color:

Ship To:

Furn Code:	QTY:	Location:
P01	9	Offices (104-112)



Laminate: Acorn



Pulls: Balance Cinder

Special Instructions: Basis of design



## FURNITURE SPECIFICATION:

CDG Code: B01 (Bookshelf)

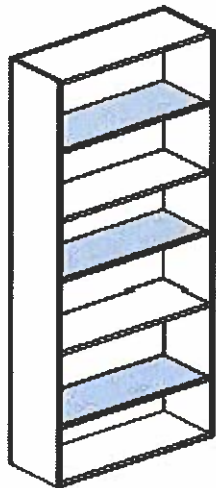
Manufacturer: National  
 Dealer:  
 Series: Waveworks  
 Model No.: WWN3680BCOFL  
 Contract No.:  
 Model Name: 5 Shelf Bookcase  
 Dimensions: 36" W x 14" D x 80" H  
 Weight Capacity:

Options:

Warranty: Lifetime  
 Lead Time:  
 Fabric: Manufacturer:  
 Name:  
 Color:

Ship To:

Furn Code:	QTY:	Location:
B01	9	Offices (104-112)



Laminate: Acorn

Special Instructions: Basis of design



## FURNITURE SPECIFICATION:

CDG Code: B02 (Overhead Storage)

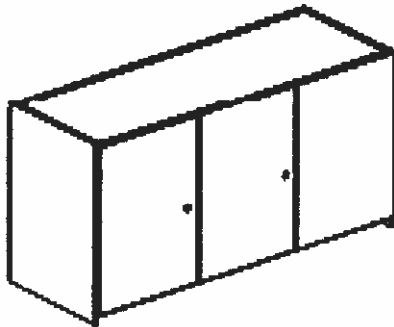
Manufacturer: National  
 Dealer:  
 Series: Waveworks  
 Model No.: WW4818SOHML  
 Contract No.:  
 Model Name: Overhead Storage Cabinet – Wall Mount  
 Dimensions: 48" W x 14.75" D x 18" H  
 Weight Capacity:

Options: Doors: Solid Laminate 3 Door  
 Locking: Yes  
 Lock: Keyed Alike Within Each Office

Warranty: Lifetime  
 Lead Time:  
 Fabric: Manufacturer:  
 Name:  
 Color:

Ship To:

Furn Code:	QTY:	Location:
B02	3	Offices (109 & 106); Printer (118)



Laminate: Acorn

Special Instructions: Basis of design



## FURNITURE SPECIFICATION:

CDG Code: MB01 (Glass Marker Board)

Manufacturer: Claridge

Dealer:

Series: Float

Model No.:

Contract No.:

Model Name:

Dimensions: 5' H x 4' W

Weight Capacity:

Options: Magnetic: Yes  
Hung Vertically

Warranty:

Lead Time:

Fabric: Manufacturer:  
Name:  
Color:

Ship To:

Furn Code:	QTY:	Location:
MB01	1	Training Room (116)



Special Instructions: Basis of design



## FURNITURE SPECIFICATION:

CDG Code: E01 (Waste Receptacle)

Manufacturer: Global Industries  
 Dealer:  
 Series: Simplehuman  
 Model No.: WR261012SS  
 Contract No.:  
 Model Name: Stainless Steel Swing Top Trash Can  
 Dimensions: 14" W X 14"D X 29"H  
 Weight Capacity:

Options: Color: Stainless Steel  
 Capacity: 14.5 gallon

Warranty:  
 Lead Time:  
 Fabric: Manufacturer: N/A  
 Name:  
 Color:

Ship To:

Furn Code:	QTY:	Location:
E01	4	Training Room (116), Break Room (102), Restrooms (114, 115)



Special Instructions: Basis of design



# Alternate 1



## BID SPECIFICATION PACKAGE



## FURNITURE SPECIFICATION:

CDG Code: MB01 & MB02 (Glass Marker Board)

Manufacturer: Claridge  
 Dealer:  
 Series: Float  
 Model No.:  
 Contract No.:  
 Model Name:  
 Dimensions: 3' H x 4' W & 4' H x 5' W  
 Weight Capacity:  
 Options: Magnetic: Yes  
           Hung vertically or horizontally?

Warranty:  
 Lead Time:  
 Fabric: Manufacturer:  
           Name:  
           Color:

Ship To:

Furn Code:	QTY:	Location:
MB02	7	3' x 4' Offices (104, 105, 107, 108, 110, 111, 112)
MB01	2	4' x 5' Offices (106 & 109)



Special Instructions: Basis of design

# Alternate 2



## BID SPECIFICATION PACKAGE



## FURNITURE SPECIFICATION:

CDG Code: L01 (Lectern)

Manufacturer: KI  
 Dealer:  
 Series: Aristotle Classic  
 Model No.: KLT1818.H  
 Contract No.:  
 Model Name: Basic Lectern  
 Dimensions: 18" W x 18" D x 44" H  
 Weight Capacity:

Options:

Warranty: Lifetime  
 Lead Time:  
 Fabric: Manufacturer:  
 Name:  
 Color:

Ship To:

Furn Code:	QTY:	Location:
L01	1	Training Room (116)



Laminate: River Cherry

Special Instructions: Basis of design



## FURNITURE SPECIFICATION:

CDG Code: CS01 (Credenza Storage)

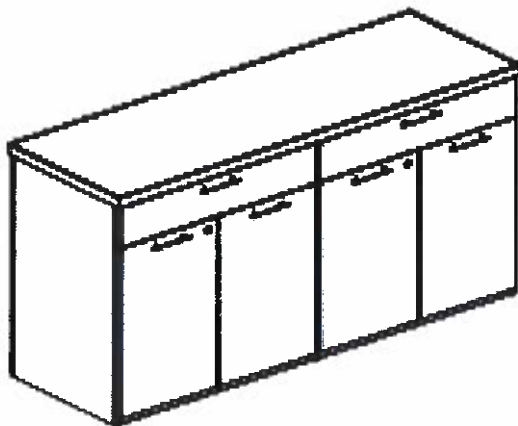
Manufacturer: National  
 Dealer:  
 Series: Waveworks  
 Model No.: WW2472CBVL  
 Contract No.:  
 Model Name: Entertainment Credenza  
 Dimensions: 71" W x 24" D x 35" H  
 Weight Capacity:

Options: Pull: Balance Cinder  
 Lock: Keyed Alike Within Training Room

Warranty: Lifetime  
 Lead Time:  
 Fabric: Manufacturer:  
 Name:  
 Color:

Ship To:

Furn Code:	QTY:	Location:
CS01	1	Training Room (116)



Laminate: Acorn



Pull: Balance Cinder

Special Instructions: Basis of design



**ADDENDUM 1**  
New Close Date & Revised Mesh Back Task  
Chair Specification  
**RFP 21-16057-TF**  
LP&L GIS Addition Furniture

**DATE ISSUED: September 13, 2021**

**NEW CLOSE DATE: September 16, 2021 at 2:00 p.m.**

The following items take precedence over specifications for the above named Request for Proposals (RFP). Where any item called for in the RFP documents is supplemented here, the original requirements, not affected by this addendum, shall remain in effect.

**Please review, incorporate, and acknowledge the information in this addendum with your proposal.**

**New Close Date**

1. The closing date has been extended to **Thursday, September 16, 2021, at 2:00PM CST.**

**Revised Mesh Back Task Chair Specification**

1. **Item 0-3 Mesh Back Task Chair**

**DELETE:** Page 4 of City of Lubbock GIS, Project #: 22004. Furniture Specifications  
CDG Code: C01 (Task Chair)

**REPLACE WITH:** CDG Code: C01 (Task Chair), labeled "Furniture Specification:  
Addendum", attached.

All requests for additional information or clarification must be submitted in writing and directed to:

Teofilo Flores, Asst. Director  
City of Lubbock  
Purchasing and Contracts Management Office  
1314 Ave. K, Floor 9  
Lubbock, Texas 79401

Questions may be faxed to (806)775-2164 or Email to [TKFlores@mylubbock.us](mailto:TKFlores@mylubbock.us)  
Questions are preferred to be posted on Bonfire.



THANK YOU,

*Teofilo Flores*

CITY OF LUBBOCK

Teofilo Flores

Asst. Director

City of Lubbock

Purchasing and Contracts Management Office

It is the intent and purpose of the City of Lubbock that this request permits competitive proposals.

It shall be the offeror's responsibility to advise the Director of Purchasing and Contract Management if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be submitted in writing and must be received by the Director of Purchasing and Contract Management no later than five (5) business days prior to the close date. A review of such notifications will be made.



# FURNITURE SPECIFICATION: Addendum

CDG Code: C01 (Task Chair)

**Manufacturer:** Sit On It  
**Dealer:**  
**Series:** Torsa  
**Model No.:** 6023 Y/e3 A134 VG4 C25 B14 MC6 FC11 Z3 KD  
**Contract No.:**  
**Model Name:** Mesh Back Task Chair  
**Dimensions:** 27" W x 27" D x 44.5" H  
**Weight Capacity:** 300 lb.

**Options:** Seat Height Adjustment: Standard Cylinder

Seat Control: Enhanced Synchro with Comfort Drive and Seat Depth Adjustment

**Seat Cushion:** Upholstered  
**Back:** Mesh  
**Arms:** Multi-Adjustable Nylon

**Frame:** Graphite  
**Casters:** Carpet

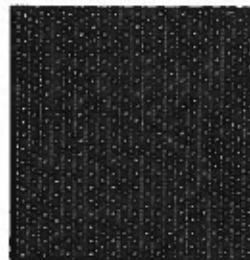
**Warranty:** Lifetime

**Lead Time:** N/A

**Fabric:** **Manufacturer:** Maharam  
**Name:** Lariat 440401  
**Color:** 016 Pebble

Ship To:

Furn Code:	QTY:	Location:
C01	9	Offices (104-112)



Mesh: Focus Nickel



Seat: Lariat Pebble



Frame: Graphite

Special Instructions:



**ADDENDUM 2**  
New Close Date & Revised Mesh Back Task  
Chair Specification  
**RFP 21-16057-TF**  
LP&L GIS Addition Furniture

**DATE ISSUED: September 14, 2021**

**NEW CLOSE DATE: September 21, 2021 at 2:00 p.m.**

The following items take precedence over specifications for the above named Request for Proposals (RFP). Where any item called for in the RFP documents is supplemented here, the original requirements, not affected by this addendum, shall remain in effect.

**Please review, incorporate, and acknowledge the information in this addendum with your proposal.**

**New Close Date**

1. The closing date has been extended to **Tuesday, September 21, 2021, at 2:00PM CST.**

**Revised Mesh Back Task Chair Specification**

1. Item 0-3 Mesh Back Task Chair

A. Please incorporate the attached specification with a revised date of September 14, 2021.

All requests for additional information or clarification must be submitted in writing and directed to:

Teofilo Flores, Asst. Director  
City of Lubbock  
Purchasing and Contracts Management Office  
1314 Ave. K, Floor 9  
Lubbock, Texas 79401

Questions may be faxed to (806)775-2164 or Email to [TKFlores@mylubbock.us](mailto:TKFlores@mylubbock.us)  
Questions are preferred to be posted on Bonfire.

THANK YOU,

*Teofilo Flores*

CITY OF LUBBOCK

Teofilo Flores

Asst. Director

City of Lubbock

Purchasing and Contracts Management Office

It is the intent and purpose of the City of Lubbock that this request permits competitive proposals. It shall be the offeror's responsibility to advise the Director of Purchasing and Contract Management if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be submitted in writing and must be received by the Director of Purchasing and Contract Management no later than five (5) business days prior to the close date. A review of such notifications will be made.



**City of Lubbock, TX  
Purchasing and Contract Management  
Request for Proposal Form**

The City of Lubbock reserves the right to accept or reject any and all proposals in whole or in part and waive any informality in the competitive proposal process. Further, the city reserves the right to enter into any contract deemed to be in the best interest of the city.

It is the intent and purpose of the City of Lubbock that this request permits competitive proposals. It is the offeror's responsibility to advise the City of Lubbock Director of Purchasing and Contract Management if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source. Such notification must be submitted in writing and must be received by the director of purchasing and contract management no later than five (5) business days prior to the above submittal deadline.

The City of Lubbock Charter states that no officer or employee of the City can benefit from any contract, job, work or service for the municipality or be interested in the sale to the City of any supplies, equipment, material or articles purchased. Will any officer or employee of the City, or member of their immediate family, benefit from the award of this proposal to the above firm?

YES       NO

**THE OFFEROR HEREBY ACKNOWLEDGES RECEIPT OF AND AGREES ITS  
PROPOSAL IS BASED ON ANY ADDENDA POSTED.**

**INSURANCE REQUIREMENTS**

I, the undersigned Bidder certify that the insurance requirements contained in this bid document have been reviewed by me and my Insurance Agent/Broker. If I am awarded this contract by the City of Lubbock, I will be able to, within ten (10) business days after being notified of such award by the City of Lubbock, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

If the time requirement specified above is not met, the City has the right to reject this proposal and award the contract to another contractor. If you have any questions concerning these requirements, please contact the Director of Purchasing & Contract Management for the City of Lubbock at (806) 775-2572.

**SUSPENSION AND DEBARMENT CERTIFICATION**

Federal Law (A-102 Common Rule and OMB Circular A-110) prohibits non-Federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards of \$25,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a Federal agency. Before an award of \$25,000 or more can be made to your firm, you must certify that your organization and its principals are not suspended or debarred by a Federal agency.

I, the undersigned agent for the firm named below, certify that neither this firm nor its principals are suspended or debarred by a Federal agency.

City of Lubbock  
Facilities  
Proposal Price Sheet  
RFP 21-16057-TF LP&L GIS Addition Furniture

**bfd interiors | blending furniture + design dba of Built for Dreams, Inc. of Lubbock, TX**

Item	Description	QTY (+/-)	UOM	Verifiable Manufacturer's		Discount Percentage	Unit Cost	Extended Cost
				List Price Number/Date	Manufacturer			
#0-1	Toggle Height- Adjustable Table	9	EA	4329	KI	53.546	2,318.00	20,862.00
#0-2	Rectangle Training Table with Static Base	9	EA	891	National	48.597	433.00	3,897.00
#0-3	Mesh Back Task Chair	9	EA	942	SitOnIt	43.916	413.69	3,723.21
#0-4	Guest Chair With Wood Back and Arms	9	EA	1205	National	45.892	553.00	4,977.00
#0-5	Nester Chair with Flexed Loop Arms	12	EA	930	SitOnIt	38.153	354.82	4,257.84
#0-6	Epic Round Top Softened Rim Table with 4-Prong Base	2	EA	1110	National	48.018	533.00	1,066.00
#0-7	Rectangular Top Nesting Training Table	6	EA	1834	KI	55.671	1,021.00	6,126.00
#0-8	Freestanding Pedestal Box/Box/File with Top	9	EA	987	National	46.707	461.00	4,149.00
#0-9	5 Shelf Bookcase	9	EA	1098	National	47.177	518.00	4,662.00
#0-10	Overhead Storage Cabinet – Wall Mount	3	EA	898	National	50.223	451.00	1,353.00
#0-11	Glass Marker Board 4' x 5'	1	EA	1719	Claridge	42.898	737.41	737.41
#0-12	Stainless Steel Swing Top Trash Can	4	EA	185	Global Ind	0.0086486	160.00	640.00
<b>Alternate 1</b>								
#1-1	3' X 4' (Glass Marker Board)	7	EA	1067	Claridge	43.686	466.13	3,262.91
#1-2	4' x 5' (Glass Marker Board)	2	EA	1719	Claridge	42.898	737.41	1,474.82
<b>Alternate 2</b>								
#2-1	Basic Lectern	1	EA	712	KI	57.725	411.00	411.00
#2-2	Entertainment Credenza	1	EA	3678	National	44.698	1,644.00	1,644.00
							<b>TOTAL</b>	<b>\$ 63,243.19</b>



**TEXAS GOVERNMENT CODE SECTION 2252.152**

The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.

**TEXAS GOVERNMENT CODE SECTION 2271.002**

Company hereby certifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

The following definitions apply to this state statute:

(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

**-----Intentionally Left Blank-----**

### Vendor Acknowledgement

**In compliance with this solicitation, the undersigned offeror having examined the request for proposal, instructions to offerors, documents associated with the request for proposals, and being familiar with the conditions to be met, has reviewed the information regarding:**

- **Insurance Requirements**
- **Suspension and Debarment Certification**
- **Texas Government Code Section 2252.152**
- **Texas Government Code Section 2271.002**

An individual authorized to bind the company must sign the following section. Failure to execute this portion may result in proposal rejection.

*Alisha Gregg*  
**Authorized Signature**

Alisha Gregg

**Print/Type Name**

bfd interiors | blending furniture + design

**Company Name**

CEO

**Title**

09.16.21

**Date**

PO Box 94667

**Address**

Lubbock, Texas 79493-4667

**City, State Zip Code**

Contact for questions, clarifications, etc.	
<b>Name and Title:</b>	Alisha Gregg, CEO
<b>Mailing Address:</b>	PO Box 94667
<b>City, State, Zip:</b>	Lubbock, Texas 79493-4667
<b>Telephone No:</b>	806.412.4796
<b>Fax No:</b>	806.687.9187
<b>E-Mail:</b>	alisha@bfdinteriors.com

EXHIBIT C

1. INSURANCE REQUIREMENTS

- 1.1. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.
- 1.2. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.
- 1.3. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

TYPE OF INSURANCE	COMBINED SINGLE LIMIT
<b>GENERAL LIABILITY</b>	
<input checked="" type="checkbox"/> Commercial General Liability	General Aggregate 1,000,000
<input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurrence	Products-Comp/Op AGG X
<input type="checkbox"/> W/Heavy Equipment	Personal & Adv. Injury X
<input checked="" type="checkbox"/> To Include Products of Complete Operation Endorsements	Contractual Liability X
	Med Exp (Any one Person) X
<b>AUTOMOTIVE LIABILITY</b>	
<input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos	Per Occurrence 1,000,000
<input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos	
<input type="checkbox"/> Non-Owned Autos	
<b>EXCESS LIABILITY</b>	
<input checked="" type="checkbox"/> Umbrella Form	Each Occurrence 4,000,000
	Aggregate
<input checked="" type="checkbox"/> WORKERS COMPENSATION – STATUTORY AMOUNTS OR OCCUPATIONAL MEDICAL AND DISABILITY	500,000
<input checked="" type="checkbox"/> EMPLOYERS' LIABILITY	1,000,000
<b>OTHER: COPIES OF ENDOSEMENTS ARE REQUIRED</b>	
<input checked="" type="checkbox"/> City of Lubbock named as additional insured on Auto/General Liability on a primary and non-contributory bases.	
<input checked="" type="checkbox"/> To include products of completed operations endorsement.	
<input checked="" type="checkbox"/> Waiver of subrogation in favor of the City of Lubbock on all coverages, except	

## **IMPORTANT: POLICY ENDORSEMENTS**

The Contractor will provide copies of the policies without expense, to the City and **all endorsements** thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Contractor.

## **REQUIRED PROVISIONS**

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

## **NOTICES**

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement **CERTIFICATE OF INSURANCE**.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management  
City of Lubbock  
1314 Avenue K, 9<sup>th</sup> Floor  
Lubbock, Texas 79401

Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

**City of Lubbock, TX  
Capital Project  
October 26, 2021**

Capital Project Number: 92634  
 Capital Project Name: LP&L GIS Office Addition

	<b>Budget</b>
<i>Encumbered/Expended</i>	
Advertising	\$ 198
Condray Design Group, Inc. - Contract 14964	84,000
Tommy Klein Construction, Inc. - Contract 15578	672,463
 <i>Agenda Item October 26, 2021</i>	
Built for Dreams, Inc. - Contract 16057	63,243
 <i><b>Encumbered/Expended To Date</b></i>	<b>819,904</b>
 <i>Estimated Costs for Remaining Appropriation</i>	
COL Charges	30,000
Technology	77,500
Construction	187,596
<i><b>Remaining Appropriation</b></i>	<b>295,096</b>
<b>Total Appropriation</b>	<b>\$ 1,115,000</b>



## **Purchasing and Contract Management**

### **Project Summary**

#### **RFP 21-16057-TF LP&L GIS Addition Furniture**

Notice was published in the Lubbock Avalanche Journal on August 29 & September 5, 2021.

Notice was published on the Purchasing Web Site under Bid Opportunities.

Notice was published on BidSync.com and Bonfire.com from August 29 to September 21, 2021.

9 individuals attended the pre-proposal meeting.

68 vendors viewed using BidSync.com and Bonfire.com.

45 vendors downloaded the documents.

6 vendors were notified separately.

3 vendors submitted a proposal.







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## Information

### Agenda Item

**Resolution - Fleet Services:** Consider a resolution authorizing the Mayor to execute Purchase Order 31062145, with C&C Manufacturing, LLC, for the purchase of a new 2022 Aljon Landfill Compactor, for Solid Waste Landfill.

### Item Summary

This Purchase Order for \$1,096,567 is for a new 2022 Aljon Series 600 landfill compactor, from C&C Manufacturing, LLC, of Centerville, Iowa, and will be used at the City landfill to move and compact refuse. This compactor is replacing a 2014 compactor that is past its useful life.

This purchase is made through the Houston-Galveston Area Council (HGAC), Contract SM10-20. HGAC is a regional planning commission created under Acts of the 59th Legislature, Regular Session, 1965, recodified as Texas Local Government Code, Chapter 391. The HGAC program was established pursuant to the Texas Interlocal Cooperation Act that allows governmental and qualifying non-profit entities to use the Act to obtain commonly needed products and services. HGAC purchases conform to the requirements of Texas competitive bid statutes.

### Fiscal Impact

Purchase Order 31062145, for \$1,096,567 to C&C Manufacturing, is funded in Capital Improvement Project 92721 Solid Waste Vehicle Replacement.

### Staff/Board Recommending

Brooke Witcher, Assistant City Manager

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## Attachments

Resolution

Purchase Order

Budget Detail

CIP Detail

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Purchase Order No. 31062145 in accordance with HGAC Contract SM10-20 for the purchase of an Alijon 600 Landfill Compactor, by and between the City of Lubbock and C&C Manufacturing, LLC, of Centerville, IA and related documents. Said Purchase Order is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

Brooke Witcher  
\_\_\_\_\_  
Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:

Kelli Leisure  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney





PURCHASE ORDER

Page - 1
Date - 10/5/2021
Order Number 31062145 000 OP
Branch/Plant 3526

TO: C&C MANUFACTURING, LLC
PO BOX 220
CENTERVILLE IA 52544-0220

SHIP TO: CITY OF LUBBOCK
FLEET SERVICES
206 MUNICIPAL DRIVE
LUBBOCK TX 79404

INVOICE TO: CITY OF LUBBOCK
ACCOUNTS PAYABLE
P.O. BOX 2000
LUBBOCK, TX 79457
BY: [Signature]
Marta Alvarez, Director of Purchasing & Contract Management

Ordered 10/5/2021 Freight
Requested 2/28/2022 Taken By K MORGAN
Delivery PER N DODSON REQ 57905 HGAC SM10-20/PUR 16168

Table with 6 columns: Description/Supplier Item, Ordered, Unit Cost, UM, Extension, Request Date. Rows include items like Aljon Series 600 Landfill Comp, 1.5X52X64 Ibeam Wheels, 17 foot Straight Blade, Fire Suppression, Auto Lube, 5 year 10000 hour pwertrain wa, Telematics, Freight, Machine Set-up & Commisioning, Special Discount, and Total Order.

Terms NET 30 1,096,567.00

This purchase order encumbers funds in the amount of \$1,096,567.00 awarded C&C Manufacturing, LLC of Centerville, IA on \_\_\_\_\_, 2021. The following is incorporated into and made part of this purchase order by reference: Quote dated September 16, 2021, from C&C Manufacturing, LLC of Centerville, IA, and HGAC Contract SM10-20. Resolution # \_\_\_\_\_

CITY OF LUBBOCK

ATTEST:

Daniel M. Pope, Mayor

Rebecca Garza, City Secretary



**PURCHASE ORDER  
TERMS AND CONDITIONS  
IMPORTANT: READ CAREFULLY  
STANDARD TERMS AND CONDITIONS  
CITY OF LUBBOCK, TX**

**Seller and Buyer agree as follows:**

1. **SELLER TO PACKAGE GOODS.** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows (a) Seller's name and address, (b) Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED.** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE AND RISK OF LOSS.** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
4. **NO REPLACEMENT OF DEFECTIVE TENDER.** Every tender of delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
5. **INVOICES & PAYMENTS.** A Seller shall submit separate invoices, in duplicate, one each purchase order or purchase release after each delivery. Invoices shall indicate the purchase order or purchase release number and the supply agreement number if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable, should be attached to the invoice. Mail To: Accounts Payable, City of Lubbock, P. O. Box 2000, Lubbock, Texas 79457. Payment shall not be due until the above instruments are submitted after delivery.
6. **GRATUITIES.** The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the City of Lubbock with a view to securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
7. **SPECIAL TOOLS & TEST EQUIPMENT.** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.
8. **WARRANTY-PRICE.** a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current process on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense. b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty the Buyer shall have the right in addition to any other right of rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
9. **WARRANTY-PRODUCT.** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and descriptions listed in the bid invitation, and to the sample(s) furnished by the Seller, if any. In the event of a conflict or between the specifications, drawings, and descriptions, the specifications shall govern. Notwithstanding any provisions contained in the contractual agreement, the Seller represents and warrants fault-free performance and fault-free result in the processing date and date related data (including, but not limited to calculating, comparing and sequencing) of all hardware, software and firmware products delivered and services provided under this Contract, individually or in combination, as the case may be from the effective date of this Contract. The obligations contained herein apply to products and services provided by the Seller, its sub-Seller or any third party involved in the creation or development of the products and services to be delivered to the City of Lubbock under this Contract. Failure to comply with any of the obligations contained herein, may result in the City of Lubbock availing itself of any of its rights under the law and under this Contract including, but not limited to, its right pertaining to termination or default. The warranties contained herein are separate and discrete from any other warranties specified in this Contract, and are not subject to any disclaimer of warranty, implied or expressed, or limitation of the Seller's liability which may be specified in this Contract, its appendices, its schedules, its annexes or any document incorporated in this Contract by reference.
10. **SAFETY WARRANTY.** Seller warrants that the product sold to the Buyer shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at the Seller's expense.
11. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS.** As part of this contract for sale Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement of the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement of the like. If Seller is of the opinion that an infringement or the like will result, he will notify the Buyer to this effect in writing within two weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will save Buyer harmless. If Seller in good faith ascertains the production of the goods in accordance with the specifications will result in infringement or the like, the contract shall be null and void.
12. **NON APPROPRIATION.** All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of nonappropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.
13. **RIGHT OF INSPECTION.** Buyer shall have the right to inspect the goods at delivery before accepting them.
14. **CANCELLATION.** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.
15. **TERMINATION.** The performance of work under this order may be terminated in whole, or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery of the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right or termination is in addition to and not in lieu of the rights of Buyer set forth in Clause 14, herein.
16. **FORCE MAJEURE.** Neither party shall be held responsible for losses, resulting if the fulfillment of any terms of provisions of this contract is delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence said party is unable to prevent.
17. **ASSIGNMENT-DELEGATION.** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purpose unless made in conformity with this paragraph.
18. **WAIVER.** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
19. **INTERPRETATION-PAROLE EVIDENCE.** This writing, plus any specifications for bids and performance provided by Buyer in its advertisement for bids, and any other documents provided by Seller as part of his bid, is intended by the parties as a final expression of their agreement and intended also as a complete and exclusive statement of the terms of their agreement. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
20. **APPLICABLE LAW.** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
21. **RIGHT TO ASSURANCE.** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
22. **INDEMNIFICATION.** Seller shall indemnify, keep and save harmless the Buyer, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in anywise accrue against the Buyer in consequence of the granting of this Contract or which may anywise result therefrom, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Seller or its employees, or of the subSeller or assignee or its employees, if any, and the Seller shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom of incurred in connection therewith, and, if any judgment shall be rendered against the Buyer in any such action, the Seller shall, at its own expenses, satisfy and discharge the same Seller expressly understands and agrees that any bond required by this contract, or otherwise provided by Seller, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Buyer as herein provided.
23. **TIME.** It is hereby expressly agreed and understood that time is of the essence for the performance of this contract, and failure by contract to meet the time specifications of this agreement will cause Seller to be in default of this agreement.
24. **MBE.** The City of Lubbock hereby notifies all bidders that in regard to any contract entered into pursuant to this request, minority and women business enterprises will be afforded equal opportunities to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or natural origin in consideration for an award.
25. **NON-ARBITRATION.** The City reserves the right to exercise any right or remedy to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.
26. **RIGHT TO AUDIT.** At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within thirty (30) days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.
27. **ASSIGNING OR SUBLETTING THE CONTRACT.** The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof of insurance from the Subcontractor that complies with all contract Insurance requirements.
29. **HOUSE BILL 1295 DISCLOSURE OF INTERESTED PARTIES.** House Bill 1295, adopted by the 84th Legislature, created §252.908, Texas Government Code. Section 252.908 requires a business entity entering into certain contracts with a governmental entity or state agency to file with the governmental entity or state agency a disclosure of interested parties at the time the business entity submits the signed contract to the governmental entity or state agency. Instructions for completing Form 1295 are available at: <http://www.ci.lubbock.tx.us/departamental-websites/departments/purchasing/vendor-information>
30. **CONTRACTOR ACKNOWLEDGES,** by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between these terms and conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.
31. **TEXAS GOVERNMENT CODE, CHAPTER 2252.** The undersigned representative of the undersigned company or business, being an adult over the age of eighteen (18) years of age, pursuant to Texas Government Code, Chapter 2252, Section 2252.152, certify that the company named above is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas, which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the City of Lubbock Purchasing and Contract Department.
32. **TEXAS GOVERNMENT CODE, CHAPTER 2270** This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.
33. **TEXAS PUBLIC INFORMATION ACT.** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Pursuant to Section 552.301(c) of the Texas Government Code, the City of Lubbock has designated the following email address for which public information requests may be made by an emailed request. Please send this request to this email address for it to be processed: [orr@mvlubbock.us](mailto:orr@mvlubbock.us).







**City of Lubbock, TX  
Capital Project  
October 26, 2021**

Capital Project Number: 92721  
 Capital Project Name: Solid Waste Vehicle Replacement Tax Notes

	<b>Budget</b>
<i>Encumbered/Expended</i>	\$ -
<i>Agenda Item October 26, 2021</i>	
C & C Manufacturing - 2022 Aljon Series 600 Compactor	1,096,567
<b><i>Encumbered/Expended To Date</i></b>	<b>1,096,567</b>
<i>Estimated Costs for Remaining Appropriation</i>	
Construction Contingencies	3,433
<b><i>Remaining Appropriation</i></b>	<b>3,433</b>
<b>Total Appropriation</b>	<b>\$ 1,100,000</b>





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## Information

### Agenda Item

**Resolution - Parks and Recreation:** Consider a resolution authorizing the Mayor to execute Amendment No. 5 to the Lease Agreement, with Joyland Amusement Park, to extend the term until December 31, 2021.

### Item Summary

This item is a resolution authorizing the Mayor to execute, on behalf of the City of Lubbock, Amendment No. 5 to the Joyland Amusement Park Lease Agreement, extending the term through December 31, 2021. The current Lease Agreement will expire on October 31, 2021. Amendment No. 5 extends the existing agreement through the end of the year, providing time to complete the ongoing negotiations on a new Lease Agreement.

### Fiscal Impact

None

### Staff/Board Recommending

Brooke Witcher, Assistant City Manager

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## Attachments

Resolution - Joyland  
Amendment No. 5  
Amendment No.4  
Lease Agreement

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT** the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Amendment No. 5 to the Joyland Lease Agreement extending the term until December 31, 2021, by and between the City of Lubbock and Mackenzie Park Playground, Inc. d/b/a Joyland Amusement Park, and related documents. Said Amendment is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

**Passed by the City Council on \_\_\_\_\_.**

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:



\_\_\_\_\_  
Ryan Brooke, Assistant City Attorney

RES. Amendment No. 5, Joyland Lease Agreement  
10.15.21

**AMENDMENT NO. 5  
TO AGREEMENT BETWEEN THE CITY OF LUBBOCK  
AND  
MACKENZIE PARK PLAYGROUND, INC.,  
D/B/A JOYLAND AMUSEMENT PARK**

THIS FIFTH AMENDMENT to the Joyland Lease Agreement dated August 13, 1987, is entered into by the **City of Lubbock** ("City"), a home rule municipal corporation in Lubbock County, Texas and **Mackenzie Park Playground, Inc., d/b/a Joyland Amusement Park** ("Joyland") Address, 500 Canyon Lake Drive, Lubbock, TX 79401.

WHEREAS, on or about August 13, 1987, City and Joyland executed a Lease Agreement whereby the City leased to Joyland lands located in Mackenzie Park for a term of ten (10) years with an additional term of five (5) years; and

WHEREAS, both parties for good and valuable consideration on or about February 8, 1996, modified the initial term of said Lease Agreement in a First Amendment to enable Joyland to obtain financing for improvements to the park facility; and

WHEREAS, both parties for good and valuable consideration on or about February 27, 1997, further modified said Lease Agreement in a Second Amendment with regard to the lease payments; and

WHEREAS, both parties for good and valuable consideration on or about October 13, 2006, further modified said Lease Agreement in a Third Amendment with regard to the term of the lease, thereby creating a termination date of October 31, 2021, and with regarding to the lease payments; and

WHEREAS, in response to the mandatory closure of non-essential businesses and necessary precautions in business services related to the COVID-19 pandemic, and by the authority of the emergency declarations of the State of Texas and the City of Lubbock, the parties further modified said Lease Agreement in a Fourth Amendment reducing the lease payments for the year 2020; and

WHEREAS, both parties for good and valuable consideration desire to further amend said Lease Agreement with regard to the term;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions, both general and specific, as hereinafter set forth, the Joyland Lease Agreement of August 13, 1987, all subsequent amendments thereto, are hereby amended by deleting the termination date of October 31, 2021 in Section 1 and replacing the termination date with December 31, 2021 in Section 1.

All other portions of the original Lease Agreement and previous Amendments shall remain in place and are not altered by this Amendment.

IN WITNESS HEREOF, the parties have executed this Amendment as of this \_\_\_\_ day of October 2021.

CITY OF LUBBOCK:

MACKENZIE PARK PLAYGROUND, INC.,  
D/B/A JOYLAND AMUSEMENT PARK

DANIEL M. POPE, MAYOR

DAVID DEAN, PRESIDENT

ATTEST:

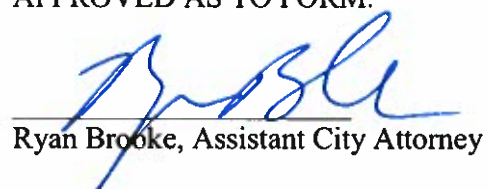
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:



Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:

  
Ryan Brooke, Assistant City Attorney



**AMENDMENT NO. 4  
TO AGREEMENT BETWEEN THE CITY OF LUBBOCK  
AND  
MACKENZIE PARK PLAYGROUND, INC.,  
D/B/A JOYLAND AMUSEMENT PARK  
(PURSUANT TO FEMA REGULATIONS)**

THIS IS AN AMENDMENT TO THE LEASE AGREEMENT dated and entered into the 11th day of May 2020 by and between the City of Lubbock ("City") and Mackenzie Park Playground, Inc., d/b/a Joyland Amusement Park ("Joyland") Address, 500 Canyon Lake Drive, Lubbock, TX 79401.

WHEREAS, the City and Joyland entered into a Lease Agreement ("Agreement") on August 13, 1987, a copy of such Agreement, and all amendments thereto, is attached hereto as "Exhibit 1" and is incorporated in this Amendment as if fully set forth herein; and

WHEREAS, on March 13, 2020, pursuant to Section 418.014 of the Texas Government Code, the Governor declared a state of disaster for the State of Texas; and

WHEREAS, on April 3, 2020, the Mayor of the City of Lubbock issued a Seventh Declaration of Disaster, pursuant to his authority under Section 418.108 of the Texas Government Code, continuing the local state of disaster, and suspending certain administrative regulations for procurement; and

WHEREAS, in response to the mandatory closure of non-essential businesses and necessary precautions in business services related to the COVID-19 pandemic, and by the authority of the emergency declarations of the State of Texas and the City of Lubbock, the City and Joyland hereby desire to amend said Agreement.

NOW THEREFORE, the City and Joyland hereby agree to amend the Agreement as follows:

This Amendment No.4 reduces the lease payment according to Section 9 of the original Agreement. Pursuant to this amendment, the four payments due for the year 2020 shall be as follows:

Payment due June 1, 2020: \$0.00  
Payment due September 1, 2020: \$9,583.25  
Payment due October 1, 2020: \$9,583.25  
Payment due November 1, 2020: \$9,583.25

This Amendment shall become effective as of May 11, 2020 and shall remain in effect until December 31, 2020 unless modified in writing and signed by both parties. Following the expiration of this Amendment No. 4 on December 31, 2020, the previous Section 9 of the Agreement shall be restored as follows:

"The consideration for the execution and acceptance of this Lease Agreement is payable as follows:

An annual payment of \$38,333 per year to be paid in four payments of \$9,583.25 due June 1, July 1, August 1, and September 1. The first payment will be due June 1, 2021."

All other portions of the original Agreement and previous Amendments shall remain in place and are not altered by this amendment.

**SUPPLEMENTAL FEDERAL REQUIREMENTS:** This agreement may receive federal aid through the Federal Emergency Management Agency (FEMA) and additional contract provisions of are set forth in 2 C.F.R §200.326 and included herein. Continuation of this project is contingent upon availability of Federal Funding.

IN WITNESS HEREOF, the parties have executed this Amendment as of this 11<sup>th</sup> day of May 2020.

CITY OF LUBBOCK:

  
Marta Alvarez, Director of Purchasing  
and Contract Management

Contractor

  
MACKENZIE PARK PLAYGROUND, INC.,  
D/B/A JOYLAND AMUSEMENT PARK

APPROVED AS TO CONTENT:

  
Brooke Witcher, Assistant City Manager

APPROVED AS TO FORM:

  
Ryan Brooke, Assistant City Attorney

**SUPPLEMENTAL FEDERAL PROVISIONS AND ASSURANCES (FEMA)**

Pursuant to 2 C.F.R. Part 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

**Non-Discrimination:** During the performance of this contract, the contractor agrees as follows:

1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, Page 10 of 25 [www.fema.gov/procurement-disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team) To Table of Contents U. S. Department of Homeland Security Headquarters 500 C St SW Washington, D.C. 20042 guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**Davis Bacon Act and Copeland Anti-Kickback Act.** During the performance of this contract, the contractor agrees as follows:

**Contractor.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

**Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

**Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

**Contract Work Hours and Safety Standards Act.** During the performance of this contract, the contractor agrees as follows:

**Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**Withholding for unpaid wages and liquidated damages.** The City of Lubbock, Texas shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

**Clean Air Act and the Federal Water Pollution Control Act.** During the performance of this contract, the contractor agrees as follows:

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The contractor agrees to report each violation to the State of Texas and understands and agrees that the State of Texas will, in turn, report each violation as required to assure notification to the City of Lubbock, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**Federal Water Pollution Control Act:** During the performance of this contract, the contractor agrees as follows:

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the City of Lubbock, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA."

**Debarment and Suspension.** During the performance of this contract, the contractor agrees as follows:

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.



This certification is a material representation of fact relied upon by the City of San Marcos. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of San Marcos and the State of Texas, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended) During the performance of this contract, the contractor agrees as follows:

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

Procurement of Recovered Materials. During the performance of this contract, the contractor agrees as follows:

- 1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-
  - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - ii. Meeting contract performance requirements; or
  - iii. At a reasonable price.
- 2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines website, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>."

Additional FEMA Requirements. During the performance of this contract, the contractor agrees as follows:

Access to Records.

The contractor agrees to provide City of Lubbock, State of Texas, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."

**DHS Seal, Logo, and Flags.**

"The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval."

**Compliance with Federal Law, Regulations, and Executive Orders.**

"This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives."

**No Obligation by Federal Government.**

"The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

**Program Fraud and False or Fraudulent Statements or Related Acts.**

"The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

**APPENDIX A. 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING**  
(must be included with Bid)

The undersigned Contractor certifies, to the best of his or her knowledge, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor Mackenzie Park Playground, Inc., d/b/a Joyland Amusement Park "Joyland", certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.* apply to this certification and disclosure, if any.

David Dean  
Signature of Contractor's Authorized Official

David Dean President  
Name and Title of Contractor's Authorized Official

5-11-20  
Date

Resolution No. 2018-R0069

Item No. 6.15

February 8, 2018

**RESOLUTION**

**WHEREAS**, the City of Lubbock (the "City") and Mackenzie Park Playground, Inc., d/b/a Joyland Amusement Park ("Joyland") entered into a Lease Agreement on August 13, 1987, a copy of such Lease Agreement, and all amendments thereto, is attached hereto as "Exhibit 1" and is incorporated in this Resolution as if fully set forth herein;

**WHEREAS**, Section 10 of said Lease Agreement permits the assignment of the Lease Agreement with the written consent of the City; and

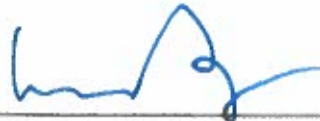
**WHEREAS**, Joyland desires to assign to Prosperity Bank the Lease Agreement with the City in order to finance park improvements, with a copy of such Assignment being attached hereto as "Exhibit 2" and being incorporated in this Resolution as if fully set forth herein; and **NOW THEREFORE:**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**SECTION 1. THAT** the City Council of the City of Lubbock hereby approves and consents to the Assignment of the Lease Agreement from Joyland to Prosperity Bank for the financing of park improvements.

**SECTION 2. THAT** the act of the City Manager of the City of Lubbock in executing the Assignment of the Lease Agreement from Mackenzie Park Playground, Inc., d/b/a Joyland Amusement Park, to Prosperity Bank, is hereby ratified in full. Said Lease Agreement and Assignment are attached hereto and incorporated in this Resolution as if fully set forth herein and shall be included in the minutes of the City Council

Passed by the City Council on February 8, 2018.



**DANIEL M. POPE, MAYOR**

**ATTEST:**



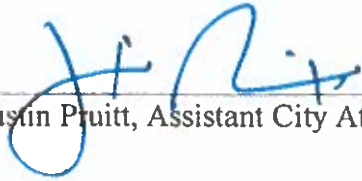
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**



W. Jarrett Atkinson, City Manager

**APPROVED AS TO FORM:**



Justin Pruitt, Assistant City Attorney

JOYLAND AMUSEMENT PARK

LEASE AGREEMENT

THE STATE OF TEXAS  
COUNTY OF LUBBOCK

§  
§

KNOW, ALL MEN BY THESE PRESENTS:

That the following agreement made and entered into by and between the CITY OF LUBBOCK, TEXAS, hereinafter called "City", acting by and through its officers heretofore duly authorized to execute this instrument, and upon the recommendation of the City of Lubbock Parks and Recreation Board, subject to the approval of the Texas State Parks Board, and MACKENZIE PARK PLAYGROUND, INC. d/b/a JOYLAND AMUSEMENT PARK, hereinafter called "Concessioner", of Lubbock County, Texas.

W I T N E S S E T H:

Section 1

That for and in consideration of the rental as hereinafter provided, the City of Lubbock does hereby lease and let to Concessioner all of the area in Mackenzie State Park known as Joyland Amusement Park, in the County of Lubbock, State of Texas, and within the corporate limits of said City of Lubbock, for a term of ten (10) years, beginning the 1st day of October, 1987, and terminating on the 30th day of September, 1997, and said lease shall be automatically extended for an additional term of five (5) years from the 1st day of October, 1997, to the 30th day of September, 2002, unless either party to this agreement shall give written notice of termination to the other party before the expiration of



the ten (10) year term, and provided said lease is not terminated earlier by mutual agreement, or as hereinafter provided.

#### Section 2

Concessioner agrees as an independent contractor to operate all concessions in said Joyland Amusement Park in a manner that will be acceptable to the City of Lubbock, the Lubbock Parks and Recreation Board and the Texas State Parks Board, or their duly authorized agents, and in accordance with all laws, rules, regulations and ordinances of the City of Lubbock, the Lubbock Parks and Recreation Board, the State of Texas and the Texas State Parks Board. This agreement applies to all existing laws, rules, regulations and ordinances and all laws, rules, regulations and ordinances hereinafter enacted or which may become effective while this agreement remains in force.

#### Section 3

Concessioner further agrees, binds and obligates itself to keep said Joyland Amusement Park in a clean and sanitary condition, and to maintain all plants, trees, grasses, buildings and improvements in such a state of repair as the same are in at the commencement of this lease, reasonable use and wearing thereof excepted, and plants, trees, grasses, buildings and improvements placed in said Joyland Amusement Park during the term of this agreement shall be maintained in such a state of repair as the same are in at the time of their installation or construction, reasonable use and wearing thereof excepted. In helping to maintain Joyland Amusement Park, the City agrees to furnish a parking lot or lots of suffi-

cient size to meet the needs of the public in its use of said Joyland Amusement Park. The City also agrees to provide water to Concessioner.

#### Section 4

Concessioner agrees to make capital improvements on Joyland Amusement Park commensurate with the growth in gross revenues generated by said Joyland Amusement Park and which, in this Concessioner's opinion, will enhance the value, patrons' use and revenue of Joyland Amusement Park, and any permanent improvements such as buildings, etc. so erected by Concessioner on the leased premises shall become the property of the City at the expiration of this lease agreement; provided, however, that all temporary improvements such as rides, etc. shall remain the personal and removable property of Concessioner.

#### Section 5

Concessioner shall maintain at all times during the term of this agreement, at Concessioner's sole expense, insurance with an insurance underwriter acceptable to the City and authorized to do business in the State of Texas, as follows:

- (1) Comprehensive General Liability Insurance in the amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) (Combined Single Limit) for Bodily Injury and Property damage claims resulting from Concessioner's business activities upon the leased premises. The City of Lubbock is to be named as an additional insured on this policy, and a copy of the endorsement naming the City as an addi-

tional insured is to be attached to or indicated on the Certificate of Insurance.

- (2) Fire and Extended Coverage Insurance on all improvements located on the premises in amounts sufficient to cover replacement costs of such improvements or the maximum for which the same are insurable, whichever is less. The City of Lubbock is to be named as insured on this policy.
- (3) Boiler Insurance on any device defined as a boiler by the laws of the State of Texas. Concessioner shall also comply with all of the State's registration and inspection requirements for boilers.
- (4) Workers' Compensation Insurance sufficient to meet statutory requirements.

City reserves the right to require Concessioner to secure additional amounts of insurance from time to time throughout the term of this agreement which the City deems necessary to protect its interests and the interests of members of the public who visit Joyland Amusement Park, but any requirement for additional insurance shall be based on such factors as construction of additional facilities, increased usage of facilities and inflation.

In the event of loss, in whole or in part, of any permanent improvement insured pursuant to the provisions of this agreement, the Concessioner shall apply all proceeds received from such insurance toward either (1) rehabilitation or repair of such improvement, or at the option of the City (2) the construction of new improvements.

If, during the term of this agreement, Concessioner's improvements are totally or partially destroyed from a risk required to be covered by the insurance described in this section, or otherwise covered by insurance, this agreement shall not terminate, and Concessioner shall timely restore or cause to be restored the improvements to substantially the same condition as existed immediately before such destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Where the risk was not required to be covered by insurance as set forth in this Section, Concessioner shall only be required to restore improvements to the extent of the insurance proceeds received.

Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City Secretary prior to entry upon the leased premises by the Concessioner. Each policy shall name the City as an additional insured as its interest may appear. Each policy shall also provide that the insurer shall notify the City Secretary of the City of Lubbock, Texas, of any alteration, renewal or cancellation of its terms and that such policy will remain in full force and effect until ten (10) days after such notice is received by the City Secretary.

#### Section 6

The City and its duly authorized agents and representatives are hereby authorized by Concessioner to at all times and seasons enter Joyland Amusement Park and all buildings and equipment on the leased premises for the purpose of inspecting the entire area for all lawful purposes, and to inspect and audit all books, records,

files and other matters pertinent thereto, which Concessioner shall at all times maintain and make available to the City's agents and representatives; and further, the City retains the right to make improvements in Joyland Amusement Park in cooperation with Concessioner which, in the discretion of the City, are necessary or desirable in order that the public might obtain full enjoyment of such premises.

#### Section 7

Concessioner agrees to notify and request approval in writing from the City's Director of Parks and Recreation for any and all changes, additions or alterations in the design and placement of facilities in Joyland Amusement Park.

#### Section 8

Concessioner shall at all times maintain a consecutively numbered ticket system, and a detailed report of Concessioner's gross income from all sources shall be furnished to the City, together with the money which shall be due and owing to the City as a result of each month's operations, on the 10th day of the following month, and further, Concessioner is hereby required to keep complete, accurate and detailed financial bookkeeping records which shall be subject to audit as hereinabove provided.

#### Section 9

The consideration for the execution and acceptance of this lease agreement is payable as follows:

As a part of the consideration for the execution of this agreement, Concessioner shall pay to the City a monthly rental

based on gross receipts from amusement rides according to the following scale:

\$ 0.00	to	\$250,000	5%
\$250,000	to	\$275,000	5½%
\$275,000	to	\$300,000	6%
\$300,000	to	\$325,000	6½%
\$325,000	to	\$350,000	7%
\$350,000	to	\$375,000	7½%
\$375,000	to	\$400,000	8%
\$400,000	to	\$425,000	8½%
\$425,000	to	\$450,000	9%
\$450,000	to	\$475,000	9½%
\$475,000	to	\$500,000	10%

and further, that a percentage on the gross receipts for all food concessions other than rides will be two percent (2%) and will be raised one half percent (.5%) according to the increase in amusement ride revenue as stated above.

It is understood and agreed by and between the parties that "gross take on all rides" shall be construed to mean all sums of money coming into the hands of Concessioner as a result of the operations of Joyland Amusement Park after the "deduction of all amusement taxes."

#### Section 10

Concessioner covenants that it will not assign this lease, nor sublet the whole or any part of the leased premises without first having obtained the written consent and approval of the Director of



Parks and Recreation of the City of Lubbock and the Parks and Recreation Board and, when required, the consent of the Texas State Parks Board.

#### Section 11

If Concessioner shall neglect or otherwise fail to perform or observe any of the covenants contained in this instrument which are to be performed by Concessioner, or shall be declared bankrupt according to law, or if any assignment shall be attempted to be made of said leased premises for the benefit of creditors, the City may lawfully and immediately or at any time thereafter, and without further notice or demand, enter into and upon the leased premises, or any part thereof in the name of the whole, and repossess the same, and expel Concessioner and remove Concessioner's effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for obtaining possession of the premises or rent in arrears, and upon entry as aforesaid the rights of Concessioner in this lease shall cease and be ended.

#### Section 12

It is mutually agreed and understood by and between both parties hereto that at the expiration of this lease the same may be renewed for a period not to exceed ten (10) years, with the terms and conditions to be agreed upon by both parties.

THIS AGREEMENT IS EXECUTED IN QUADRUPLICATE this, the 13th  
day of August, 1987.

CITY OF LUBBOCK

MACKENZIE PARK PLAYGROUND, INC.  
d/b/a JOYLAND AMUSEMENT PARK

BY: B. C. McMinr  
B. C. MCMINN, MAYOR

BY: James C. Osborn

ATTEST:

TEXAS STATE PARK'S BOARD

Ranette Boyd  
Ranette Boyd, City Secretary

BY: \_\_\_\_\_

APPROVED AS TO CONTENT:

Lee Osborn  
Lee Osborn, Director of  
Parks and Recreation

APPROVED AS TO FORM:

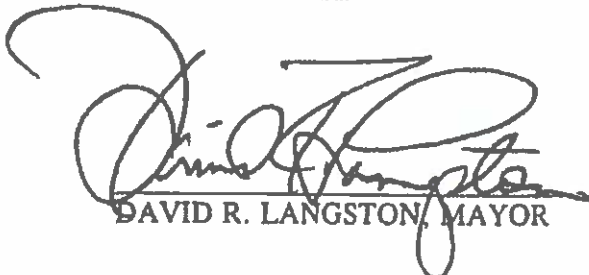
Harold Willard  
Harold Willard, Assistant  
City Attorney

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock BE and is hereby authorized and directed to execute for and on behalf of the City of Lubbock a First Amendment to Joyland Amusement Park Lease Agreement, attached hereto and which shall be spread upon the minutes of the Council and as spread upon the minutes of this Council shall constitute and be a part of this Resolution as if fully copied herein in detail.

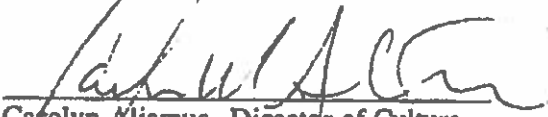
Passed by the City Council this 8th day of February, 1996.

  
DAVID R. LANGSTON, MAYOR

ATTEST:

  
Betty M. Johnson, City Secretary

APPROVED AS TO CONTENT:

  
Carolyn Aliamus, Director of Culture  
and Leisure Services

APPROVED AS TO FORM:

  
Harold Willard, Assistant City Attorney

**THE STATE C**

2. That the phrase "subject to the approval of the Texas Parks and Wildlife Department" contained in the first paragraph on page 1 of the agreement is hereby deleted from the agreement.

3. That the phrase "and the Texas Parks and Wildlife Department" contained in Section 2 of the agreement is hereby deleted from the agreement.

4. That the phrase "and, when required, the consent of the Texas Parks and Wildlife Department" contained in Section 10 of the agreement is hereby deleted from the agreement.

5. That the agreement between the City and Concessioner to which this Amendment is applicable shall be modified and amended only as expressly stated herein and is hereby ratified and affirmed in all other respects.

EXECUTED THIS 8th day of February, 1996.

CITY OF LUBBOCK

MACKENZIE PARK PLAYGROUND, INC.  
d/b/a JOYLAND AMUSEMENT PARK

BY:

David R. Langston  
DAVID R. LANGSTON, MAYOR

BY:

David Dean

ATTEST:

Betty M. Johnson  
Betty M. Johnson, City Secretary

APPROVED AS TO CONTENT:

Carolyn Aliamus  
Carolyn Aliamus, Director of Culture  
and Leisure Services

APPROVED AS TO FORM:

Harold Willard  
Harold Willard, Assistant City Attorney

HW:da/cityatt/a-joylnd.doc  
January 30, 1996

RESOLUTION NO. 5428  
Item #16  
February 27, 1997

**RESOLUTION**


**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

THAT the Mayor of the City of Lubbock BE and is hereby authorized and directed to execute for and on behalf of the City of Lubbock a Second Amendment to the Joyland Amusement Park Lease Agreement, attached hereto and which shall be spread upon the minutes of the Council and as spread upon the minutes of this Council shall constitute and be a part of this Resolution as if fully copied herein in detail.

Passed by the City Council this 27th day of February, 1997.

  
WINDY SITTON, MAYOR

ATTEST:

  
Kathie Darnell, City Secretary

APPROVED AS TO CONTENT:

  
Carolyn Aliamus-Somma, Director of  
Culture and Leisure Services

APPROVED AS TO FORM:

  
Donald G. Vandiver, First Assistant  
City Attorney



SECOND AMENDMENT  
JOYLAND AMUSEMENT PARK  
LEASE AGREEMENT

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF LUBBOCK §

THIS Second Amendment to the Joyland Amusement Park Lease Agreement entered into by and between the City of Lubbock, Texas, hereinafter called "City," and MacKenzie Park Playground, Inc., d/b/a Joyland Amusement Park, hereinafter called "Concessioner."

WITNESSETH:

WHEREAS, on or about the 13th day of August, 1987, City and Concessioner executed a Lease Agreement whereby the City leased to Concessioner all of the area in Mackenzie Park for a term of ten (10) years with an additional term of five (5) years; and

WHEREAS, the term of said Lease Agreement has been extended to the 28th day of February, 2006, with an optional extensions of five (5) years in a First Amendment to said Lease Agreement which was executed by the parties hereto on or about the 8th day of February, 1996; and

WHEREAS, both parties for good and valuable consideration desire to further amend said Lease Agreement by amending Section 9 to read as follows.

Section 9

The consideration for the execution and acceptance of this Lease Agreement is payable as follows:

As a part of the consideration for the execution of this agreement, Concessioner shall pay to the City a monthly rental based on gross receipts from Joyland Amusement Park according to the following scale:

			RIDES	OTHER RECEIPTS
\$ 1	to	\$250,000	5%	2% ←
\$250,001	to	\$275,000	5 1/2%	2 1/2%
\$275,001	to	\$300,000	6%	3%
\$300,001	to	\$325,000	6 1/2%	3 1/2%
\$325,001	to	\$350,000	7%	4%

# **JOYLAND AMUSEMENT PARK ADDITIONS AND IMPROVEMENTS**

## **1989**

Addition of the Round-Up Ride  
Added the animated Bonanza Shooting Gallery

## **1990**

Replaced the Go-Karts with the Galaxie Coaster  
Our desire was to enhance the family atmosphere  
Expanded the midway

## **1991**

Built a new building and moved the Bonanza Shooting Gallery

## **1992**

Built another building for:  
The Shoot Out The Star Game  
Additional arcade equipment  
Concession  
Shade and picnic tables

## **1993**

New Entrance and additional gates  
Resurfaced the Midway

## **1994**

Added the Rock-O-Plane Ride  
Built an additional games building and added:  
The Frog Game  
Hot Shots Basketball Game  
Added the Dart Game

## **1995**

Added the Space Shuttle Ride  
Water Wars Game  
"Sunport" shade and additional tables with benches  
Resurfaced the Midway  
New Arcade games  
New and Expanded Games Redemption Area  
Outdoor air conditioning - mist system

# GROSS REVENUE ON RIDES AND CONCESSION

		Percentage To City	Gross Income
<b>1989</b>			
Rides:	\$250,000.00 at 5%	\$12,500.00	\$291,288.96
	\$ 41,288.96 at 5 1/2%	2,270.89	
Concession:	\$ 43,250.93 at 2%	<u>897.30</u>	<u>43,250.93</u>
	<b>TOTAL</b>	<b>\$15,668.19</b>	<b>\$334,539.89</b>

<b>1990</b>			
Rides:	\$250,000.00 at 5%	\$12,500.00	\$292,427.95
	\$ 42,427.95 at 5 1/2%	2,333.54	
Concession:	\$ 44,4315.05 at 2%	<u>886.30</u>	<u>44,315.05</u>
	<b>TOTAL</b>	<b>\$15,719.84</b>	<b>\$336,743.00</b>

<b>1991</b>			
Rides:	\$250,000.00 at 5%	\$12,500.00	\$304,940.17
	\$ 54,940.17 at 5 1/2%	3,021.71	
Concession:	\$ 49,461.81 at 2%	<u>989.24</u>	<u>49,461.81</u>
	<b>TOTAL</b>	<b>\$16,510.95</b>	<b>\$354,401.98</b>

<b>1992</b>			
Rides:	\$250,000.00 at 5%	\$12,500.00	\$288,176.32
	\$ 38,176.32 at 5 1/2%	2,099.70	
Concession:	\$ 53,541.88 at 2%	<u>1,070.84</u>	<u>53,541.88</u>
	<b>TOTAL</b>	<b>\$15,670.54</b>	<b>\$341,718.20</b>

<b>1993</b>			
Rides:	\$250,000.00 at 5%	\$12,500.00	\$316,402.55
	\$ 66,402.55 at 5 1/2%	3,652.14	
Concession:	\$ 67,582.85 at 2%	<u>1,351.66</u>	<u>67,582.85</u>
	<b>TOTAL</b>	<b>\$17,503.80</b>	<b>\$383,985.40</b>

<b>1994</b>			
Rides:	\$218,227.83 at 5%	\$10,911.39	\$283,265.45
	\$ 65,037.62 at 5 1/2%	3,577.07	
Concession:	\$ 56,794.75 at 2%	<u>1,218.48</u>	<u>56,794.75</u>
	<b>TOTAL</b>	<b>\$15,706.94</b>	<b>\$340,060.20</b>

<b>1995</b>			
Rides:	\$246,279.55 at 5%	\$12,313.98	\$322,896.40
	\$ 76,616.85 at 5 1/2%	4,213.93	
Concession:	\$ 62,405.97 at 2%	<u>1,319.84</u>	<u>62,405.97</u>
	<b>TOTAL</b>	<b>\$17,847.75</b>	<b>\$385,302.37</b>

Contract #: \_\_\_\_\_ Change Order #: \_\_\_\_\_ Requisition #: \_\_\_\_\_ ITB# / RFP# / RFQ# (If Applicable): \_\_\_\_\_

**CONTRACT COVER SHEET**

**See Step-by-Step Contracting Process on CLIC for Instructions**

*(Type or Print all information with the exception of Signatures and Signature Dates)*

Forward the complete contract package to Contract Management, Municipal Building Suite 204, for review, approval and contract execution. The complete package includes one (1) copy of the completed Contract Cover Sheet (for internal City use only), minimum of three (3) originals of the contract or amendment; and minimum of three (3) originals of all other certifications and contract addenda.

Attached Contract must be "Approved as to Content" by Director and "Approved as to Form" by Legal. The following signatures are required to process Contract Cover Sheet **IMPORTANT:** Each person who signs the Contract Cover Sheet must carefully review the attached contract document before signing the contract cover sheet

Risk Manager: \_\_\_\_\_ Ins Cert Req'd: \_\_\_\_\_ Date: \_\_\_\_\_

Dir of Fiscal Policy: \_\_\_\_\_ Date: \_\_\_\_\_

Asst City Manager/Chief: \_\_\_\_\_ Date: \_\_\_\_\_

**Originating Dept and Individual Responsible for Ensuring Contract Terms and Contract Compliance:**

Department:	Parks and Recreation	Name:	Randy Truesdell
Phone Number:	806.775.2671	Title:	Community Services Director

**Information for Vendor/Contractor/Agency or Other Entity City of Lubbock is Contracting With:**

Name of Entity:	Joyland Amusement Park		
Address:	Mackenzie Park		
City:	Lubbock	State:	TX
		Zip:	79404
Contact Name:	David Dean		
Contract Signatory:	David Dean	Title:	Operator
Phone #:	806.763.2719	Fax #:	
		E-mail:	

**Contract Information:**

Brief Description of Goods or Services or arrangements covered by the terms of the contract:	
Joyland Amusement Park Lease Agreement, First Amendment - to modify the length of the initial term from 2/28/06 to 2/28/11 and to delete "Texas Parks and Wildlife" from agreement - Section 1	
Effective Date:	<input checked="" type="checkbox"/> Upon Execution by Authorized Signatories OR Other (Specify Date): 2/08/1996
End Date:	Notice To Proceed + <input type="checkbox"/> (Specify # of Days) OR Other (Specify Date): 2/28/2011

**Financial Information**

Cost Center:	Account #:	Amount: Not To Exceed:	\$Based on monthly rental based on gross receipts from amusement rides according to scale in contract.
		Other:	

Contract #:

Change Order #:

Requisition #:

ITB# / RFP# / RFQ# (If Applicable):

<p>Will Contract Generate Revenue:</p>	<p>Yes, see amount below If so, amount: \$Based on monthly rental based on gross receipts from amusement rides according to scale in contract.</p>	<p>Project Number (if applicable): Will Contract Be Paid From Grant Funds: No Notes:</p>
--	--	--

Reviewed by Purchasing/Contract Manager: \_\_\_\_\_ Date: \_\_\_\_\_

## Contract Form and Signatory

Contract:  Signatory:

### Contract Checklist *(Not applicable to Change Orders or Amendments)*

1. Is this individual or owner of this business an officer or employee of the City of Lubbock? **No**  
[Note: If Yes, City policy may not allow us to write a contract for this individual/vendor.] If unsure, check with Legal.
2. Are all documents in order and submitted at least 5 business days prior to the start date for services for standard contracts or at least 20 business days prior to start date for services if using a non-standard contract? **Contract will begin "Date of Full Execution"**  
[Note: If No, and not associated with a building repair, complete a "Justification for Unlimate Contract Submittal" form.]
3. Does the contract, Licensing Agreement, insurance or other document requiring signature originate from the vendor? **Yes - SEE NOTE**  
[Note: If Yes, must be reviewed by Legal. Forward to Purchasing Department.]
4. Does the contract involve work by the contractor on City owned property? **No**  
[Note: If Yes, contact Risk Management at (806) 775-2277.]
5. Does the contract involve the purchase of hardware, software, firmware or computer component acquisition? **No**  
[Note: If Yes, A Purchase Requisition from Information Technology is required. Contact IT at (806) 775-2374.]
6. Does the contract involve a purchase valued at \$2,500 or more? **No**  
[Note: If Yes, A Purchase Requisition is required. For assistance, contact your Buyer in the Purchasing Department.]
7. Does the contract involve a purchase valued at \$25,000 or more? **No**  
[Note: If Yes, Formal Competitive Sealed Bidding is required. For assistance, contact your Buyer in the Purchasing Department.]
8. Does the contract involve Consulting Services valued at \$25,000 or more? **No**  
[Note: If Yes, requires Request for Qualifications. Contact Purchasing Manager (806) 775-2165.]
9. Does the contract involve purchase of construction valued at \$25,000 or more? **No**  
[Note: If Yes, Requires Payment Bond.]
10. Does the contract involve purchase of construction valued at \$100,000 or more? **No**  
[Note: If Yes, contract requires Performance Bond]
11. Does the contract include language for Insurance Requirements? **No**  
[Note: If Yes, contact Risk Management at (806) 775-2277.]
12. If state funded, does the contract require language for Child Support certification? **Not Applicable**  
[Note: If Yes, attach Child Support Certification, form OCA-S-99-25 for state funded acquisition.]
13. If federal or state funded, does the contract include all clauses required by federal or state statutes and executive orders and their implementing regulations? **Not Applicable**
14. If the purchase/transaction involves the purchase, lease, acceptance as a gift, etc. of real estate, has an environmental site assessment (ESA) been performed on the property? **Not Applicable**  
[Note: If No, contact Environmental Compliance at x2880 or x2119.]

### Contract Award by City Council *(enter applicable information)*

Council Date:  Council Agenda Item #:  Resolution #

The complete package includes one (1) copy of the completed Contract Cover Sheet (for internal City use only); minimum of three (3) originals of the contract or amendment; and minimum of three (3) originals of all other certifications and contract addenda. Forward the complete contract package to Contract Management, Municipal Building Suite 204, for review, approval and contract execution.



Amendment to 1987

## Contract Summary

Contract Title: 5094, Resolution; Joyland Amusement Park 2-08-1996; Lease Amendment

Project/Purpose: Amending the agreement leasing all the area in Mackenzie State Park known as Joyland Amusement Park to Mackenzie Park Playground, Inc.

Execution Date: February 8, 1996

End Date: Extended to 28<sup>th</sup> day of February, 2006, and said lease shall be automatically extended for an additional term of five (5) years from the 1<sup>st</sup> day of March, 2006, to the 28<sup>th</sup> day of February, 2011, unless either party to this agreement shall give written notice of termination to the other party before the expiration of the initial term, and provided said lease is not terminated earlier by mutual agreement, or as hereinafter provided.

Contract Amount: Concessioner shall pay to the City a monthly rental based on gross receipts from amusement rides according to the following scale: for gross receipts of \$0 to \$250,000 Mackenzie Park Playground, Inc. pays 5% to the City, \$250,000 to \$275,000 pays 5.5%, ..., \$475,000 to \$500,000 pays 10% to the City (for each additional \$25,000, up to \$500,000, the percentage rate increases by one-half percent, 0.5%). Further, a percentage on the gross receipts for all food concessions other than rides will be two percent (2%) and will raise one-half percent (0.5%) according to the same scale as amusement ride receipts. It is understood and agreed by and between the parties that "gross take on all rides" shall be construed to mean all sums of money coming into the hands of the Concessioner as a result of the operations of Joyland Amusement Park after the "deduction of all amusement taxes".

Payment Timing/Procedure: Concessioner shall pay on the 10<sup>th</sup> day of the following month to the City a monthly rental based on gross receipts from amusement rides and food concessions as listed above.

Contractor: Mackenzie Park Playground, Inc. d/b/a Joyland Amusement Park

Point of Contact & Tel #: <sup>David</sup> James E Dean, no phone number given 763-2719

Contract Administrator: Corbin Pemberton, (806) 775-2689

### Mandatory Reports/ Meetings:

- (1) The City also agrees to provide water to Concessioner.
- (3) The City and its duly authorized agents and representatives are hereby authorized by Concessioner to at all times and seasons enter Joyland Amusement Park and all buildings and equipment on the leased premises for the purpose of inspecting the entire area for all lawful purposes.
- (4) Concessioner agrees to notify and request approval in writing from the City's Director of Parks and Recreation for any and all changes, additions or alterations in the design and placement of facilities in Joyland Amusement Park.
- (5) Concessioner shall maintain the following:

- a. Consecutively numbered ticket system,
- b. Detailed report of gross income from all sources to be furnished to City, and
- c. Complete, detailed and accurate financial bookkeeping records which shall be provided subject to audit.

**Performance Standards:**

- (1) Concessioner further agrees, binds and obligates itself to keep said Joyland Amusement Park in a clean and sanitary condition, and to maintain all plants, trees, grasses, buildings and improvements in such state of repair as the same are in at the commencement of the lease, reasonable use and wearing thereof excepted, and plants, trees, grasses, buildings and improvements placed in said Joyland Amusement Park during the term of this agreement shall be maintained in such a state of repair as the same are in at the time of their installation or construction, reasonable use and wearing thereof excepted.

**Deliverables: NA**

**Insurance:** Concessioner shall maintain at all times during the term of this agreement, at Concessioner's sole expense, insurance with an insurance underwriter acceptable to the City and authorized to do business in the State of Texas, as follows: Comprehensive General Liability Insurance (\$1,000,000.00), Fire and Extended coverage, Boiler Insurance, and Workers' Compensation Insurance. City reserves the right to require Concessioner to secure additional amounts of insurance from time to time. Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City Secretary prior to entry upon the leased premises by the Concessioner; each policy shall name the City as additional insured.

**General:** Concessioner agrees to make capital improvements on Joyland Amusement Park commensurate with the growth in gross revenues generated by said Joyland Amusement Park and which, in this Concessioner's opinion, will enhance the value, patrons' use and revenue of Joyland Amusement Park, and any permanent improvements such as buildings, etc. so erected by Concessioner on the leased premises shall become the property of the City at the expiration of this lease agreement; provided, however, that all temporary improvements such as rides, etc. shall remain the personal and removable property of Concessioner.

**Amendments**

**WHEREAS**, on or about the 13<sup>th</sup> day of August, 1987, City and Concessioner executed an agreement whereby City leased to Concessioner all of the area in Mackenzie Park known as Joyland Amusement Park for a term of ten (10) years and an additional term of five (5) years; and

**WHEREAS**, both parties for good and valuable consideration now desire to modify the length of the initial term of the above-described agreement to enable Concessioner to obtain financing for improvements to the park facility; and

**WHEREAS**, both parties to this Amendment also desire to delete or eliminate those provisions in the agreement requiring approval or consent of the Texas Parks and Wildlife Department because such approval or consent is no longer required;

**NOW THEREFORE:** The agreement is amended in the following manner:

- (1) Section 1 of the agreement is amended to read as follows:

- a. That for and in consideration of the rental as hereinafter provided, the City of Lubbock does hereby lease and let to Concessioner all the area in Mackenzie Park known as Joyland Amusement Park, in the County of Lubbock, State of Texas, and within the corporate limits of said City of Lubbock, for a term beginning the 1<sup>st</sup> day of October, 1987, and terminating on the 28<sup>th</sup> day of February, 2006, and said lease shall be automatically extended for an additional term of five (5) years from the 1<sup>st</sup> day of March, 2006, to the 28<sup>th</sup> day of February, 2011, unless either party to this agreement shall give written notice of termination to the other party before the expiration of the initial term, and provided said lease in not terminated earlier by mutual agreement, or as hereinafter provided.
- b. That the phrase "*subject to the approval of the Texas Parks and Wildlife Department*" contained in the first paragraph on page 1 of the agreement is hereby delete from the agreement.
- c. That the phrase "*and the Texas Parks and Wildlife Department*" contained in Section 2 of the agreement is hereby deleted from the agreement.
- d. That the phrase "*and, when required, the consent of the Texas Parks and Wildlife Department*" contained in Section 10 of the agreement is hereby deleted from the agreement.
- e. That the agreement between the City and Concessioner to which this Amendment is applicable shall be **modified and amended** only as expressly stated herein and is hereby ratified and affirmed in all other respects.

Resolution No. 2006-R0505  
October 13, 2006  
Item No. 5.38

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the City Council of the City of Lubbock hereby authorizes and directs the Mayor of the City of Lubbock to execute a Third Amendment to a Lease Agreement by and between the City of Lubbock and Mackenzie Park Playground, Inc., d/b/a Joyland Amusement Park of Lubbock, Texas for additional land for installation of a new roller coaster ride, which Third Amendment and any associated documents, are attached hereto and made a part of this Resolution for all intents and purposes.

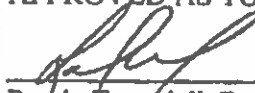
Passed by the City Council this 13th day of October, 2006.

  
DAVID A. MILLER, M.P. .R

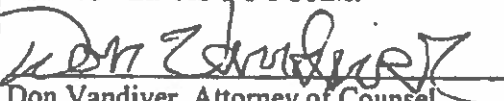
ATTEST:

  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
Randy Truesdell, Parks and Recreation Director

APPROVED AS TO FORM:

  
Don Vandiver, Attorney of Counsel

THIRD AMENDMENT  
JOYLAND AMUSEMENT PARK  
LEASE AGREEMENT

STATE OF TEXAS           §  
  KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF LUBBOCK   §

THIS THIRD AMENDMENT to the Joyland Lease Agreement of August 13, 1987, is entered into by the City of Lubbock (referred to herein as "City"), a home rule municipality of Lubbock County, Texas, and Mackenzie Park Playground, Inc., d/b/a Joyland Amusement Park (referred to herein as "Concessioner").

WITNESSETH:

WHEREAS, on or about August 13, 1987, City and Concessioner executed a Lease Agreement whereby the City leased to Concessioner lands located in Makenzie Park for a term of ten (10) years with an additional term of five (5) years; and

WHEREAS, both parties for good and valuable consideration on or about February 8, 1996, modified the initial term of said Lease Agreement in a First Amendment to enable Concessioner to obtain financing for improvements to the park facility; and

WHEREAS, both parties for good and valuable consideration on or about February 27, 1997, further modified said Lease Agreement in a Second Amendment with regard to lease payments; and

WHEREAS, both parties for good and valuable consideration desire to further amend said lease agreement with regard to its term, land leased and lease payments to enable Concessioner to obtain financing for further improvements to the park facility;

NOW THEREFORE, for and in consideration of the mutual promises, covenants, terms and conditions, both general and special, as hereinafter set forth, City Lease Agreement of August 13, 1987, as amended by First and Second Amendments is hereby further amended as follows:

Section 1

That for and in consideration of the rental as hereinafter provided, the City of Lubbock does hereby lease and let to Concessioner all of the area within Mackenzie Park known as Joyland Amusement Park and such additional lands in the County of Lubbock, State of Texas, within the corporate limits of the City of Lubbock, as are further described by metes and bounds on Attachment A hereto and as indicated on the map attached hereto as Exhibit B. Both of said exhibits are incorporated herein and made a part hereof for all purposes. The term of this lease

shall be from the date of execution hereof by the parties through October 31, 2021, unless either party to this agreement shall give written notice of termination to the other party before the expiration of the initial term, and unless said agreement is not terminated earlier by mutual agreement, or as hereinafter provided.

Section 9

The consideration for the execution and acceptance of this Lease Agreement is payable as follows:

An annual payment of \$38, 333 per year to be paid in four payments of \$9,583.25 due June 1, July 1, August 1 and September 1. The first payment will be due June 1, 2007.

Additional Provisions

1. The City will remove such park playground equipment as may be reused from the area of the Joyland expansion. Concessioner will be responsible for any additional demolition required in the expansion area.

2. Concessioner will be responsible for construction of new parking lots needed for the expansion. Such lots shall be located on land adjacent to the expansion owned by the City and the City shall have joint use of such new parking lots.

3. Concessioner shall be responsible for any archeological and environmental testing and reported required as part of the expansion.


4. That the Lease Agreement and the amendments thereto are modified and amended only as expressly stated herein and all other provisions shall remain in full force and effect.

EXECUTED this 13th day of October, 2006.

CITY OF LUBBOCK:

CONCESSIONER:

BY:   
DAVID A. MILLER, MAYOR

BY:   
TITLE: president

ATTEST:

  
Rebecca Garza, City Secretary



APPROVED AS TO CONTENT:

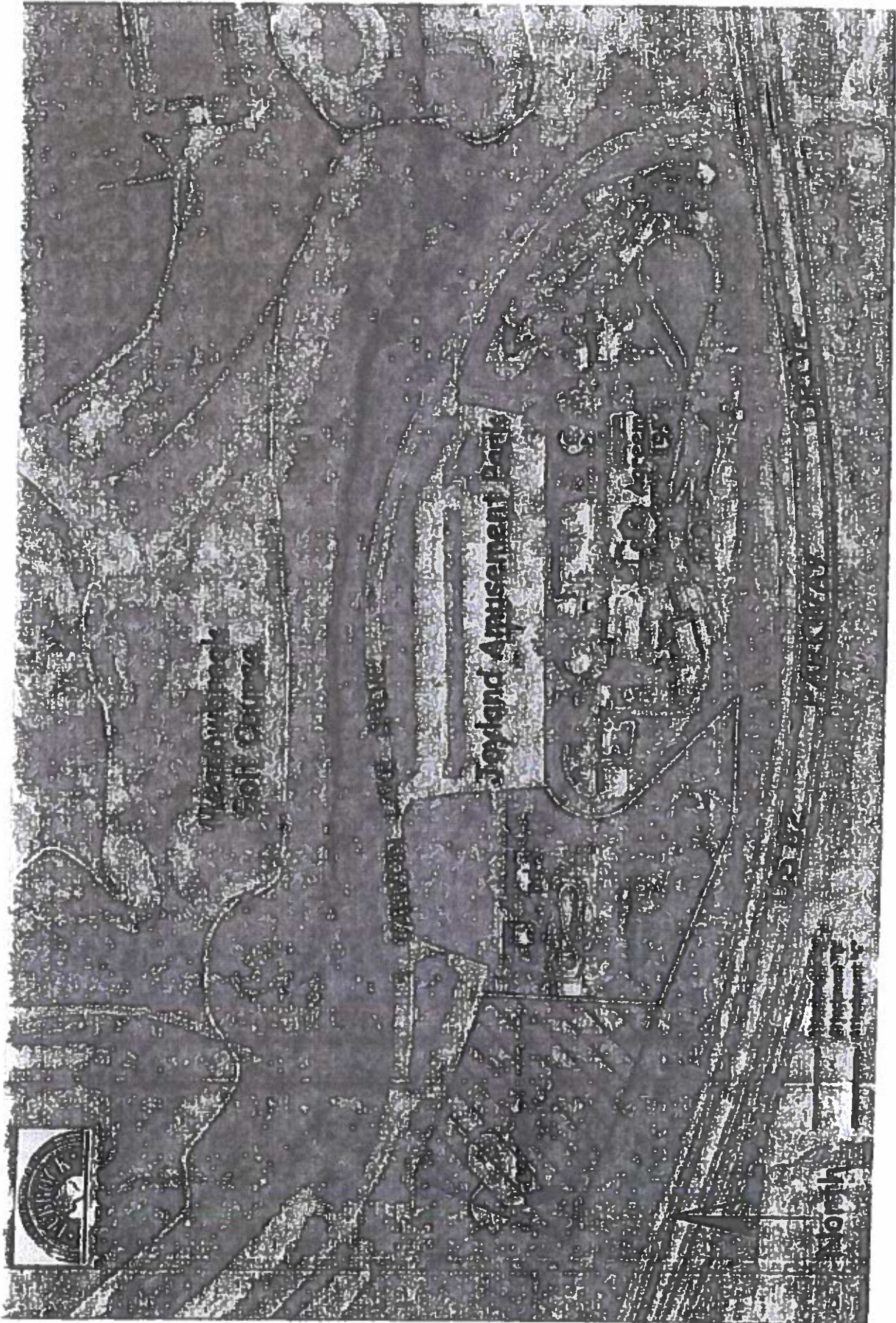
  
\_\_\_\_\_  
Randy Truesdell, Parks and Recreation Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Don Vandiver, Attorney of Counsel

dd/con/ToylandLeaseAmend3  
September 26, 2006

**"EXHIBIT B"**





Resolution No. 2006-R0504  
October 13, 2006  
Item No. 5.38

**ATTACHMENT A  
A 2.24 ACRE TRACT OF  
LAND IN MACKENZIE PARK,  
CITY OF LUBBOCK, TEXAS**

BEGINNING at a point which is the intersection of a fence on the approximate North Right-of-Way line of U.S. Highway 62/82 and a fence which is the present Westerly boundary of an existing amusement park, described in Attachment "B" of prior agreement.

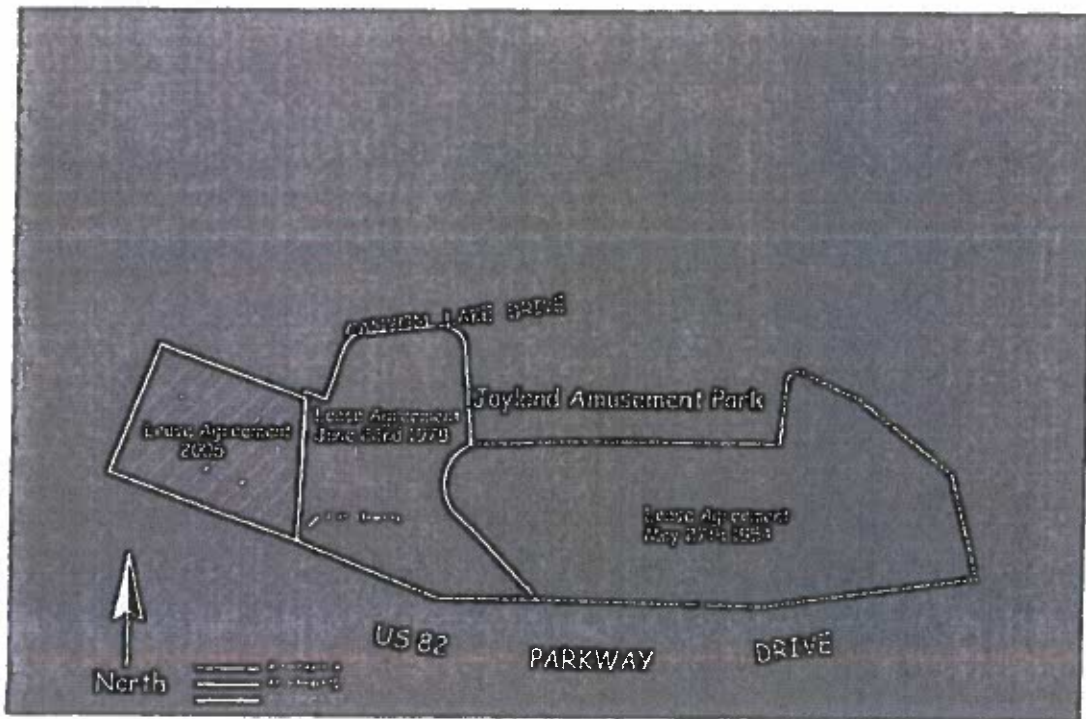
THENCE Westerly, with the 4 foot chain link fence on the North R-O-W line of U.S. Highway 62/82 a distance of 408.2750 feet to a 16p nail in said fence;

THENCE Northerly, with said fence a distance of 271.1993 feet at  $87^{\circ}37'30.8''$  to a 16p nail;

THENCE Easterly, a distance of 310.9166 feet at  $92^{\circ}24'52.6''$  to a 2 5/8" existing 6 foot corner fence post at the South side of a parking lot;

THENCE Southerly, following said 6 foot chain link fence on the west edge of said existing amusement park and a distance of 284.5290 feet at  $107^{\circ}34'43.6''$  to the Point of beginning.

Prepared from sketch  
October 9, 2006





POLICY NUMBER: G23976936

COMMERCIAL GENERAL LIABILITY  
CG 20 26 07 04

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s)</b>
<ol style="list-style-type: none"><li>1. The organization that manages the event.</li><li>2. The political sub-division who grants you permission to operate at the event.</li><li>3. The owner of the premises on which the event is being held.</li><li>4. The landlord or lessor of the premises on which the event is being held.</li><li>5. The Promoter(s) of the event.</li><li>6. The Sponsor(s) of the event.</li><li>7. The organization for whom you are performing operations at the event.</li></ol>
<b>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</b>

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

Contract #: \_\_\_\_\_ Change Order #: \_\_\_\_\_ Requisition #: \_\_\_\_\_ ITB# / RFP# / RFQ# (If Applicable): \_\_\_\_\_

### CONTRACT COVER SHEET

See Step-by-Step Contracting Process on CLIC for Instructions

(Type or Print all information with the exception of Signatures and Signature Dates)

Forward the complete contract package to Contract Management, Municipal Building Suite 204, for review, approval and contract execution. The complete package includes one (1) copy of the completed Contract Cover Sheet (for internal City use only); minimum of three (3) originals of the contract or amendment; and minimum of three (3) originals of all other certifications and contract addenda.

Attached Contract must be "Approved as to Content" by Director and "Approved as to Form" by Legal. The following signatures are required to process Contract Cover Sheet. **IMPORTANT:** Each person who signs the Contract Cover Sheet must carefully review the attached contract document before signing the contract cover sheet.

Risk Manager: \_\_\_\_\_ Ins Cert Req'd: \_\_\_\_\_ Date: \_\_\_\_\_

Dir of Fiscal Policy \_\_\_\_\_ Date: \_\_\_\_\_

Asst City Manager/Chief: \_\_\_\_\_ Date: \_\_\_\_\_

#### Originating Dept and Individual Responsible for Ensuring Contract Terms and Contract Compliance:

Department:	Parks and Recreation	Name:	Randy Truesdell
Phone Number:	806.775.2671	Title:	Community Services Director

#### Information for Vendor/Contractor/Agency or Other Entity City of Lubbock is Contracting With:

Name of Entity:	Joyland Amusement Park		
Address:	Mackenzie Park		
City:	Lubbock	State:	TX
		Zip:	79404
Contact Name:	David Dean		
Contract Signatory:	David Dean	Title:	Operator
Phone #:	806.763.2719	Fax #:	
		E-mail:	

#### Contract Information:

Brief Description of Goods or Services or arrangements covered by the terms of the contract			
Joyland Amusement Park Lease Agreement, Second Amendment - concessioner shall pay City a monthly rental based on gross receipts according to scale in agreement - Section 9			
Effective Date:	<input checked="" type="checkbox"/> Upon Execution by Authorized Signatories	OR	Other (Specify Date): 2/27/1997
End Date:	Notice To Proceed +	(Specify # of Days) OR	Other (Specify Date): 2/28/2011

#### Financial Information

Cost Center:	Account #:	Amount: Not To Exceed:	\$Based on monthly rental based on gross receipts from amusement rides according to scale in contract
		Other:	



Contract #:

Change Order #:

Requisition #:

ITB# / RFP# / RFQ# (If Applicable):

Will Contract  
Generate  
Revenue:

Yes, see amount below  
If so, amount: \$Based on  
monthly rental based on  
gross receipts from  
amusement rides according  
to scale in contract.

Project Number (if applicable):

Will Contract Be Paid From Grant Funds: No

Notes:

Reviewed by Purchasing/Contract Manager. \_\_\_\_\_ Date: \_\_\_\_\_

## Contract Form and Signatory

Contract: General Agreement

Signatory: Mayor

### Contract Checklist (Not applicable to Change Orders or Amendments)

1. Is this individual or owner of this business an officer or employee of the City of Lubbock? No  
[Note: If Yes, City policy may not allow us to write a contract for this individual/vendor.] If unsure, check with Legal.
2. Are all documents in order and submitted at least 5 business days prior to the start date for services for standard contracts or at least 20 business days prior to start date for services if using a non-standard contract? Contract will begin "Date of Full Execution"  
[Note: If No, and not associated with a building repair, complete a "Justification for Untimely Contract Submittal" form.]
3. Does the contract, Licensing Agreement, insurance or other document requiring signature originate from the vendor? Yes - SEE NOTE  
[Note: If Yes, must be reviewed by Legal. Forward to Purchasing Department.]
4. Does the contract involve work by the contractor on City owned property? No  
(Note: If Yes, contact Risk Management at (806) 775-2277.)
5. Does the contract involve the purchase of hardware, software, firmware or computer component acquisition? No  
[Note: If Yes, A Purchase Requisition from Information Technology is required. Contact IT at (806) 775-2374 ]
6. Does the contract involve a purchase valued at \$2,500 or more? No  
[Note: If Yes, A Purchase Requisition is required. For assistance, contact your Buyer in the Purchasing Department.]
7. Does the contract involve a purchase valued at \$25,000 or more? No  
[Note: If Yes, Formal Competitive Sealed Bidding is required. For assistance, contact your Buyer in the Purchasing Department.]
8. Does the contract involve Consulting Services valued at \$25,000 or more? No  
[Note: If Yes, requires Request for Qualifications. Contact Purchasing Manager (806) 775-2165.]
9. Does the contract involve purchase of construction valued at \$25,000 or more? No  
[Note: If Yes, Requires Payment Bond.]
10. Does the contract involve purchase of construction valued at \$100,000 or more? No  
[Note: If Yes, contract requires Performance Bond]
11. Does the contract include language for Insurance Requirements? No  
(Note: If Yes, contact Risk Management at (806) 775-2277.)
12. If state funded, does the contract require language for Child Support certification? Not Applicable  
[Note: If Yes, attach Child Support Certification, form OCA-S-99-25 for state funded acquisition.]
13. If federal or state funded, does the contract include all clauses required by federal or state statutes and executive orders and their implementing regulations? Not Applicable
14. If the purchase/transaction involves the purchase, lease, acceptance as a gift, etc. of real estate, has an environmental site assessment (ESA) been performed on the property? Not Applicable  
[Note: If No, contact Environmental Compliance at x2880 or x2119.]

### Contract Award by City Council (enter applicable information)

Council Date: 2/27/1997

Council Agenda Item #: 16

Resolution #: 5428

The complete package includes one (1) copy of the completed Contract Cover Sheet (for internal City use only); minimum of three (3) originals of the contract or amendment; and minimum of three (3) originals of all other certifications and contract addenda. Forward the complete contract package to Contract Management, Municipal Building Suite 204, for review, approval and contract execution.

## Contract Summary

Contract Title: 5428, Resolution; Joyland Amusement Park 2-27-1997; Lease Amendment

Project/Purpose: Amending the agreement leasing all the area in Mackenzie State Park known as Joyland Amusement Park to Mackenzie Park Playground, Inc.

Execution Date: February 27, 1997

End Date: Extended to 28<sup>th</sup> day of February, 2006, and said lease shall be automatically extended for an additional term of five (5) years from the 1<sup>st</sup> day of March, 2006, to the 28<sup>th</sup> day of February, 2011, unless either party to this agreement shall give written notice of termination to the other party before the expiration of the initial term, and provided said lease in not terminated earlier by mutual agreement, or as hereinafter provided.

Contract Amount: Concessioner shall pay to the City a monthly rental based on gross receipts from amusement rides according to the following scale:

			RIDES	OTHER RECEIPTS
\$1	to	\$250,000	5.0%	2.0%
\$250,001	to	\$275,000	5.5%	2.5%
\$275,001	to	\$300,000	6.0%	3.0%
\$300,001	to	\$325,000	6.5%	3.5%
\$325,001	to	\$350,000	7.0%	4.0%
\$350,001	to	\$375,000	7.5%	4.5%
\$375,001	to	\$400,000	8.0%	5.0%
\$400,001	to	\$425,000	8.5%	5.5%
\$425,001	to	\$450,000	9.0%	6.0%
\$450,001	to	\$475,000	9.5%	6.5%
\$475,001	to	\$500,000	10.0%	7.0%
More than \$500,001			10.0%	7.0%

It is understood and agreed by and between the parties that "gross take on all rides" shall be construed to mean all sums of money coming into the hands of the Concessioner as a result of the operations of Joyland Amusement Park after the "deduction of all amusement taxes".

Payment Timing/Procedure: Concessioner shall pay on the 10<sup>th</sup> day of the following month to the City a monthly rental based on gross receipts from amusement rides and food concessions as listed above.

Contractor: Mackenzie Park Playground, Inc. d/b/a Joyland Amusement Park

Point of Contact & Tel #: <sup>DAVID</sup> James E Dean, ~~no phone number given~~ 763-2719

Contract Administrator: Corbin Pemberton, (806) 775-2689

Mandatory Reports/ Meetings:

- (1) The City also agrees to provide water to Concessioner.

- (3) The City and its duly authorized agents and representatives are hereby authorized by Concessioner to at all times and seasons enter Joyland Amusement Park and all buildings and equipment on the leased premises for the purpose of inspecting the entire area for all lawful purposes.
- (4) Concessioner agrees to notify and request approval in writing from the City's Director of Parks and Recreation for any and all changes, additions or alterations in the design and placement of facilities in Joyland Amusement Park.
- (5) Concessioner shall maintain the following:
  - a. Consecutively numbered ticket system,
  - b. Detailed report of gross income from all sources to be furnished to City, and
  - c. Complete, detailed and accurate financial bookkeeping records which shall be provided subject to audit.

**Performance Standards:**

- (1) Concessioner further agrees, binds and obligates itself to keep said Joyland Amusement Park in a clean and sanitary condition, and to maintain all plants, trees, grasses, buildings and improvements in such state of repair as the same are in at the commencement of the lease, reasonable use and wearing thereof excepted, and plants, trees, grasses, buildings and improvements placed in said Joyland Amusement Park during the term of this agreement shall be maintained in such a state of repair as the same are in at the time of their installation or construction, reasonable use and wearing thereof excepted.

**Deliverables: NA**

**Insurance:** Concessioner shall maintain at all times during the term of this agreement, at Concessioner's sole expense, insurance with an insurance underwriter acceptable to the City and authorized to do business in the State of Texas, as follows: Comprehensive General Liability Insurance (\$1,000,000.00), Fire and Extended coverage, Boiler Insurance, and Workers' Compensation Insurance. City reserves the right to require Concessioner to secure additional amounts of insurance from time to time. Certificates of insurance or other satisfactory evidence of insurance shall be filed with the City Secretary prior to entry upon the leased premises by the Concessioner; each policy shall name the City as additional insured.

**General:** Concessioner agrees to make capital improvements on Joyland Amusement Park commensurate with the growth in gross revenues generated by said Joyland Amusement Park and which, in this Concessioner's opinion, will enhance the value, patrons' use and revenue of Joyland Amusement Park, and any permanent improvements such as buildings, etc. so erected by Concessioner on the leased premises shall become the property of the City at the expiration of this lease agreement; provided, however, that all temporary improvements such as rides, etc. shall remain the personal and removable property of Concessioner.

Amendments, 2-08-1996

**WHEREAS**, on or about the 13<sup>th</sup> day of August, 1987, City and Concessioner executed an agreement whereby City leased to Concessioner all of the area in Mackenzie Park known as Joyland Amusement Park for a term of ten (10) years and an additional term of five (5) years; and

## LANDLORD'S CONSENT TO ASSIGNMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
	01-22-2018	11-30-2027	8256884		****	BC	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

**Borrower:** Mackenzie Park Playground, Inc. dba Joyland Amusement Park  
Amusement Park  
P. O. Box 2262  
Lubbock, TX 79408

**Lender:** PROSPERITY BANK  
Avenue Q Banking Center  
1401 Avenue Q  
Lubbock, TX 79401-3819

THIS LANDLORD'S CONSENT TO ASSIGNMENT is entered into among Mackenzie Park Playground, Inc. dba Joyland Amusement Park ("Borrower"), whose address is P. O. Box 2262, Lubbock, TX 79408; PROSPERITY BANK ("Lender"), whose address is Avenue Q Banking Center, 1401 Avenue Q, Lubbock, TX 79401-3819; and City of Lubbock ("Landlord"), whose address is 1625 13th Street, Lubbock, TX 79401. Borrower and Lender have entered into, or are about to enter into, an agreement whereby Lender has acquired or will acquire a security interest or other interest in the Collateral. Some or all of the Collateral may be affixed or otherwise become located on the Premises. To induce Lender to extend the Loan to Borrower against such security interest in the Collateral and for other valuable consideration, Landlord hereby agrees with Lender and Borrower as follows:

**COLLATERAL DESCRIPTION.** The word "Collateral" means certain of Borrower's personal property in which Lender has acquired or will acquire a security interest, including without limitation the following specific property:

2017 Calvera World S.R.O. Extreme Amusement Ride Serial #E0171002, whether now owned or hereafter acquired, together with all increases, parts, fittings, accessories, special tools and accessories now or hereafter attached thereto or used in connection therewith, and any and all replacements of all or any part thereof and any and all products and proceeds of any of the foregoing including general intangibles.

Assignment of that certain lease agreement executed August 13, 1987 and entered into by and between the City of Lubbock, Texas through its officers and Mackenzie Park Playground, Inc. dba Joyland Amusement Park together with all amendments of, extensions of, modifications of and substitutions for the lease agreement subsequently executed.

All Inventory, Accounts, Equipment, Machinery, Rides, General Intangibles and Fixtures

**BORROWER'S ASSIGNMENT OF LEASE.** Borrower hereby assigns to Lender all of Borrower's rights in the Lease, as partial security for the Loan. The parties intend that this assignment will be a present transfer to Lender of all of Borrower's rights under the Lease, subject to Borrower's rights to use the Premises and enjoy the benefits of the Lease while not in default on the Loan or Lease. Upon full performance by Borrower under the Loan, this assignment shall be ended, without the necessity of any further action by any of the parties. This assignment includes all renewals of and amendments to the Lease or the Loan, until the Loan is paid in full. No amendments may be made to the Lease without Lender's prior written consent, which shall not be unreasonably withheld or delayed.

**CONSENT OF LANDLORD.** Landlord consents to the above assignment. If Borrower defaults under the Loan or the Lease, Lender may reassign the Lease, and Landlord agrees that Landlord's consent to any such reassignment will not be unreasonably withheld or delayed. So long as Lender has not entered the Premises for the purpose of operating a business, Lender will have no liability under the Lease, including without limitation liability for rent. Whether or not Lender enters into possession of the Premises for any purpose, Borrower will remain fully liable for all obligations of Borrower as lessee under the Lease. While Lender is in possession of the Premises, Lender will cause all payments due under the Lease and attributable to that period of time to be made to Landlord. If Lender later reassigns the Lease or vacates the Premises, Lender will have no further obligation to Landlord.

**LEASE DEFAULTS.** Both Borrower and Landlord agree and represent to Lender that, to the best of their knowledge, there is no breach or offset existing under the Lease or under any other agreement between Borrower and Landlord. Landlord agrees not to terminate the Lease, despite any default by Borrower, without giving Lender written notice of the default and an opportunity to cure the default within a period of sixty (60) days from the receipt of the notice. If the default is one that cannot reasonably be cured by Lender (such as insolvency, bankruptcy, or other judicial proceedings against Borrower), then Landlord will not terminate the Lease so long as Landlord receives all sums due under the Lease for the period during which Lender is in possession of the Premises, or so long as Lender reassigns the Lease to a new lessee reasonably satisfactory to Landlord.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement: This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement. The covenants of Borrower and Landlord respecting subordination of the claim or claims of Landlord in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any claim or claims to which this Agreement shall apply. Lender need not accept this Agreement in writing or otherwise to make it effective. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. If Landlord is other than an individual, any agent or other person executing this Agreement on behalf of Landlord represents and warrants to Lender that he or she has full power and authority to execute this Agreement on Landlord's behalf. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. Without notice to Landlord and without affecting the validity of this Consent, Lender may do or not do anything it deems appropriate or necessary with respect to the Loan, any obligors on the Loan, or any Collateral for the Loan, including without limitation extending, renewing, rearranging, or accelerating any of the Loan indebtedness.

**AMENDMENTS.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**NO WAIVER BY LENDER.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Landlord, shall constitute a waiver of any of Lender's rights or of any of Landlord's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Agreement.** The word "Agreement" means this Landlord's Consent to Assignment, as this Landlord's Consent to Assignment may be amended or modified from time to time, together with all exhibits and schedules attached to this Landlord's Consent to Assignment from time to time.

**Borrower.** The word "Borrower" means Mackenzie Park Playground, Inc. dba Joyland Amusement Park and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Borrower's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Landlord.** The word "Landlord" means City of Lubbock, and is used for convenience purposes only. Landlord's interest in the Premises may be that of a fee owner, lessor, sublessor or lienholder, or that of any other holder of an interest in the Premises which may be, or may become, prior to the interest of Lender.

**Lease.** The word "Lease" means that certain lease of the Premises, dated August 13, 1987, between Landlord and Borrower.

**Lender.** The word "Lender" means PROSPERITY BANK, its successors and assigns.



LANDLORD'S CONSENT TO ASSIGNMENT  
(Continued)

Loan No: 6255684

Page 2

**Loan.** The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing and however evidenced

**Note.** The word "Note" means the Note dated January 22, 2018 and executed by Mackenzie Park Playground, Inc. dba Joyland Amusement Park in the principal amount of \$360,000.00, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

**Premises.** The word "Premises" means the real property located in Lubbock County, State of Texas, commonly known as 500 Canyon Lake Drive, Lubbock TX 79408

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

BORROWER AND LANDLORD ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS LANDLORD'S CONSENT TO ASSIGNMENT, AND BORROWER AND LANDLORD AGREE TO ITS TERMS. THIS AGREEMENT IS DATED JANUARY 22, 2018.

BORROWER:

MACKENZIE PARK PLAYGROUND, INC. DBA JOYLAND  
AMUSEMENT PARK

By: JAMES DAVID DEAN, President of Mackenzie  
Park Playground, Inc. dba Joyland Amusement  
Park

By: KATHERINE W. DEAN, Secretary of Mackenzie  
Park Playground, Inc. dba Joyland Amusement  
Park

LANDLORD:

LENDER:

CITY OF LUBBOCK

PROSPERITY BANK

By:   
Authorized Signer for City of Lubbock

X Bruce Curlee, Senior Vice President

By: \_\_\_\_\_  
Authorized Signer for City of Lubbock







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## Information

### Agenda Item

**Resolution - Civic Center:** Consider a resolution approving the recommendation from the Cultural Arts Grant Review Committee and the Civic Lubbock, Inc. Board of Directors, for the 2021 Live Music Performance Grant Program using Hotel Occupancy Tax funds collected at the end of FY 2019-20.

### Item Summary

Civiic Lubbock, Inc. (CLI) administers an allocation of Hotel Occupancy Tax to underwrite local visual and performing arts programs. The Live Music Performance Grant (LMPG) program is a new matching grant program available to local hotels and is funded through a portion of the Hotel Occupancy Tax allocation. The purpose of the LMPG program is to serve as an economic stimulus for local artists who perform live music in Lubbock and to promote what Lubbock has to offer musically to visitors. For the 2021 LMPG program, the goal is to increase opportunities for local artists to perform by 1) enhancing live music programs currently offered by local hotels and/or 2) encouraging local hotels to implement a live music program.

Of the total allocation paid to CLI for 2021 programs, \$15,000 was initially set aside for the Live Music Performance Grant Program. Two 2021 Cultural Arts Grants awarded in July of 2021 totaling \$15,971 were declined by the grant recipients due to the cancellation of their projects. The Cultural Arts Grant Program (CAGP) Review Committee, who also reviews applications and makes grant recommendations for the LMPG program, recommended, and the CLI Board approved, utilizing the unused \$15,971 for the 2021 LMPG program, thereby making the amount available for the LMPG program a total of \$30,971.

With the assistance of Visit Lubbock, information about the LMPG program was sent to approximately 70 local hoteliers. Four applications were received, by the September 1, 2021, deadline. The CAGP Review Committee has recommended full or partial funding for all four applicants.

The CAGP Review Committee, comprised of appointments by City Council and representatives of the CLI Board of Directors, submitted their recommendations to the full CLI Board at their September 22nd meeting. These recommendations are now being presented to City Council for approval.

The CAGP Review Committee and the CLI Board of Directors are requesting City Council approval of \$30,971.00 in grant awards for the 2021 LMPG program.

### Fiscal Impact

None

### Staff/Board Recommending

Brooke Witcher, Assistant City Manager  
CAGP Review Committee  
CLI Board of Directors

---

## **Attachments**

Resolution

CLI Board Letter

LMPG Award Recommendations

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT** the City Council hereby approves the recommendation from the Cultural Arts Grant Review Committee and the Civic Lubbock, Inc. Board of Directors for the Live Music Grant Program using a portion of Hotel Occupancy Tax funds allocated for FY 2020-2021.

**Passed by the City Council on \_\_\_\_\_.**

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**



\_\_\_\_\_  
Brooke Witcher, Assistant City Manager

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Ryan Brooke, Assistant City Attorney



October 7, 2021

Ms. Lisa Thomason  
Director  
Lubbock Memorial Civic Center  
1501 Mac Davis Ln  
Lubbock, Texas 79401

Dear Ms. Thomason:

Civic Lubbock, Inc. (CLI) administers an allocation of Hotel Occupancy Tax that is used to underwrite local visual and performing arts programs. In 2021, the CLI Board established a Live Music Performance Grant Program (LMPG) using a portion of the Hotel Occupancy Tax allocation. The LMGP is a matching grant program available to local hotels that provide live music. The purpose of the LMPG Program is to serve as an economic stimulus for local artists who perform live music in Lubbock and to promote what Lubbock has to offer musically to visitors. For the 2021 LMPG Program, the goal is to increase opportunities for local artists to perform by 1) enhancing live music programs currently offered by local hotels and/or 2) encouraging local hotels to implement a live music program. With Visit Lubbock's assistance, information on the Live Music Performance Grant Program was sent to approximately 70 of their local hotel contacts.

The Cultural Arts Grant Review Committee oversees the new grant program. The Committee has developed its grant award recommendations for the 2021 Live Music Performance Grant Program. The recommendation was presented to the entire Civic Lubbock, Inc. Board of Directors on September 22, 2021 and was approved as recommended.

Of the total allocation paid to CLI for 2021 programs, \$15,000 was initially set aside for the Live Music Performance Grant Program. Two 2021 Cultural Arts Grants awarded in July of 2021 were declined by the grant recipients due to the cancellation of their projects. The amount of the unused grants totaled \$15,971. The Grant Review Committee recommended, and the CLI Board approved, that the unused grant funds of \$15,971 be utilized for the 2021 LMPG program thereby making the amount available for the LMPG program a total of \$30,971.

Ms. Lisa Thomason  
October 7, 2021  
Page 2

The Cultural Arts Grant Review Committee is comprised of five members; three Civic Lubbock, Inc. Directors assigned by Civic Lubbock, Inc. and two members-at-large appointed by the City Council. They are as follows:

Kathy Horkey-Wolff, CLI Board of Directors/Chair of the Grant Review Committee  
Idris Traylor, CLI Board of Directors  
Stephanie Massengale, CLI Board of Directors  
Melinda Green Harvey, Member-at-Large appointed by City Council  
Christena Gonzales, Member-at-Large appointed by City Council

In reviewing requests and developing funding recommendations for each application, the Grant Review Committee followed the guidelines established by the Civic Lubbock, Inc. Board for the 2021 Live Music Performance Grant Program.

Accompanying this document are the results of the Grant Review Committee meeting held on September June 17, 2021. Four applications were received and four applications are recommended for full or partial funding. The total amount of funding requested for the 2021 grant cycle was \$35,100.00 of which \$30,971.00 is recommended for funding.

The Civic Lubbock, Inc. Board of Directors requests that the City Council consider approval of the Live Music Performance Grant allocations of \$30,971.00 as recommended by the Cultural Arts Grant Review Committee and approved by the Civic Lubbock, Inc Board.

Sincerely,



Grace Q. Gonzales  
President  
Civic Lubbock, Inc.

Attachments



**City of Lubbock/Civic Lubbock, Inc.**  
**2021 Live Music Performance Grant Program**  
**Grant Recommendations**  
**October 26, 2021**

Grant No.	Funding Period	Hotel	New	Expanded	Requested	Recommended	Hotel Matching Funds	
2021-001	Jan 2022 - Dec 2022	Embassy Suites by Hilton Lubbock	X		\$4,000	\$4,000	\$4,000	New program
2021-002	Jan 2022 - Dec 2022	Overton Hotel		X	\$13,000	\$11,300	\$11,300	Currently providing music on Fri/Sat nights; plan to add Thurs/Sun nights.
2021-003	Jan 2022 - Dec 2022	Doubletree by Hilton Lubbock (University Area)		X	\$15,600	\$13,171	\$13,171	Currently providing music on Fri/Sat nights and sometimes Sun brunch. Plan to add 3 nights per week.
2021-004	Jan 2022 - Dec 2022	MCM Elegante Hotel & Suites		X	\$2,500	\$2,500	\$2,500	Currently providing music on Fri nights. Plan to expand to include Sat nights
		<b>TOTAL</b>			<b>\$35,100</b>	<b>\$30,971</b>		
	<b>HOT Funding initially set aside for the Live Music Performance Grant Program</b>				<b>\$15,000</b>			
	<b>Additional HOT Funding from unused Cultural Arts Grants</b>				<b><u>\$15,971</u></b>			
	<b>Total HOT Funding available for the Live Music Performance Grant Program</b>				<b>\$30,971</b>			

**Note: Two organizations awarded 2021 Cultural Arts Grant funding cancelled their events so that funding will not be used. Amount of those grant awards totaled \$15,971. The CAG Review Committee recommended and the CLI Board approved using the unused \$15,971 towards the LMPG program so that the funds can get out into the community.**



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## Information

### Agenda Item

**Resolution - Lubbock Power & Light:** Consider a resolution ratifying the Second Amendment to the Master Sales Agreement, by and between the City of Lubbock acting by and through its Electric Utility Board and City Council, and Itron, Inc., regarding the installation, maintenance, and support services relating to automatic meters and metering.

### Item Summary

On June 14, 2018, the City of Lubbock, acting by and through its Electric Utility Board and City Council, executed a contract with Itron for the installation of the AMI Solution for the electric and water utilities. The AMI Solution is important for the efficient operation of the electric and water distribution system. AMI Solution's key attributes will improve billing accuracy, improve customer service, empower customers, and enhance reliability.

Change Order #1 covered initial electric meter hardware quantity changes. Change Order #2 was to incorporate an electrician into the project. Change Order #3 was created, not executed. Change Order #4 was for the requested additional scope to provide the Itron Call Center, for a 6-month period, starting in September 2019. Change Order #5 was for the requested 24-month performance and payment bond to meet the funding requirements of the Texas Water Development Board. Change Order #6 was executed to purchase additional electric meters required to complete the exchange of meters for the AMI Solution. Change Order #7 was solely related to the Water AMI project for additional water communication devices.

This Change Order #8 increases the amount of the MSA to purchase test electric meters and other equipment necessary for a testing environment. The additional equipment will enable end-to-end regression testing for both the AMI and CIS systems along with an increased level of confidence in the readiness of the system for future upgrades.

This Change Order #8 is within the authority delegated to the Director of Electric Utilities under Section 14.4 of the MSA. Nevertheless, because of recent changes in law, the parties agreed to the Second Amendment to incorporate new Texas law provisions.

Staff recommends ratification of this Second Amendment, which includes a change order in the amount of \$10,067, to Itron, Inc., or such alternative action as the City Council may deem appropriate.

### Fiscal Impact

The cost associated with the Second Amendment is \$10,067, and is funded in Account 92457 (Customer Service Information and Workforce Management Systems).

### Staff/Board Recommending

David McCalla, Director of Electric Utilities  
Electric Utility Board

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## **Attachments**

Resolution - Amendment 2 to ITRON Master Sales Agreement

Amendment 2 - ITRON Master Sales Agreement

LP&L Resolution - Amendment 2, ITRON Master Sales Agreement

## RESOLUTION

WHEREAS, the City of Lubbock (the “City”) and Itron, Inc. (“Itron”) entered into a Master Sales Agreement, entered into on or about June 14, 2018, Electric Utility Board Resolution No. EUB 2018-R0041 and City Council Resolution No. 2018-R0194 (the “Original Agreement”) to provide the City with advanced electric meter infrastructure and advanced water meter infrastructure;

WHEREAS, the Original Agreement was amended by the First Amendment to Master Sales Agreement, dated March 10, 2020, by City Council Resolution No. 2020-R0084 and EUB Resolution 2020-R0030 (“First Amendment”);

WHEREAS, the Electric Utility Board and the City Council of the City of Lubbock, possess joint jurisdiction over the contracting for the subject infrastructure and services due to the inclusion of both electric and water metering infrastructure;

WHEREAS, the City and Itron wish to amend the Original Agreement, as amended;

WHEREAS, the Second Amendment to Master Sales Agreement (“Second Amendment”) was previously executed by the Director of Electric Utilities due to business needs of the utility, and the City wishes to ratify such action through the Electric Utility Board and the City Council of the City of Lubbock; NOW THEREFORE:

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the City Council, on behalf of the City of Lubbock, hereby ratifies, adopts, and confirms that certain Second Amendment to Master Sales Agreement by and between the City of Lubbock, acting by and through its City Council and Electric Utility Board, and Itron, Inc., as attached hereto and incorporated herein as though set forth fully herein in detail, and any documents related thereto, as if originally authorized by the Electric Utility Board, as of the date written.

Passed by the City Council this 26th day of October, 2021.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

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Becky Garza, City Secretary

APPROVED AS TO CONTENT:



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David McCalla, Director of Electric Utilities

APPROVED AS TO FORM:



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Jenny Smith, LP&L General Counsel

## SECOND AMENDMENT TO MASTER SALES AGREEMENT

This Second Amendment to Master Sales Agreement (“Second Amendment”), is entered into and effective this 22nd day of September, 2021, by and between City of Lubbock, Texas, acting by and through its Electric Utility Board and City Council (“City”), and Itron, Inc., a Washington corporation (“Itron”).

### WITNESSETH

WHEREAS, City and Itron entered into that certain Master Sales Agreement (the “Original Agreement”), on or about June 14, 2018, City Council Resolution No. 2018-R0194, and Electric Utility Board Resolution No. EUB 2018-R0041 wherein Itron agreed to sell, and provide certain installation, maintenance, and support services relating to, automatic meters and metering, as described more particularly thereunder (“Services”);

WHEREAS, the Original Agreement was amended by the First Amendment to Master Sales Agreement, dated March 10, 2020, by City Council Resolution No. 2020-R0084 and EUB resolution 2020-R0030 (“First Amendment”);

WHEREAS, Article 14 of the Original Agreement provides for a change order process;

WHEREAS, previous changes orders have been issued, which are comprised as follows: Change Order #1 covered initial electric meter hardware quantity changes; Change Order #2 incorporated an electrician into the project; Change Order #3 was created but not executed; Change Order #4 requested an additional scope to provide for the Itron Call Center, for a six-month period, starting in September 2019; Change Order #5 was for the requested 24-month Performance and Payment Bond to meet the funding requirements of the Texas Water Development Board; Change



Order #6 accommodated the need for additional electric meters to complete the services; and Change Order #7 provided for additional water communication devices;

WHEREAS, City and Itron desire to execute Change Order #8 pursuant to Article 14 of the Original Agreement, as amended, to purchase test electric meters and related equipment to be used for system upgrade testing;

WHEREAS, the parties are now required to provide certain representations and warranties, and performance obligations, under law;

WHEREAS, City and Itron now desire to amend the Original Agreement, as amended, to provide for such matters;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Itron hereby amend the Original Agreement, as amended, as follows:

1. Change Order #8, attached hereto as Exhibit "A", is hereby added to the Original Agreement for all purposes.
2. The following is added as Section 16.22 of the Original Agreement, as amended to wit:

**Ownership Representation and Warranty.** To the extent Chapter 2274, Texas Government Code applies to this Agreement, Itron represents and warrants that it is not, and during the term of this Agreement will not be (1) owned by or the majority of stock or other ownership interest of Itron, will not be held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country, as defined in Section 2274.0101, Texas Government Code; or (ii) a company or entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country as defined in Section 2274.0101, Texas Government Code; or (2) headquartered in China, Iran, North Korea, Russia, or a designated country as defined in Section 2274.0101, Texas Government Code. Itron warrants and represents

that Customer's Agreement with Itron therefore does not and will not violate Texas Government Code Section 2274.0101, et seq.

3. The following is hereby added as Section 16.23 of Original Agreement, as amended, to wit:

**Non-Discrimination against Firearm Entities/Trade Associations.** Itron hereby warrants that it is in compliance with Chapter 2274, Subtitle F, Title 10 of the Texas Government Code by verifying that: (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) it will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

4. The following is hereby added as Section 16.24 of Original Agreement, as amended, to wit:

**Non-Boycott of Energy Companies.** Itron hereby warrants that it is in compliance with Chapter 2274, Subtitle F, Title 10 of the Texas Government Code by verifying that: (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of this Agreement.

5. The following is hereby added as Section 16.25 of Original Agreement, as amended, to wit:

**Disclosure of Interested Parties.** To the extent Section 2252.908 of the Texas Government Code applies to this Agreement, Itron shall submit a disclosure of Interested Parties ("Disclosure Form") to Customer (to the attention of Customer's Purchasing Department) at the time Itron submits the signed Agreement to Customer. The Disclosure Form may be found here: <https://www.ethics.state.tx.us/filinginfo/1295/> or other webpage as designated by the Texas Ethics Commission from time to time. If Itron has not submitted a Disclosure Form pursuant to this section, Itron represents and warrants that Section 2252.908 of the Texas Government Code does not apply to this Agreement.

6. Except as amended hereby, the terms and conditions of the Original Agreement, as amended, shall remain valid and subsisting as originally provided.

IN WITNESS WHEREOF, the parties have executed this Second Amendment, as amended, by their duly authorized representatives effective as of the date first written above.

City of Lubbock, acting by and through Lubbock  
Power & Light



David McCalla, Director of Electric Utilities

APPROVED AS TO CONTENT:




David McCalla, Director of Electric Utilities

APPROVED AS TO FORM:



Jenny Smith, LP&L General Counsel

Itron, a Washington Corporation

By: 

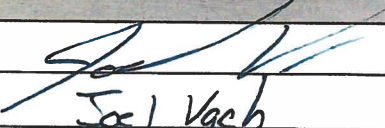
Name: Joel Vach

Title: VP Tax & Treasurer

# Exhibit A

### Customer Change Order Form

	Name	Date
<b>Client Name:</b>	City of Lubbock Utilities	8/10/2021
<b>Contract Name:</b>	Master Sales Agreement 7123-17 EUA	on or about June 14, 2018
<b>Requestor:</b>	Todd Stocker / Willie Burgess	8/10/2021
<b>Change Order:</b>	#8	

Signature Block	Itron Representative	Customer Representative
<b>Signature</b>		
<b>Name</b>	Joel Vach	
<b>Title</b>	VP Tax & Treasurer	
<b>Date Signed</b>	10/7/2021	

Send Pricing Summary to Client?  Yes  No

Has contract been signed?  Yes  No

General Comments: Purchase of test CGR and electric meters to be used for current/future system upgrade testing.

Order Processing:

PO/Contract #: Master Agreement 7123-17 EUA

Comments: \_\_\_\_\_

Hardware Changes:

Description	Qty	Price	Extended
Connected Grid Router – CGR1240 WPAN 4G w/4 module slots, 2 GE, 2 Serial, 4 FE LAN, Wi-Fi, GPS	1	\$7,731	\$7,731
OpenWay Riva Singlephase 2S, CL200, 240V, RD	4	\$100	\$400
OpenWay Riva Polyphase 16S, CL320, 120-480V	4	\$185	\$740
Connected Grid Router Support – Mesh	1	\$1,196	\$1,196
<b>Total</b>			<b>\$10,067</b>

Comments:

## RESOLUTION

WHEREAS, the City of Lubbock (the “City”) and Itron, Inc. (“Itron”) entered into a Master Sales Agreement, entered into on or about June 14, 2018, Electric Utility Board Resolution No. EUB 2018-R0041 and City Council Resolution No. 2018-R0194 (the “Original Agreement”) to provide the City with advanced electric meter infrastructure and advanced water meter infrastructure;

WHEREAS, the Original Agreement was amended by the First Amendment to Master Sales Agreement, dated March 10, 2020, by City Council Resolution No. 2020-R0084 and EUB resolution 2020-R0030 (“First Amendment”);

WHEREAS, the Electric Utility Board and the City Council of the City of Lubbock, possess joint jurisdiction over the contracting for the subject infrastructure and services due to the inclusion of both electric and water metering infrastructure;

WHEREAS, the City and Itron wish to amend the Original Agreement, as amended;

WHEREAS, the Second Amendment to Master Sales Agreement (“Second Amendment”) was previously executed by the Director of Electric Utilities due to business needs of the utility, and the City wishes to ratify such action through the Electric Utility Board and the City Council of the City of Lubbock; NOW THEREFORE:

BE IT RESOLVED BY THE ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK:

THAT the Electric Utility Board, on behalf of the City of Lubbock, acting by and through Lubbock Power & Light, hereby ratifies, adopts, and confirms that certain Second Amendment to Master Sales Agreement by and between the City of Lubbock, acting by and through its City Council and Electric Utility Board, and Itron, Inc., as attached hereto and incorporated herein as though set forth fully herein in detail, and any documents related thereto, as if originally authorized by the Electric Utility Board, as of the date written.

BE IT FURTHER RESOLVED BY THE ELECTRIC UTILITY BOARD OF THE CITY OF LUBBOCK:

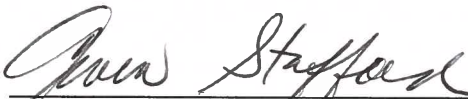
THAT in the event that the City Council of the City of Lubbock shall not likewise ratify the Second Amendment attached hereto on or before November 15, 2021, this Resolution shall be null and void and of no force or effect whatsoever.



Passed by the Electric Utility Board this 19th day of October, 2021.

  
\_\_\_\_\_  
Dan Odom, Chairman

ATTEST:

  
\_\_\_\_\_  
Gwen Stafford, Board Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
David McCalla, Director of Electric Utilities

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jenny Smith, LP&L General Counsel



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## Information

### Agenda Item

**Board Appointments - City Secretary:** Consider a resolution authorizing the City Council to cast votes for candidates to the Lubbock Central Appraisal District Board of Directors.

### Item Summary

On September 28, 2021, the City Council approved Resolution No. 2021-R0390, nominating Sonny Garza, Brady Goen, Greg Jones, Bobby McQueen, and Noe Reynolds as candidates for positions on the Lubbock Central Appraisal District Board of Directors.

The City of Lubbock is entitled to 1089 votes (from a total of 5000 votes spread among 20 entities in Lubbock County). To cast a vote, the City Council must vote in an open meeting, report the vote by written resolution by the first or second open meeting held after the date the chief appraiser delivers the ballot. The ballot was delivered to the City of Lubbock on Wednesday, October 20, 2021. The governing body must then submit its vote to the chief appraiser not later than the 3rd day following the date the resolution is adopted.

### Fiscal Impact

None

### Staff/Board Recommending

Rebecca Garza, City Secretary

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## Attachments

Resolution

LCAD Letter

**RESOLUTION**

WHEREAS, Section 6.01 of the Texas Property Tax Code established an appraisal district in each county to appraise property for ad valorem tax purposes of each taxing unit in the district; and,

WHEREAS, the Property Tax Code authorized the establishment of appraisal districts to be governed by a Board of Directors; and,

WHEREAS, the City of Lubbock is a taxing unit within the Lubbock Central Appraisal District entitled to cast votes for the election of persons to the Board of Directors of the District; and,

WHEREAS, the Chief Appraiser has received timely nominations from voting taxing units, has prepared the following ballot of candidates for the Board of Directors, and has determined that the City of Lubbock is entitled to cast 1089 votes in the election of the District's Board of Directors;

NOW THEREFORE:

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the 1089 votes of the City of Lubbock are cast for candidates for the Lubbock Central Appraisal District Board of Directors as follows:

<u>NAME</u>	<u>NUMBER OF VOTES</u>
Garza, Sonny	_____
Goen, Brady	_____
Jones, Greg	_____
McQueen, Bobby	_____
Reynolds, Noe	_____

THAT, a copy of this Resolution BE submitted to the Chief Appraiser not later than the 3<sup>rd</sup> day following the date this Resolution is adopted in order that the votes of the City of Lubbock may be counted.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

---

Rebecca Garza, City Secretary


APPROVED AS TO CONTENT:



---

W. Jarrett Atkinson  
City Manager

APPROVED AS TO FORM



---

Mitchell S. ...  
First Assistant City Attorney

# LUBBOCK CENTRAL APPRAISAL DISTRICT

TIM RADLOFF, RPA, RTA, CCA  
Chief Appraiser / Administrator  
October 19, 2021

OFFICE OF THE  
CHIEF APPRAISER



Mr. Dan Pope  
Mayor  
City of Lubbock  
P.O. Box 2000  
Lubbock, TX 79457-2000

Dear Mr. Pope:

In compliance with the provisions of Section 6.03 of the Texas Property Tax Code I have received director nominations from voting units located within the Lubbock Central Appraisal District. Enclosed you will find a resolution containing the ballot with the names of those nominated for directors listed in alphabetical order.

**During the last legislative session, HB 988 added subsection (k-1) to PTC Section 6.03. This subsection requires the governing body of a taxing unit entitled to cast at least 5% of the total number of votes to determine its vote for its appraisal district's board of directors by resolution adopted at the first or second open meeting held after the date the chief appraiser delivers the ballot. The governing body must then submit its vote to the chief appraiser not later than the 3<sup>rd</sup> day following the date the resolution is adopted. Because City of Lubbock has more than 5% of the vote, your board will need to follow these procedures of when to vote and the deadline for delivering the adopted resolution.**

It is important that the aforesaid method of voting, reporting of votes, and submission of the votes to the chief appraiser before the deadline be followed. A unit may cast all its votes for one candidate or may distribute the votes among any number of candidates named on the ballot.

A voting unit may only cast its votes for a person timely nominated and named on the enclosed ballot. There is no provision for write-in candidates. Since we only have five nominees this time, those listed on the enclosed ballot will be your directors. Even so, the participation of all eligible units in the voting process would be appreciated.

**Before December 31, I will count the votes and officially declare elected the five candidates who received the largest vote totals.** I am required to notify all taxing units and all the candidates of the election results before December 31, 2021.

Additionally, I have enclosed another copy of the worksheet showing the calculation of the number of votes to which each taxing unit is entitled. Other details are contained in my letter to you of August 26, 2021.

Thank you for your participation in the board of directors' selection process. If you would like to discuss any aspect of the process, please contact me at your convenience.

Respectfully submitted,

*Tim Radloff*

Tim Radloff

Enclosures

cc: W. Jarrett Atkinson  
Cheryl Brock  
Rebecca Garza

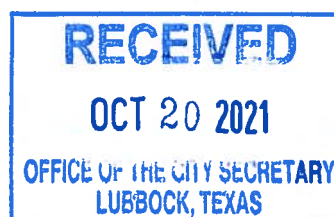
2109 AVENUE Q

P.O. BOX 10542

LUBBOCK, TEXAS 79408

(806) 762-5000

FAX (806) 762-2451



**RESOLUTION**

**WHEREAS**, Section 6.01 of the Texas Property Code, V.A.C.S., established an appraisal district in each county to appraise property for ad valorem tax purposes of each taxing unit in the district; and,

**WHEREAS**, the Property Tax Code, V.A.C.S., authorized the establishment of appraisal districts to be governed by a Board of Directors; and,

**WHEREAS**, the City of Lubbock is a taxing unit within the Lubbock Central Appraisal District entitled to cast votes for the election of persons to the Board of Directors of the District; and,

**WHEREAS**, the Chief Appraiser has received timely nominations from voting taxing units, has prepared the following ballot of candidates for the Board of Directors, and has determined that the City of Lubbock is entitled to cast 1089 votes in the election of the District's Board of Directors;

**NOW THEREFORE:**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**THAT**, the 1089 votes of the City of Lubbock are cast for candidates for the Lubbock Central Appraisal District Board of Directors as follows:

<u>NAME</u>	<u>NUMBER OF VOTES</u>
Garza, Sonny	_____
Goen, Brady	_____
Jones, Greg	_____
McQueen, Bobby	_____
Reynolds, Noe	_____

**AND THAT**, a copy of this Resolution be submitted to the Chief Appraiser not later than the 3<sup>rd</sup> day following the date this Resolution is adopted in order that the votes of the City of Lubbock may be counted.

Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Daniel M. Pope, Mayor

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary



**2021 CALCULATION OF VOTES TO SELECT FIVE DIRECTORS  
FOR THE LUBBOCK CENTRAL APPRAISAL DISTRICT**

<b>TAXING UNIT</b>	<b>2020 LEVY</b>	<b>PERCENTAGE 2020 LEVY TOTAL LEVY</b>	<b>X 1000</b>	<b>X Number of Directors</b>	<b>Number of Votes</b>
<b>CITIES</b>					
Abernathy	167,087	0.03588%	0.36	5	2
Idalou	734,938	0.15784%	1.58	5	8
Lubbock	101,459,830	21.78966%	217.90	5	1,089
New Deal	255,520	0.05488%	0.55	5	3
Ransom Canyon	951,861	0.20442%	2.04	5	10
Shallowater	1,185,359	0.25457%	2.55	5	13
Slaton	1,402,810	0.30127%	3.01	5	15
Wolfforth	3,217,486	0.69099%	6.91	5	35
<b>SCHOOLS</b>					
Abernathy	1,069,665	0.22972%	2.30	5	11
Frenship	67,469,562	14.48986%	144.90	5	724
Idalou	3,972,419	0.85312%	8.53	5	43
Lorenzo	117,394	0.02521%	0.25	5	1
Lubbock-Cooper	53,660,234	11.52415%	115.24	5	576
Lubbock	133,040,461	28.57197%	285.72	5	1,429
New Deal	4,182,138	0.89816%	8.98	5	46
Roosevelt	3,372,913	0.72437%	7.24	5	36
Shallowater	5,438,370	1.16795%	11.68	5	58
Slaton	6,142,596	1.31919%	13.19	5	66
Southland	8,088	0.00174%	0.02	5	0
<b>COUNTY</b>					
Lubbock County	77,784,103	16.70503%	167.05	5	835
<b>TOTALS</b>	<b>465,632,834</b>	<b>1.00000</b>	<b>1,000</b>		<b>5,000</b>



Regular City Council Meeting

10/26/2021:

8. 2.

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### **Information**

#### **Agenda Item**

**Board Appointments - City Secretary:** Consider appointments to the Airport Board.

#### **Item Summary**

Consider appointments to the Airport Board.

#### **Fiscal Impact**

None

#### **Staff/Board Recommending**

Rebecca Garza, City Secretary

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### **Attachments**

*No file(s) attached.*



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## Information

### Agenda Item

**Public Hearing - Business Development:** Hold a public hearing on the proposed 2022 assessment rate for the Northwest Passage Public Improvement District (PID), and consider an ordinance reviewing classifications for the methods of assessing special benefits for the services and improvements of property in the Northwest Passage PID; approving, adopting, and filing with the City Secretary the assessment roll; levying 2022 assessments for the cost of certain services and improvements to be provided in the district during FY 2022-23; fixing charges and liens against the property in the district and against the owners thereof; and providing for the collection of the assessment.

### Item Summary

This item includes a public hearing followed by consideration of the Assessment Ordinance. The ordinance to levy assessments is the last activity in the PID establishment process.

The purpose of the public hearing is to provide the opportunity for property owners in the Northwest Passage PID to speak in favor of, or in opposition to, the assessment to be levied in the Northwest Passage PID for 2022. A notice of public hearing was published in the Lubbock Avalanche Journal, and notices were mailed to the property owners on Tuesday, October 12, 2021, as required by the statute. At or on the adjournment of the hearing on proposed assessments, the governing body of the municipality must hear and pass on any objections to the proposed assessment.

The proposed assessment for the first year is for tax year 2022 which will fund the budget for FY 2022-23. The total estimated cost of services provided by the District is estimated at \$516,836 over the next five years. The estimated annual cost rises from \$9,000 in the first year to \$479,742 in year five. The method of assessment for the Northwest Passage PID will be based on taxable value. The proposed assessment rate for 2022 is \$0.15 per \$100 valuation. All property will be assessed for 2022.

The funds raised by the assessment will be used to provide design, construction and maintenance of parks and greenspace, along with any ancillary features or amenities including water features, lighting, signage, the repair and replacement of said amenities, and any other maintenance needed on projects in the District, as well as cover the costs of administering the PID.

### Fiscal Impact

The estimated assessment that will be collected for 2022, based on projected values, is \$7,503.

### Staff/Board Recommending

Jessica McEachern, Assistant City Manager

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## Attachments

Public Hearing Notice

Assessment Ordinance

# NOTICE OF PUBLIC HEARING FOR THE PROPOSED NORTHWEST PASSAGE PUBLIC IMPROVEMENT DISTRICT

Please take notice that on October 26, 2021, at 5:00 P.M., the City Council of Lubbock, Texas, will conduct a public hearing in the City Council Chambers of Citizens Tower at 1314 Avenue K, Lubbock, Texas 79401. The purpose of this hearing is to consider the 2022 assessment rate for property owners in the Northwest Passage Public Improvement District (“District”) pursuant to Chapter 372 of the Texas Local Government Code (The “Act”).

All interested persons will be given the opportunity to appear and be heard at such public hearing. Written or oral objections will be considered. The Assessment Roll will be available for viewing in the City Secretary’s Office after October 14, 2021.

The following information is hereby provided concerning the matters to be considered at such hearing:

**Nature of the Services and Improvements:** (a) the design, construction and maintenance of parks and greens together with any ancillary structures, features or amenities such as playgrounds, athletic facilities, pavilions, community facilities, bridges, walkways, lighting, benches, trash receptacles and similar items located therein along with all necessary grading, drainage and similar infrastructure involved in the construction of such parks and greens; landscaping, hardscaping and irrigation; the design, construction and maintenance of water features such as lakes, ponds and fountains; distinctive lighting and signs; construction and improvement of pedestrian malls, passages or pathways including pedestrian bridges; design, construction and improvement of vehicular bridges and low water crossings; design, construction and improvement of community meeting halls or similar buildings; design, construction and improvement of community monuments, towers, and other amenity-type structures; acquisition and installation of art work; design, acquisition, installation, and improvement of telecommunication and similar technology systems; and special supplemental services defined in the Act, together with related permits and licenses; and (b) payment of costs associated with developing and financing the public improvements listed in subdivision (i) including costs of establishing, administering, and operating the District; (c) The District shall prioritize its expenditures as follows: (i) design, construction, maintenance, and financing for drainage improvements; then (ii) design, construction, maintenance, and financing for park improvements; then (iii) selection, acquisition, and maintenance for public art; then (iv) all other allowable improvements and related expenditures. The District is to supplement and enhance services within the District, but not replace or supplant existing City services provided within the District.

**Estimated Cost of the Services and Improvements:** The proposed assessment for the first year is for tax year 2022 which will fund the budget for FY 2022-23. The total estimated cost of services provided by the District is estimated at \$516,836 over the next five years. The estimated annual cost rises from \$9,000 in the first year to \$479,742 in year five (5). The costs are based on a proposed assessment rate of \$0.15 per \$100.00 of valuation through tax year 2026.

**Boundaries:** The District is located within the City of Lubbock, Texas. The proposed Northwest Passage Public Improvement District (PID) covers a portion of an area in the City of Lubbock, Lubbock County, Texas, generally bounded by Frankford Avenue on the west, Quaker Avenue on the east, Kent Avenue and Highway 84 on the north, and Marshall Avenue on the south. A detailed map of the District and a legal description as well as the Assessment Roll is available in the Business Development Department on the 9<sup>th</sup> Floor of Citizens Tower.

Public hearings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary’s Office at 775-2025 or write to P.O. Box 2000, Lubbock, Texas, 79457, at least 48 hours in advance of the public hearing.

Any questions concerning the matters described in this notice should be directed to: **Brianna Gerardi, City of Lubbock Business Development Department at 775-3082.**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ADOPTING A SERVICE PLAN FOR THE NORTHWEST PASSAGE PUBLIC IMPROVEMENT DISTRICT, WITH SUCH SERVICE PLAN INCLUDING AN ASSESSMENT PLAN FOR SAID PUBLIC IMPROVEMENT DISTRICT; ESTABLISHING REASONABLE CLASSIFICATIONS AND FORMULAS FOR THE APPORTIONMENT OF THE COST BETWEEN THE CITY OF LUBBOCK, TEXAS AND THE NORTHWEST PASSAGE PUBLIC IMPROVEMENT DISTRICT, AND THE METHODS OF ASSESSING SPECIAL BENEFITS FOR VARIOUS CLASSES OF IMPROVEMENTS OF PROPERTY WITHIN THE NORTHWEST PASSAGE PUBLIC IMPROVEMENT DISTRICT; APPROVING, ADOPTING, AND FILING WITH THE CITY SECRETARY OF THE CITY OF LUBBOCK, TEXAS AN ASSESSMENT ROLL FOR THE NORTHWEST PASSAGE PUBLIC IMPROVEMENT DISTRICT; AND, LEVYING THE ASSESSMENT FOR THE NORTHWEST PASSAGE PUBLIC IMPROVEMENT DISTRICT AS A SPECIAL ASSESSMENT, SPECIFYING THE METHOD OF PAYMENT OF THE ASSESSMENT, AND FIXING CHARGES AND LIENS AGAINST THE PROPERTY IN THE NORTHWEST PASSAGE PUBLIC IMPROVEMENT DISTRICT AND AGAINST THE OWNERS OF PROPERTY WITHIN THE NORTHWEST PASSAGE PUBLIC IMPROVEMENT DISTRICT.**

**WHEREAS**, Chapter 372 of the Texas Local Government Code (the "Act") provides the process by which the City of Lubbock, Texas (the "City") may create a public improvement district; and

**WHEREAS**, through Resolution No. 2021-R0363 the City Council of the City (the "Council") authorized the Northwest Passage Public Improvement District (the "PID"); established the boundaries of the PID; approved the estimated costs, method of assessment, and apportionment of costs for the PID; and, created the initial advisory board for the PID; and

**WHEREAS**, through Resolution No. 2021-R0413, the Council directed City staff to:

- (1) prepare a Service Plan for the PID according to the Act with such Service Plan covering a period of at least five (5) years, defining the annual indebtedness of the PID, projecting the costs for improvements in the PID, and including an assessment plan for the PID;
- (2) prepare an assessment roll for the PID that states the assessment against each parcel of land in the PID, with such proposed assessment roll to be filed with the municipal secretary and being made available for public inspection;
- (3) send and publish notice of a public hearing according to the Act concerning the Service Plan; and



**WHEREAS**, City staff has prepared a Service Plan for the PID according to the Act, prepared an assessment roll for the PID, and has sent and published notice of a public hearing to be held at five o'clock in the evening (5:00 PM), Tuesday, October 26, 2021, in the City Council Chambers, 1314 Avenue K, Lubbock, Texas, to consider the proposed apportionment and assessment for the PID; and

**WHEREAS**, at the adjournment of the public hearing the Council desires to hear and pass on any objections to the proposed assessment for the PID and, through this Ordinance, to establish reasonable classifications and formulas for the apportionment of the costs for the services and improvements of the PID between the City and the PID, to approve, adopt, and file with the City Secretary the Service Plan for the PID that includes an assessment plan and assessment roll for the PID, and to levy an assessment as a special assessment on the property within the PID; and **NOW, THEREFORE**;

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**SECTION 1: THAT** the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct.

**SECTION 2: THAT** the Council has reviewed the Service Plan for the PID, which is attached to this Ordinance as "Exhibit 1", and finds that it: covers a period of at least five (5) years; defines the annual indebtedness of the PID; estimates the costs for improvements in the PID; and, includes an assessment plan for the PID.

**SECTION 3: THAT** the Council hereby finds that the assessment rate provided in the Service Plan for the PID is feasible and sound and will serve the needs and desires of the property owners within the PID, and the Council hereby adopts the assessment rate of fifteen cents (\$0.15) per one hundred dollars (\$100) of net taxable value for tax year 2022, as determined by the Lubbock Central Appraisal District, of the property or improvements to the property located in the PID.

**SECTION 4: THAT** the Council finds that the assessment plan included in the Service Plan for the PID provides for the apportionment of the cost of improvements to be assessed against the property within the PID on the basis of special benefits accruing to the property within the PID because of the improvements, and the Council hereby establishes the reasonable classifications and formulas for the apportionment of the costs between the City and the PID and the methods of assessment of the special benefits for the various classes of improvements within the PID as such classifications, formulas, and methods are provided for in the assessment plan.

**SECTION 5: THAT** the Council hereby approves, adopts, and files with the City Secretary the assessment roll that is attached to this Ordinance as "Exhibit 2", with such assessment roll stating an estimate of the assessment to be levied against the property within the PID, and with the City Secretary filing the assessment roll in the official records of the City and being subject to public inspection.

**SECTION 6: THAT** the Council finds that the assessments should be made and levied against the property within the PID and against the owners thereof, and that such assessments are in proportion to the benefits to the property by means of the services and improvements in the PID for which such assessments are levied, and further finds that in each case the property assessed is specially benefited by means of the said services and improvements of the District, and further finds that the apportionment of costs of the services and improvements is in accordance with the Act.

**SECTION 7: THAT** there is hereby levied and assessed against the parcels of property within the PID, and against the real and true owners thereof, whether such owners be correctly named or not, the sums of money calculated by applying the assessment rate to in the manner described in the assessment plan and assessment roll.

**SECTION 8: THAT** the several sums above mentioned and assessed against the said parcels of property and the owners thereof, and interest thereon at the rate per annum established herein, together with reasonable attorney's fees and costs of collection, if incurred, are hereby declared to be and are made a first and prior lien against the property assessed, superior to all other liens and claims except liens and claims for ad valorem taxes and is a personal liability of and charge against the owners of the property regardless of whether the owners are named; and, with such lien being attached on January 1 of each year to the property to secure the payment of all assessments, penalties, and interest ultimately imposed for the year on the property, whether or not the assessments are imposed in the year the lien attaches and shall be effective until the assessment is paid; and, with such lien being perfected on attachment requiring no further action by the Council.

**SECTION 9: THAT** the assessments levied herein shall be due and payable in full on receipt of the assessment bill and are delinquent if not paid by January 31, 2023 except as provided in Sections 31.02(b), 31.03, and 31.04 of the Texas Property Tax Code. A delinquent assessment incurs a penalty of six percent (6%) of the amount of the assessment for the first (1<sup>st</sup>) calendar month it is delinquent plus one percent (1%) for each additional month or portion of a month the assessment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an assessment delinquent on July 1 incurs a total penalty of twelve percent (12%) of the amount of the delinquent assessment without regard to the number of months the assessment has been delinquent. A delinquent assessment continues to incur the penalty provided by this Section as long as the assessment remains unpaid, regardless of whether a judgment for the delinquent assessment has been rendered. That if default be made in the payment of any of the said sums hereby assessed against said property owners and their property, collection thereof, including costs and attorney's fees, shall be enforced by the governing body in the same manner that an ad valorem tax lien against real property may be enforced by the governing body under Chapters 31, 32 and 33 of the Texas Property Tax Code. The owner of the assessed property may pay at any time the entire assessment on any lot or parcel, along with any interest and penalty that has accrued on the assessment.

**SECTION 10: THAT** all assessments herein levied are a personal liability and charge against the real and true owners of the premises described, notwithstanding such owners may not be named, or may be incorrectly named.

**AND IT IS SO ORDERED.**

**Passed by the City Council on first reading on \_\_\_\_\_, 2021.**

**Passed by the City Council on second reading on \_\_\_\_\_, 2021.**

\_\_\_\_\_  
**DANIEL M. POPE, MAYOR**

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Blu Kostelich, Chief Financial Officer

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**EXHIBIT 1**  
**City of Lubbock, TX**  
**Finance Department**  
**Northwest Passage PID FY 2022-23 Service and Assessment Plan**

**Method of Assessment**

- \* Properties will be assessed based on the City's 2022 "net taxable value" as established by the Lubbock Central Appraisal District and submitted to the City under Tax Code Section 26.04.
- \* Assessment rate will be \$0.15/\$100 valuation.
- \* All property will be assessed based on the final 2022 "net taxable value".

**Service Plan**

Tax Year	PROJECTIONS						Totals
	2021	2022	2023	2024	2025	2026	
Property Values* (Taxable)	5,001,669	5,001,669	37,062,953	193,493,429	219,576,954	250,438,980	250,438,980
Discounted Property Values	5,001,669	5,001,669	33,356,658	174,144,086	197,619,259	225,395,082	225,395,082
Number of Homes							
<b>Fiscal Year Revenues</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>	<b>Totals^</b>
Interest	-	-		457	3,383	6,750	10,590
Assessment @ \$0.15	-	7,503	50,035	261,216	296,429	338,093	953,275
<b>Total</b>	<b>-</b>	<b>7,503</b>	<b>50,035</b>	<b>261,673</b>	<b>299,812</b>	<b>344,843</b>	<b>963,865</b>
<b>Expense</b>							
Debt Service						470,000	470,000
Administrative Costs		4,000	4,080	4,162	4,245	4,330	20,816
Annual Operation Cost <i>(Notices, Public Hearings, Collection Costs, Advisory Group meeting costs, postage, office supplies, Maint PT)</i>		5,000	5,100	5,202	5,306	5,412	26,020
<b>Total</b>	<b>-</b>	<b>9,000</b>	<b>9,180</b>	<b>9,364</b>	<b>9,551</b>	<b>479,742</b>	<b>516,836</b>
Cash Reserve	-	(1,497)	39,357	291,667	581,928	447,029	447,029

\*Property Value growth rate = 2% annually

Assessment Information for 100,000 home                   **\$150.00**

**EXHIBIT 1**  
**Service and Assessment Plan Required Attachment**

Sec. 5.014. NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT. (a) A person who proposes to sell or otherwise convey real property that is located in a public improvement district established under Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code, shall first give to the purchaser of the property the [a] written notice prescribed by Subsection (a-1) or (a-2), as applicable.

(a-1) Except for the notice prescribed by Subsection (a-2), the notice required by Subsection (a) shall be executed by the seller and must, except as provided by Subsection (b), read as follows:

NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO (insert name of municipality or county  
levying assessment), TEXAS CONCERNING THE FOLLOWING PROPERTY  
(insert property address)

As the [a] purchaser of the real property described above, you are obligated to pay assessments [~~an~~  
~~assessment~~] to (insert name of [a] municipality or county, as applicable), Texas, for the costs of a portion of a public  
[~~an~~] improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property  
within (insert name of public improvement district) (the "District") created under (insert Subchapter A, Chapter 372,  
Local Government Code, or Chapter 382, Local Government Code, as applicable).

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS,  
WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE  
IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID,  
COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.

The exact amount of the assessment may be obtained from (insert name of municipality or county, as  
applicable). The exact amount of each annual installment will be approved each year by (insert name of city council  
or county commissioners court, as applicable) in the annual service plan update for the district. More information  
about the assessments, including the amounts and due dates, may be obtained from (insert name of [the]  
municipality or county, as applicable).

Your failure to pay any assessment or any annual installment may result in penalties and interest being  
added to what you owe or in a lien on and the foreclosure of your property.

The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding  
contract for the purchase of the real property at the address described above.

Date: \_\_\_\_\_

Signature of Purchaser

(a-2) For a district described by Section 372.0035, Local Government Code, the notice required by  
Subsection (a) shall be executed by the seller and must, except as provided by Subsection (b), read as follows:

NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO (insert name of municipality levying  
assessment), TEXAS CONCERNING THE FOLLOWING HOTEL PROPERTY  
(insert property address)

As the purchaser of the real property described above, you are obligated to pay assessments to (insert  
name of municipality), Texas, for the costs of a portion of a public improvement or services project (the "Authorized  
Services") undertaken for the benefit of the property within (insert name of public improvement district) (the  
"District") created under Subchapter A, Chapter 372, Local Government Code.

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED SERVICES, WHICH  
MUST BE PAID IN FULL WITH EVERY PAYMENT BY THE HOTEL OF LOCAL HOTEL OCCUPANCY TAX REMITTANCES TO  
THE MUNICIPALITY. YOUR FAILURE TO PAY THE ASSESSMENT MAY RESULT IN PENALTIES AND INTEREST BEING  
ADDED TO WHAT YOU OWE, AND MAY INCLUDE THE PURSUIT OF ANY OTHER REMEDY THAT IS AUTHORIZED UNDER  
SECTION 372.0035(d), LOCAL GOVERNMENT CODE.

**EXHIBIT 1**  
**2021 Service and Assessment Plan**

Information about the calculation of the assessment may be obtained from (insert name of the municipality). The exact assessment rate will be approved each year by (insert name of city council) in the annual service plan update for the district. More information about the assessments, including the assessment rate and due dates, may be obtained from (insert name of municipality).

The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

Date: \_\_\_\_\_

Signature of Purchaser

(b) The seller or the municipality or county that created the public improvement district may provide additional information regarding the district in the notice prescribed by Subsection (a-1) or (a-2), including whether an assessment has been levied, the amount of the assessment, and the payment schedule for assessments.

(c) This section does not apply to a transfer:

- (1) under a court order or foreclosure sale;
- (2) by a trustee in bankruptcy;
- (3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- (4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- (5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (6) from one co-owner to another co-owner of an undivided interest in the real property;
- (7) to a spouse or a person in the lineal line of consanguinity of the seller;
- (8) to or from a governmental entity; or
- (9) of only a mineral interest, leasehold interest, or security interest.

(d) For the purposes of this section, a contract for the purchase and sale of real property having a performance period of less than six months is considered a sale requiring notice



**EXHIBIT 2**  
**City of Lubbock, TX**  
**Finance Department**  
**Northwest Passage PID Projected Assessment Roll**

Property ID	Owner Name	Owner Address	Property Address	Legal Description	Land Size in Acres	2021 Prelim Market Value	2021 Prelim Taxable Value	Projected 2022 Taxable Value	Estimated 2022 Assessment	
R63099	NWP EB-5 PROJECT LLC	1500 BROADWAY ST LUBBOCK, TX 79401	STE 1500	BLK JS SEC 11 AB 343 TR A AC: 233.7	233.70	1,168,500	1,168,500	1,168,500	\$ 1,752.75	
R66307	NWP EB-5 PROJECT LLC	1500 BROADWAY ST LUBBOCK, TX 79401	STE 1500	BLK A SEC 14 AB 861 TR A OF S/ 2 ACS: 206.14	206.14	1,030,700	1,030,700	1,030,700	1,546.05	
R82421	NWP EB-5 PROJECT LLC	1500 BROADWAY ST LUBBOCK, TX 79401	STE 1500	5601 URSULINE ST, LUBBOCK, TX 79416	BLK JS SEC 6 AB 1492 TR A & A10F NW/4 AC: 152.606	152.61	757,939	757,939	757,939	1,136.91
R82485	NWP EB-5 PROJECT LLC	1500 BROADWAY ST LUBBOCK, TX 79401	STE 1500	5201 URSULINE ST, LUBBOCK, TX 79416	BLK JS SEC 6 AB 1516 TR B ACS: 154.12	154.12	770,600	770,600	770,600	1,155.90
R63214	NWP EB-5 PROJECT LLC	1500 BROADWAY ST LUBBOCK, TX 79401	STE 1500	5521 N CR 2000	BLK JS SEC 11 AB 343 TR B AC:245.49	245.49	1,273,930	1,273,930	1,273,930	1,910.90
					992.06	5,001,669	5,001,669	5,001,669	\$ 7,502.50	



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## Information

### Agenda Item

**Public Hearing - Business Development:** Hold a public hearing for the City Council to consider the creation of a Public Improvement District for Willow Bend Villas, which covers a portion of an area in the City of Lubbock, Lubbock County, Texas, generally bounded by 19th Street on the north, Kelsey Avenue on the east, and railroad tracks on the south and west.

### Item Summary

The purpose of this public hearing is to present information to the City Council regarding the advisability of establishing a Public Improvement District (PID) pursuant to Chapter 372 of the Texas Local Government Code, and to provide an opportunity for property owners in the proposed public improvement district to speak in favor of, or in opposition to, the creation of a PID.

The proposed PID is for the purposes of financing improvements and services related to:

- (i) acquisition, construction, or drainage facilities or improvements, (a) the design, construction, and maintenance of parks and green spaces, together with any ancillary structures, features or amenities such as playgrounds, splash pads, pool(s), athletic facilities, pavilions, community facilities, irrigation, walkways, lighting, benches, trash receptacles, and any similar items located therein along with all necessary grading, drainage, and similar infrastructure involved in the construction of such parks and greens; landscaping, hardscaping, and irrigation; and
- (ii) payment of costs associated with developing and financing the public improvements listed in the subdivision (i) including costs of establishing, administering, and operating the District.

The District is to supplement and enhance services within the District, but not replace or supplant existing City services provided within the District.

The Willow Bend Villas PID will be a defined assessment area providing specific types of services for a given area. The City Council approved the calling of a Public Hearing at the September 28, 2021 City Council Meeting. A notice of Public Hearing was published in the Lubbock Avalanche Journal, and notices were mailed to the property owners on October 10, 2021, as required by the statute.

As a reminder, the City of Lubbock received a petition from property owners requesting that the City of Lubbock establish a PID for the proposed Willow Bend Villas development area. The area covers approximately 63.1982 acres. PID establishment can only be initiated by a petition of property owners meeting two tests outline in the statute. The petition must be signed by:

- (a) Owners representing more than 50% of the appraised value of the taxable real property liable for assessment; and
- (b) Record owners of property liable for assessment under the PID petition who:
  - 1. Constitute more than 50% of all the record owners of property liable for assessment and
  - 2. Own taxable real property that constitutes more than 50% of the area liable for assessment within the PID.

The petition received by the City of Lubbock was signed by authorized agents of Betenbough Homes, LLC, owners of 100% of the total appraised value for the area and 100% of the total land area contained in the proposed PID. The petition was examined, verified, and found to meet the requirements of Section 372.005(b) of the Texas Local Government Code and to be sufficient for consideration by the City of Lubbock.

The owner of the property submitting the petition paid the application fee of \$5,000, which should cover the cost of creating the PID, with any remaining money reimbursed to the developer. If the cost of creating the PID exceeds \$5,000, the developer will reimburse the City for the remaining cost.

**Fiscal Impact**

None

**Staff/Board Recommending**

Jesica McEachern, Assistant City Manager

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**Attachments**

Public Hearing Notice

Map

# NOTICE OF PUBLIC HEARING FOR THE PROPOSED WILLOW BEND VILLAS PUBLIC IMPROVEMENT DISTRICT

Please take notice that on October 26, 2021, at 5:00 PM, the City Council of Lubbock, Texas, will conduct a public hearing in the City Council Chamber of Citizens Tower at 1314 Avenue K, Lubbock, TX 79401. The purpose of this hearing is to consider the establishment of the Willow Bend Villas Public Improvement District (“District”) pursuant to Chapter 372 of the Texas Local Government Code (The “Act”).

All interested persons will be given the opportunity to appear and be heard at such public hearing. Written or oral objections will be considered. The hearing may be adjourned from time to time until the City Council makes findings by ordinance as to the advisability of the District.

The following information is hereby provided concerning the matters to be considered at such hearing:

**Nature of the Services and Improvements:** The general nature of the proposed public improvements is: (i) acquisition, construction, or drainage facilities or improvements, (ii) the design, construction and maintenance of parks and green spaces, together with any ancillary structures, features or amenities such as playgrounds, splash pads, pool(s), athletic facilities, pavilions, community facilities, irrigation, walkways, lighting, benches, trash receptacles and any similar items located there in along with all necessary grading, drainage, and similar infrastructure involved in the construction of such parks and greens; landscaping, hardscaping and irrigation; and (iii) payment of costs associated with developing and financing the public improvements listed in subdivision (iv) including costs of establishing, administering and operating the District.

**Estimated Cost of the Services and Improvements:** The proposed assessment for the first year is for tax year 2022 which will fund the budget for FY 2022-23. The total estimated cost of services provided by the District is estimated at \$136,852 over the next five years. The estimated annual cost rises from \$7,000 in the first year to \$33,434 in year five (5). The costs are based on a proposed assessment rate of \$0.15 per \$100.00 of valuation through tax year 2026.

**Boundaries:** The proposed boundaries of the Willow Bend Villas Public Improvement District (PID) covers a portion of an area in the City of Lubbock, Lubbock County, Texas, generally bounded by 19<sup>th</sup> Street to the north, the alley between Kelsey Avenue and Kenwood Avenue to the east, and railroad tracks to the south and west.

**Method of Assessment:** Properties will be assessed based on the City’s “net taxable value” as established by the Lubbock Central Appraisal District. Each assessment will be determined using the formula: (net taxable value divided by 100) multiplied by assessment rate.

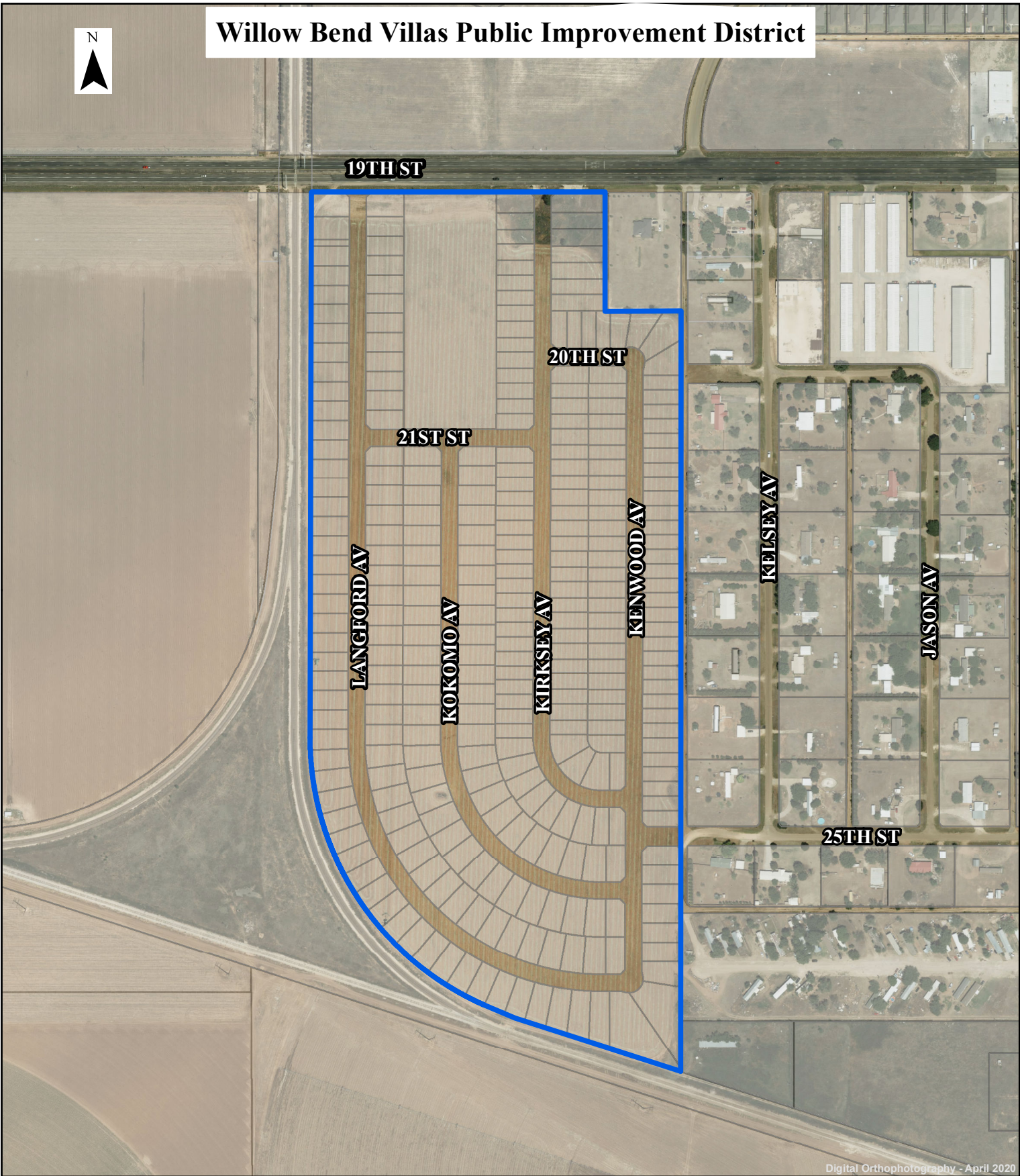
**Apportionment of Cost:** The District is to supplement and enhance services within the District, but not replace or supplant existing City services provided within the District. One hundred percent of the maintenance of the public improvements and any construction of new public improvements included in the Service Plan will be funded by the Public Improvement District.

Public hearings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary’s Office at 775-2025 or write to P.O. Box 2000, Lubbock, Texas, 79457, at least 48 hours in advance of the public hearing.

Any questions concerning the matters described in this notice should be directed to: **Brianna Gerardi, City of Lubbock Business Development Department at 775-3082.**



# Willow Bend Villas Public Improvement District

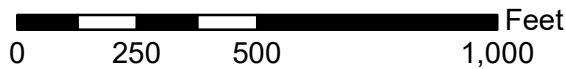


Digital Orthophotography - April 2020

 Willow Bend Villas PID

 Parcels

 Lot-Block Lines



As required by Chapter 2051, Geospatial Data Products of the Government Code, this product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

5/21/2021



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## Information

### Agenda Item

**Resolution - Business Development:** Consider a resolution making findings and authorizing establishment of the Willow Bend Villas Public Improvement District (PID), which covers a portion of an area in the City of Lubbock, Lubbock County, Texas, generally bounded by 19th Street on the north, Kelsey Avenue on the east, and railroad tracks on the south and west.

### Item Summary

The City of Lubbock received a petition from property owners requesting that the City of Lubbock establish a Public Improvement District (PID) for the proposed Willow Bend Villas development area. The area covers approximately 63.1982 acres. PID establishment can only be initiated by a petition of property owners meeting two tests outlined in the statute. The petition must be signed by:

- (a) Owners of taxable real property representing more than 50% of the appraised value of the taxable real property liable for assessment; and
- (b) Record owners of property liable for assessment under the PID petition who:
  - 1. Constitute more than 50% of all the record owners of property liable for assessment under the proposal; or
  - 2. Own taxable real property that constitutes more than 50% of the area of all taxable real property that is liable for assessment under the proposal.

The petition received by the City of Lubbock was signed by authorized agents of property owners of 100% of the total appraised value for the area and 100% of the total land area contained in the proposed PID. The petition has been examined, verified, and found to meet the requirements of Section 372.005(b) of the Texas Local Government Code and to be sufficient for consideration by the City of Lubbock.

The Willow Bend Villas PID is a defined assessment area providing specific types of services for a given area. The purpose of the Northwest Passage PID will be:

- (i) acquisition, construction, or drainage facilities or improvements, (a) the design, construction, and maintenance of parks and green spaces, together with any ancillary structures, features or amenities such as playgrounds, splash pads, pool(s), athletic facilities, pavilions, community facilities, irrigation, walkways, lighting, benches, trash receptacles, and any similar items located therein along with all necessary grading, drainage, and similar infrastructure involved in the construction of such parks and greens; landscaping, hardscaping, and irrigation; and
- (ii) payment of costs associated with developing and financing the public improvements listed in subdivision (i) including costs of establishing, administering, and operating the District.

The owner of the property submitting the petition paid the application fee of \$5,000, which should cover the cost of creating the Public Improvement District, with any money reimbursed to the Developer. If the cost of creating the Public Improvement District exceeds \$5,000, the Developer will reimburse the City for the remaining cost.



One of the statutory requirements for establishing the Public Improvement District is that the City Council hold a Public Hearing regarding the advisability of creating the District. A notice of Public Hearing was published in the Lubbock Avalanche Journal, and notices were mailed to the property owners on October 10, 2021, as required by the statute.

Pursuant to Chapter 372 of the Texas Local Government Code, this resolution illustrates the following findings:

1. The advisability of the services;
  2. The nature of the services;
  3. The estimated cost of the services;
  4. The boundaries of the public improvement district;
  5. The method of assessment; and
  6. The apportionment of costs between the district and the municipality as a whole.
- The City Council is required to make these findings in order to create the PID.

**Fiscal Impact**

None

**Staff/Board Recommending**

Jessica McEachern, Assistant City Manager

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**Attachments**

Resolution  
Exhibit 1  
Exhibit 2  
Exhibit 3

**A RESOLUTION OF THE CITY OF LUBBOCK, TEXAS, APPROVING AND AUTHORIZING THE CREATION OF THE WILLOW BEND VILLAS PUBLIC IMPROVEMENT DISTRICT**

**WHEREAS**, the City Council (the "Council") of the City of Lubbock (the "City") has received a petition (the "Petition") with signatures from the record owners of taxable real property representing more than fifty percent (50%) of the appraised value of an area within the City as determined by the most recent certified appraisal roll of the Lubbock Central Appraisal District, and owners of more than fifty percent (50%) of the area of all taxable real property that is liable for assessment under the area covered by the Petition; and

**WHEREAS**, the Petition requests that the City establish a public improvement district according to Chapter 372 of the Texas Local Government Code for the general purpose of financing improvements and services related to:

(a) acquisition, construction, or drainage facilities or improvements, the design, construction, and maintenance of parks and green spaces, together with any ancillary structures, features or amenities such as playgrounds, splash pads, pool(s), receptacles and any similar items located there in along with all necessary grading, drainage, and similar infrastructure involved in the construction of such parks and greens; landscaping, hardscaping and irrigation; and

(b) payment of costs associated with developing and financing the public improvements listed in subdivision including costs of establishing, administering and operating the District; and

**WHEREAS**, the Petition, a copy of which has been attached to and made a part of this Resolution as "Exhibit 1", was examined, verified, found to meet the requirements of Section 372.005(b) of the Texas Local Government Code, and accepted by the City Council; and

**WHEREAS**, the Petition covers property within an area generally bounded by 19<sup>th</sup> Street to the North, Kelsey Avenue to the East, and railroad tracks to the south and west, with such property being the development known as Willow Bend Villas, and a description and depiction of the property covered by the Petition is attached to and made a part of this Resolution as "Exhibit 2"; and

**WHEREAS**, notice of the public hearing was published in the Lubbock Avalanche-Journal, a daily paper of general circulation in the City, such publication date being before the fifteenth (15<sup>th</sup>) day before the date of the public hearing, stating the time and place of the public hearing, the general nature of the services, the estimated cost of the services, the boundaries of the proposed public improvement district, the method of assessment, and the apportionment of cost between the public improvement district and the City; and

**WHEREAS**, before the fifteenth (15<sup>th</sup>) day before the date of the public hearing, written notice of the proposed public improvement district was mailed to the current addresses of the record owners, as reflected on the most recent certified appraisal roll of the Lubbock Central Appraisal District, of property subject to assessment under the proposed public improvement district; and

**WHEREAS**, the public hearing was convened at the time and place mentioned in the published notice, on the twenty-sixth (26<sup>th</sup>) day of October, 2021, at five (5:00) p.m., at Citizen's Tower, located at 1314 Avenue K, Lubbock, Texas; and

**WHEREAS**, in accordance with the published and mailed notices, the Council called the public hearing and heard public comment from interested persons speaking in favor or opposition to the proposed public improvement district and the Council heard a report by City staff on the advisability of the proposed public improvement district and its benefits to the City and to the property within the boundaries of the proposed public improvement district; and

**WHEREAS**, the proponents of the proposed public improvement district offered evidence, both oral and documentary, in favor of all of the foregoing matters relating to the creation of the proposed public improvement district, and opponents of the public improvement district were given the opportunity to appear to contest authorization of the proposed public improvement district, after which the Council closed the hearing; and **NOW THEREFORE:**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:**

**SECTION 1: THAT** the facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct.

**SECTION 2: THAT** after conducting a public hearing, examining evidence, and hearing testimony, the City Council finds and determines the following:

(a) That the public hearing on the advisability of authorizing the Willow Bend Villas Public Improvement District has been properly called, held, and conducted and that notice of such hearing has been published and mailed as required by law and delivered to the current address of the owners of property subject to assessment under the Willow Bend Villas Public Improvement District; and

(b) That authorization of the Willow Bend Villas Public Improvement District with boundaries depicted and described in "Exhibit 2" is advisable and will result in benefits to the City, its residents, and the property owners in the Willow Bend Villas Public Improvement District for the general purpose of financing improvements and services related to:

(a) acquisition, construction, or drainage facilities or improvements, the design, construction, and maintenance of parks and green spaces, together with any ancillary structures, features or amenities such as

playgrounds, splash pads, pool(s), receptacles and any similar items located there in along with all necessary grading, drainage, and similar infrastructure involved in the construction of such parks and greens; landscaping, hardscaping and irrigation; and

(b) payment of costs associated with developing and financing the public improvements listed in subdivision including costs of establishing, administering and operating the District; and

(c) That the total estimated cost of services and improvements to be paid by the assessment generated within the Willow Bend Villas Public Improvement District through Fiscal Year 2025-26 is approximately one hundred thirty six thousand eight hundred fifty two dollars (\$136,852) (the "Costs"), with such Costs being described in "Exhibit 3" attached to and made a part of this Resolution; and

(d) That the Costs will be paid by the proposed assessment rate of fifteen cents (\$0.15) per one hundred dollars (\$100) of valuation of property within the Willow Bend Villas Public Improvement District through Fiscal Year 2025-26, with such proposed assessment being described in "Exhibit 3"; and

(e) That as to the apportionment of the Costs between the Willow Bend Villas Public Improvement District and the City, all the Costs will be paid by the Willow Bend Villas Public Improvement District through assessments on the property within the boundaries of the Willow Bend Villas Public Improvement District.

**SECTION 3: THAT** subject to Chapter 372 of the Texas Local Government Code, the City Council hereby authorizes a public improvement district over the area depicted and described in "Exhibit 2" and such public improvement district shall be identified as the Willow Bend Villas Public Improvement District, City of Lubbock, Texas.

**SECTION 4: THAT** the City Council hereby creates the Willow Bend Villas Public Improvement District Advisory Board for the Willow Bend Villas Public Improvement District. The Willow Bend Villas Public Improvement District Advisory Board shall act as an advisory board of the City of Lubbock, and shall initially be composed of five (5) members, each of whom will represent a developer of the property within the Willow Bend Villas Public Improvement District. The Willow Bend Villas Public Improvement District Advisory Board shall follow any and all rules, regulations, policies, and procedures related to City of Lubbock advisory boards and the Criteria and Guidelines for Public Improvement Districts. The initial members of the Advisory Board for the Willow Bend Villas Public Improvement District shall serve a two (2) year term. The City Council may extend the term of the initial governing board beyond two (2) years. The initial Advisory Board of the Willow Bend Villas Public Improvement District will provide recommendations to the City Council on all matters related to the initial development of the Willow Bend Villas Public Improvement District, including matters related to the Costs and to the assessments on properties located within the Willow Bend Villas Public Improvement District. Upon the end of the term of the initial Advisory Board members of the Willow Bend Villas Public Improvement District, an election will be held for the

Willow Bend Villas property owners to vote on each of the five seats. Once an election has taken place, the City Council will appoint the members of the Willow Bend Villas Public Improvement District Advisory Board. The PID Board shall adopt and be governed by a set of bylaws that, among other things, direct the PID Board as to its membership, its purpose, and its procedure for conducting business related to the Willow Bend Villas Public Improvement District.

**SECTION 5: THAT** if any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

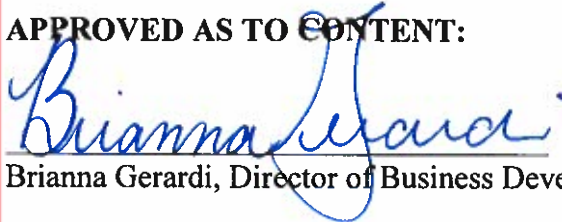
**Passed by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2021.**

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

**ATTEST:**

\_\_\_\_\_  
Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Brianna Gerardi, Director of Business Development

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**CITY OF LUBBOCK** §  
**COUNTY OF LUBBOCK** §  
**STATE OF TEXAS** §

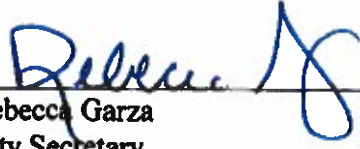
**CERTIFICATION OF SUFFICIENT PETITION**

I hereby certify, in the performance of the functions of my office, that the attached petition, from property owners requesting the City of Lubbock establish a Public Improvement District (PID) for the proposed Willow Bend Villas development, has been verified and is sufficient. And, that Public Improvement Districts can only be initiated by a petition of property owners who meet a value test and an area test, pursuant to Texas Local Government Code, Sec. 372.005 (b). And, the statutory two test requirement was met: (1) petition is signed by the owners of taxable real property representing more than 50% of the appraised value of the taxable real property liable for assessment by the current roll of the appraisal district (September 14, 2021), in the area known as Willow Bend Villas, as shown on the attached map; the petitioners own 100% of the area within the proposed Willow Bend Villas PID; (2) petition must be signed by the record owners of property that constitute more than 50% of the number of record owners or the record owners of more than 50% of the area within the PID; the petitioners own 100% of the total area within the proposed Northwest Passage PID area.

I further certify that I am the City Secretary of the City of Lubbock, that said documents appear of record in my office, I have legal custody of said record, and that I am a lawful possessor and keeper and have legal custody of the records in said office.

In witness whereof I have hereunto set my hand and affixed the official seal of said office the 20th day of September, 2021.

(City Seal)

  
\_\_\_\_\_  
Rebecca Garza  
City Secretary  
City of Lubbock  
Lubbock County, State of Texas





**Date:** September 16, 2021

**To:** Becky Garza, City Secretary

**From:** Brianna Gerardi, Business Development Director

**CC:** Blu Kostelich, Chief Financial Officer

**Re:** Willow Bend Villas Public Improvement District Petition

Recently, the City of Lubbock received petitions from Property Owners requesting the City of Lubbock establish a Public Improvement District (PID) for the proposed Willow Bend Villas development shown on the attached map. PID establishment can only be initiated by a petition of property owners who meet two tests outlined in the state statute.

The first test is that the petition is sufficient if signed by the owners of taxable real property representing more than 50 percent of the appraised value of the taxable real property liable for assessment by the current roll of the appraisal district (September 14, 2021). Since the petitioners own 100 percent of the taxable real property value within the boundary, the petition passes the value test.

The second test is that the petition must be signed by the record owners of property that constitute more than 50 percent of the number of record owners or the record owners of more than 50 percent of the area within the PID. The petitioners own 100 percent of the total area within the proposed Willow Bend Villas PID area so they pass the area test.

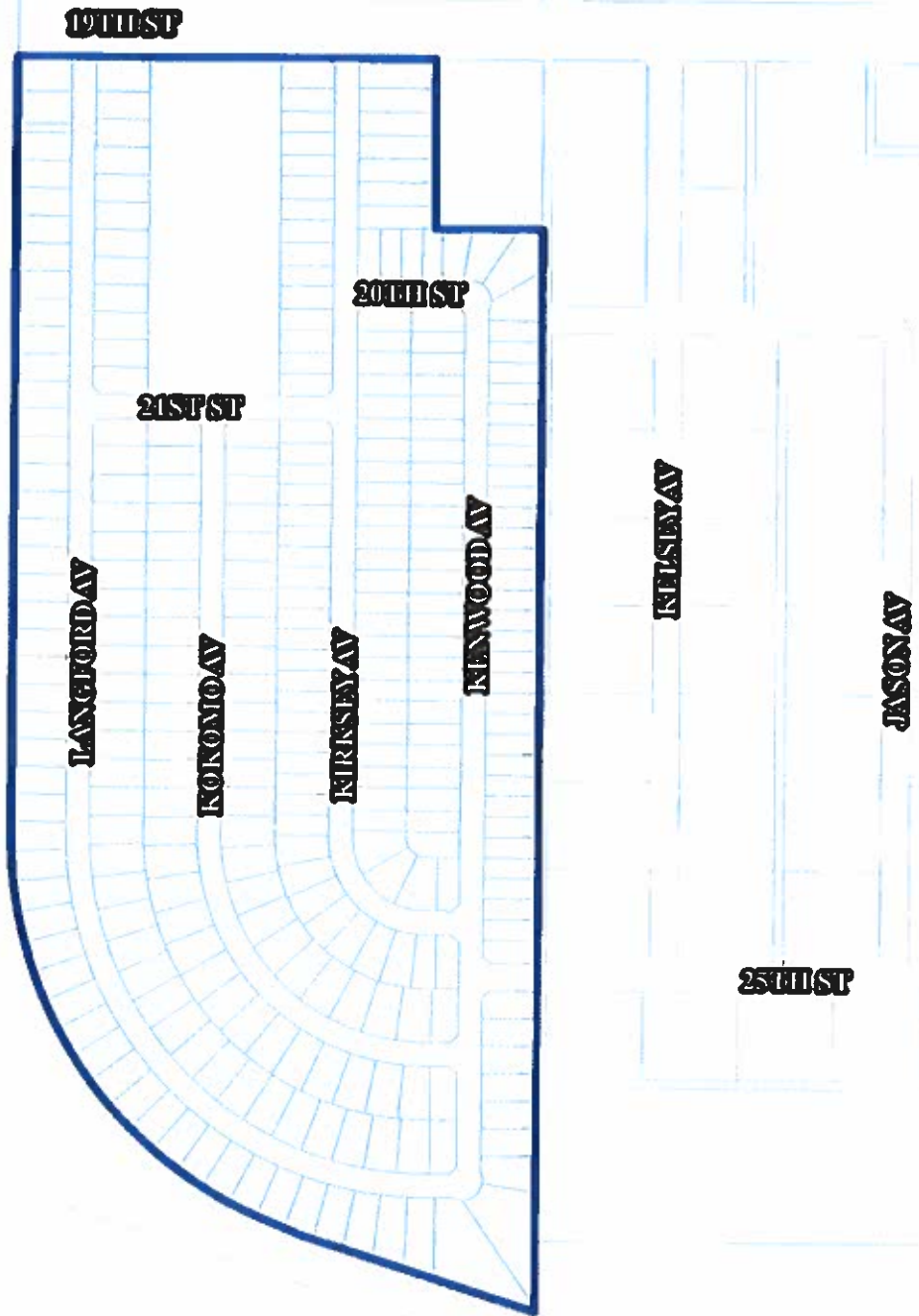
The notarized signature on the Willow Bend Villas petitions were validated by a visual review and owners on the petitions were verified against the current tax roll received from Lubbock Central Appraisal District by the Business Development Department and reviewed by GIS and Data Services.

Willow Bend Villas Projected Assessment Roll

LCAD Roll 9.14.2021

Property ID	Owner Name	Owner Address	SiteAddress	LegalDescription	Acres	TotalPropellctValue	TotalAssesestValue
R30086	BETENBOUGH HOMES LLC	6305 82ND ST LUBBOCK, TX 79424-3681	LUBBOCK 79407	BLK D6 SEC 6 AB 880 TR D12 & TR C D4 AC: 65.552 LESS ROW	63.1982	\$202,107.00	\$202,107.00

# Willow Bend Villas Public Improvement District



 Willow Bend Villas PID

Parcels

Lot-Block Lines



As enabled by Chapter 361, Geographic Data Products of the Government Code, this product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an as-shown/field survey and represents only the approximate relative location of property boundaries.

5/21/2021



September 20, 2021

Cheryl Brock  
City of Lubbock, Tx  
1625 13<sup>th</sup> Street  
Lubbock, Tx 79457

RE: Willow Bend Villas, Public Improvement District

Dear Honorable Mayor and City Council;

Willow Bend Villas (19<sup>th</sup> and Mackey) is a residential development within the city limits of the City of Lubbock bound on the North by 19<sup>th</sup> Street, adjacent to the East by Kelsey Ave, and adjacent to railroad tracks to the South and West. We are proposing to create a Public Improvement District, "PID", to maintain the public improvements for Willow Bend Villas (19<sup>th</sup> and Mackey).

In order to comply with the "Public Improvements District Policies and Guidelines", we are providing information as required in Section III. "Guidelines", b. "Petition Requirements". We are providing information regarding items 1, 5-16, as follow:

1. Betebough has purchased/optioned almost 63.1982 acres. Betebough plans to invest \$250,000 in improvements for this park system before it would be deeded over to the City and the PID. We will be here to help keep the PID healthy and thriving. We have a heavily vested interest in making this PID healthy and self-sufficient.
5. If there is sufficient support to petition to dissolve the Public Improvement District certain requirements in addition to sufficient support must be met in order to dissolve the PID. Those requirements include arrangements to transfer ownership and maintenance of the City owned and PID maintained property. These arrangements are to be made by the Advisory Board and with funds available to the Advisory Board. Betebough will have been responsible for some maintenance before the park system would be deeded over. With having supported some maintenance, we feel we will have an accurate representation of cost to propose for the service plan. So far, all of our proposed service plans, does get reviewed by city staff, and approved by city council.
6. Map of the area is attached to this email and is to be added to the petition.



7. In regards to the procedure for the nomination of the PID Advisory Board, the process shall be consistent with the bylaws for Public Improvement Districts for the City of Lubbock.
  
8. Addressed in Section 2 of the petition. We feel that the 2 pocket parks and improved basin area creates a quality of life for the homeowners. Each park area will have a different playscape but will match in color, tying the community together in the park landscaping. The basin will also have some trees on the north side along 19<sup>th</sup> street protecting the view for the public looking into the community, and for the community as a buffer for 19<sup>th</sup> street traffic.
  
9. Each parcel of City-owned land will be identified as a "Tract" at time of platting.
  
10. General description of proposed improvements in Section 2 of the petition.
  
11. The estimated total cost of the improvements is approximately \$250,000 and will be paid and constructed by the developer, Betebough Homes does not desire any reimbursement. The estimated cost of the maintenance is approximately \$25,000 per year and is to be paid for by the PID as soon as the funds are available. This is the estimated cost for the entirety of the "park system".
  
12. Budget is attached in the service plan.
  
13. Method of assessment will be based on the net taxable value of the affected properties and will be assessed at \$.15 per \$100.00 valuation.
  
14. Documentation of liability insurance will be attached to this letter.
  
15. Addressed in Section 6 of the petition.
  
16. Addressed in Section 5 of the petition.

**Our goal is to provide all of the information requested to continue with the creation of the PID. Please let us know if you have any questions or require any additional information.**



**BETENBOUGH**  
HOMES®

*Chris Berry*

**Chris Berry**  
**Development**  
**Betenbough Homes**



**PETITION FOR THE CREATION OF A PUBLIC IMPROVEMENT DISTRICT TO FINANCE  
IMPROVEMENTS TO Willow Bend Villas (19<sup>th</sup> and Mackey)**

THE STATE OF TEXAS     §  
  §  
CITY OF LUBBOCK         §

**TO: THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF LUBBOCK:**

The undersigned petitioners (the "Petitioners"), acting pursuant to the provisions of Chapter 372, Texas Local Government Code, as amended (the "Act"), request that the City of Lubbock create a public improvement district (the "District") in the territory described in Exhibit A attached hereto (the "Land") within the City of Lubbock, Texas (the "City"), and in support of this petition the Petitioners would present the following:

**Section 1. Standing of Petitioners.** In compliance with the requirements of Texas Local Government Code, Section 372.005(b), as determined by the current roll of the Lubbock Central Appraisal District, the Petitioners constitute: (i) the owners of taxable real property representing more than 50% of the appraised value of real property liable for assessment under the proposal described herein, and (ii) the record owners of taxable real property that constitutes more than 50% of the area of all taxable real property that is liable for assessment under such proposal.

**Section 2. General nature of the proposed public improvements.** The general nature of the proposed public improvements is: (i) acquisition, construction, or drainage facilities or improvements, (ii) the design, construction and maintenance of parks and green spaces, together with any ancillary structures, features or amenities such as playgrounds, splash pads, pool(s), athletic facilities, pavilions, community facilities, irrigation, walkways, lighting, benches, trash receptacles and any similar items located there in along with all necessary grading, drainage, and similar infrastructure involved in the construction of such parks and greens; landscaping, hardscaping and irrigation; and (ii) payment of costs associated with developing and financing the public improvements listed in subdivision (i) including costs of establishing, administering and operating the District.

**Section 3. Estimated cost of the proposed public improvements and annual maintenance:** \$500,000 estimated for proposed public improvements as mentioned in section 2. Annual maintenance costs - \$75,000 for proposed improvements made by developer.

**Section 4. Boundaries.** The proposed boundaries of the District are described in Exhibit A and Exhibit B.

**Section 5. Method of assessment.** An assessment methodology has been prepared that will address (i) how the costs of the public improvements paid for with the assessments are assessed against the property in the District, (ii) the assessments to be collected each year, and (iii) reduction of the assessments for costs savings (pursuant to the annual review of the service plan for the District). Additionally, a report will be prepared showing the special benefits accruing to property in the District and how the costs of the public improvements are assessed to

property on the basis of the special benefits. The result will be that equal shares of the costs will be imposed on property similarly benefited.

In assessing the maintenance of the public improvements, property will be classified based on the net taxable value of the property.

The assessment methodology will result in each parcel paying its fair share of the costs of maintaining the public improvements based on the special benefits received by the property from the public improvements and property equally situated paying equal shares of the costs of the public improvements.

The annual budget is subject to review by City of Lubbock staff and final approval by the City Council. The annual assessments may be adjusted as a result of the City of Lubbock staff review and City Council approval.

**Section 6.** **Apportionment of Cost between the City and the District.** The City will not be obligated to provide any funds to finance the proposed public improvements or maintain the public improvements. All of the costs of the proposed public improvements will be paid by assessments of the property within the District and from other sources of funds, if any, available to the developer of the Land.

**Section 7.** **Management of the District.** The City will manage the District, or a partnership between the municipality or county and the private sector, to the extent allowed by law, the City may contract with either a non-profit, or a for-profit organization, including a Public Facilities Corporation created by the City pursuant to Chapter 303, Texas Local Government Code, to carry out all or a part of the responsibilities of managing the District, including the day-to-day management and administration of the District.

**Section 8.** **Advisory board.** An advisory board may be established to develop and recommend an improvement plan to the City Council of the City (the "City Council").

The signers of this petition request the establishment of the District and this petition will be filed with the City Secretary in support of the creation of the District by the City Council as herein provided.

[Signature on following page]

PETITIONERS:

Betenbough Homes LLC



Chris Berry, Land Planning Manager

THE STATE OF TEXAS §  
§  
COUNTY OF LUBBOCK §



On this, the 8<sup>th</sup> day of SEPTEMBER 2021, before me, the undersigned Notary Public, personally appeared **Kelly Oaks** who acknowledged that he is **Community Development Manager of Betenbough Homes, LLC**, and that he, in such capacity, being duly authorized so to do, executed the foregoing petition for the purposes therein contained by signing his name in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public Signature

## **EXHIBIT A**

### **The Land**

#### **Description, "Tract A":**

A 63.1982 acre tract of land located in the East Half (E/2) of Section 6, Block D-6, Brooks and Burleson Survey, Abstract Number 880, Lubbock County, Texas, and being situated within and a portion of that certain tract of land conveyed to HWY 179, LTD. described as "Tract 1" and all of that certain tract of land described as "Tract 2" in a General Warranty Deed recorded in Volume 10145, Page 346, and all of that certain 0.19 acre tract of land conveyed to HWY 179, LTD. described in a General Warranty Deed recorded in Volume 10394, Page 34, Official Public Records of Lubbock County, Texas, said 63.1982 acre tract, hereinafter referred to as "Tract A", being further described by metes and bounds as follows:

**BEGINNING** at a 1/2" iron rod with a cap marked "AMD ENG" set in place of a 1/2" iron rod with a cap marked "WSCI" found bent at the intersection of the east right-of-way line of the West Texas and Lubbock Railroad, as described in Volume 6182, Page 346 of the Real Property Records of Lubbock County, Texas, and the south right-of-way line of State Highway 114, also known as 19<sup>th</sup> Street, as described in Volume 181, Page 214 and Volume 491, Page 47 of the Deed Records of Lubbock County, Texas, at the northwest corner of said 0.19 acre tract for the northwest corner of this said Tract "A" and having coordinates of Northing: 7,274,815.61 and Easting: 897,482.48 of the Texas Coordinate System of 1983 (2011), Texas North Central Zone, whence the northeast corner of said Section 6 bears N. 01° 48' 46" E. a distance of 65.00 feet and S. 88° 11' 14" E. a distance of 2465.72 feet, as calculated from calls in said railroad right-of-way deed;

**THENCE** S. 88° 11' 14" E., along said right-of-way line of State Highway 114, a distance of 911.41 feet to a 1/2" iron rod with a cap marked "HRA" found at the northwest corner of that certain 2.0 acre tract of land described in a Warranty Deed recorded in Volume 4730, Page 67 of the Real Property Records of Lubbock County, Texas, for the most northerly northeast corner of this said "Tract A";

**THENCE** S. 01° 51' 08" W. a distance of 370.84 feet to a 1/2" iron rod found at the southwest corner of said 2.0 acre tract for an ell corner of this said "Tract A";

**THENCE** S. 88° 11' 59" E. a distance of 234.91 feet to a 1/2" iron rod with a cap marked "WSCI" found at the southeast corner of said 2.0 acre tract for the most easterly northeast corner of this said "Tract A";

**THENCE** S. 01° 51' 30" W., along the west line of an alley and the west plat limits of Energy Circle, Lots 1 thru 40, an addition to Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded in Volume 1835, Page 129 of the Deed Records of Lubbock County, Texas, at a distance of 1869.46 feet pass a 1/2" iron rod found at the end of said alley, continuing at a distance of 2204.38 feet pass a 1/2" iron rod with a cap marked "HRA" found at the southeast corner of said plat limits of Energy Circle, same being the northwest corner of that certain 11.16 acre tract of land described in a Warranty Deed recorded in County Clerk's file

number 2010001381 of the Official Public Records of Lubbock County, Texas, continuing for a total distance of 2359.76 feet to a 1/2" iron rod with a cap marked "HRA" found in the north right-of-way line of the West Texas and Lubbock railroad, as described in Volume 99, Page 459 of the Deed Records of Lubbock County, Texas, at the southwest corner of said 11.16 acre tract and the southeast corner of this said "Tract A", having coordinates of Northing: 7,272,050.90 and Easting: 898,539.46 of the Texas Coordinate System of 1983 (2011), Texas North Central Zone;

THENCE N. 70° 19' 00" W., along said railroad right-of-way line, a distance of 540.93 feet to a 1/2" iron rod with a cap marked "WSCI" found at a point of intersection at the southeast corner of that certain 8.71 acre right-of-way parcel for the West Texas and Lubbock Railroad described in Volume 6254, Page 30 of the Real Property Records of Lubbock County, Texas, for a corner of this said "Tract A";

THENCE N. 64° 25' 16" W. a distance of 103.01 to a 1/2" iron rod with a cap marked "WSCI" found at a point of intersection in the northeasterly right-of-way line of said railroad for a corner of this said "Tract A";

THENCE northwesterly, along a curve to the right and said railroad right-of-way line, an arc distance of 1049.59 feet, said curve having a radius of 904.93 feet, a delta angle of 66° 27' 17", a chord distance of 991.73 feet and a chord bearing of N. 31° 13' 29" W., to a 1/2" iron rod with a cap marked "WSCI" found at a point of tangency in the east right-of-way line of said railroad for a corner of this said "Tract A";

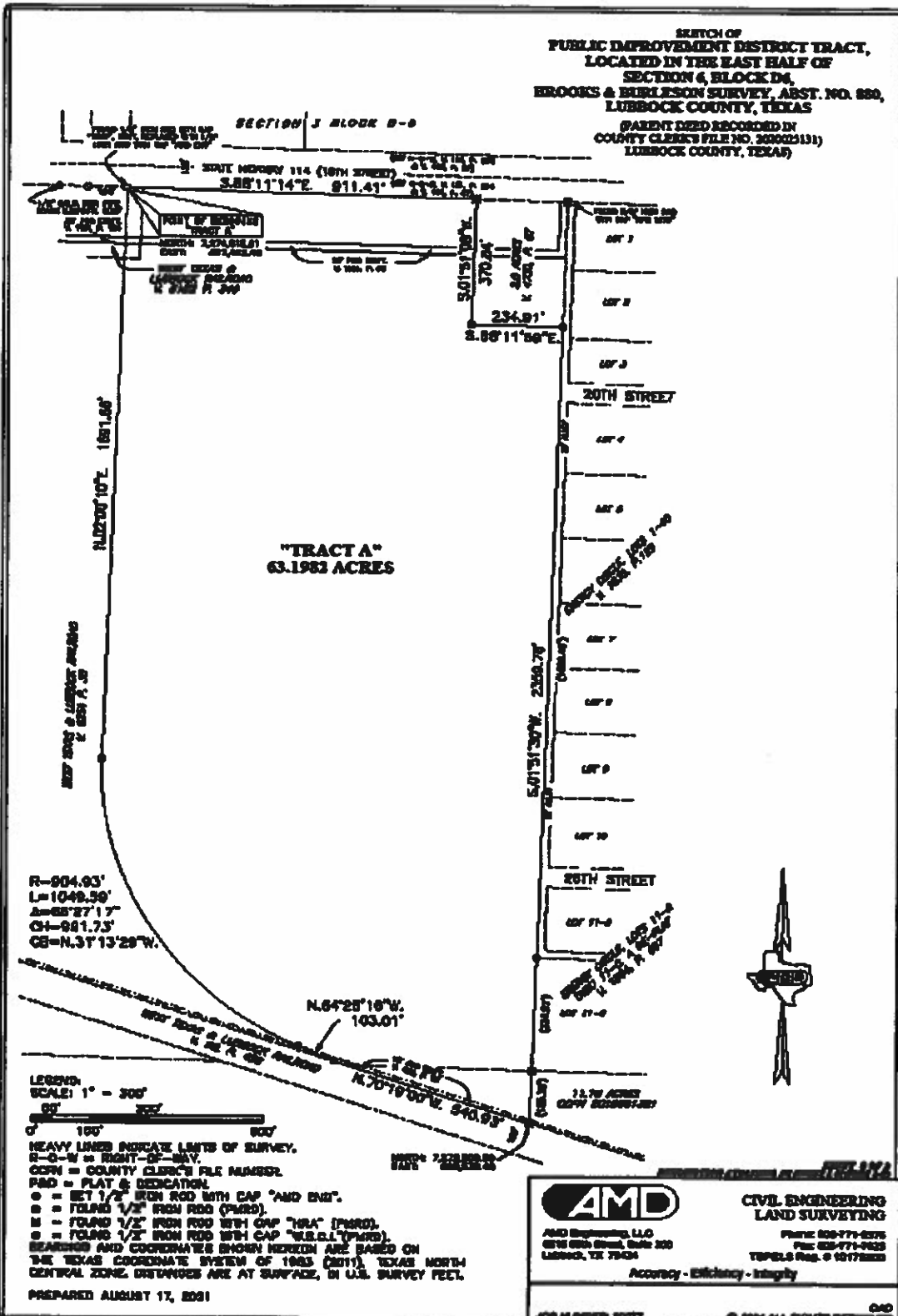
THENCE N. 02° 00' 10" E., along the east right-of-way line of said railroad at a distance of 1482.82 feet pass the northeast corner of said right-of-way in Volume 6254, Page 30, same being the southeast corner of said right-of-way in Volume 6182, Page 346, and the southwest corner of said 0.19 acre tract, continuing for a total distance of 1691.66 feet to the Point of Beginning. Bearings are based on the Texas Coordinate System of 1983 (2011), Texas North Central Zone. Distances are at surface, in U.S. Survey feet.

**EXHIBIT B**

**Sketch**



SKETCH OF  
PUBLIC IMPROVEMENT DISTRICT TRACT,  
LOCATED IN THE EAST HALF OF  
SECTION 4, BLOCK D4,  
HOOKS & BURLESON SURVEY, ABST. NO. 880,  
LUBBOCK COUNTY, TEXAS  
(PARENT DEED RECORDED IN  
COUNTY CLERK'S FILE NO. 200002131)  
LUBBOCK COUNTY, TEXAS



## **EXHIBIT A**

### **The Land**

#### **Description, "Tract A":**

A 63.1982 acre tract of land located in the East Half (E/2) of Section 6, Block D-6, Brooks and Burleson Survey, Abstract Number 880, Lubbock County, Texas, and being situated within and a portion of that certain tract of land conveyed to HWY 179, LTD. described as "Tract 1" and all of that certain tract of land described as "Tract 2" in a General Warranty Deed recorded in Volume 10145, Page 346, and all of that certain 0.19 acre tract of land conveyed to HWY 179, LTD. described in a General Warranty Deed recorded in Volume 10394, Page 34, Official Public Records of Lubbock County, Texas, said 63.1982 acre tract, hereinafter referred to as "Tract A", being further described by metes and bounds as follows:

**BEGINNING** at a 1/2" iron rod with a cap marked "AMD ENG" set in place of a 1/2" iron rod with a cap marked "WSCI" found bent at the intersection of the east right-of-way line of the West Texas and Lubbock Railroad, as described in Volume 6182, Page 346 of the Real Property Records of Lubbock County, Texas, and the south right-of-way line of State Highway 114, also known as 19<sup>th</sup> Street, as described in Volume 181, Page 214 and Volume 491, Page 47 of the Deed Records of Lubbock County, Texas, at the northwest corner of said 0.19 acre tract for the northwest corner of this said Tract "A" and having coordinates of Northing: 7,274,815.61 and Easting: 897,482.48 of the Texas Coordinate System of 1983 (2011), Texas North Central Zone, whence the northeast corner of said Section 6 bears N. 01° 48' 46" E. a distance of 65.00 feet and S. 88° 11' 14" E. a distance of 2465.72 feet, as calculated from calls in said railroad right-of-way deed;

**THENCE** S. 88° 11' 14" E., along said right-of-way line of State Highway 114, a distance of 911.41 feet to a 1/2" iron rod with a cap marked "HRA" found at the northwest corner of that certain 2.0 acre tract of land described in a Warranty Deed recorded in Volume 4730, Page 67 of the Real Property Records of Lubbock County, Texas, for the most northerly northeast corner of this said "Tract A";

**THENCE** S. 01° 51' 08" W. a distance of 370.84 feet to a 1/2" iron rod found at the southwest corner of said 2.0 acre tract for an ell corner of this said "Tract A";

**THENCE** S. 88° 11' 59" E. a distance of 234.91 feet to a 1/2" iron rod with a cap marked "WSCI" found at the southeast corner of said 2.0 acre tract for the most easterly northeast corner of this said "Tract A";

**THENCE** S. 01° 51' 30" W., along the west line of an alley and the west plat limits of Energy Circle, Lots 1 thru 40, an addition to Lubbock County, Texas, according to the map, plat and/or dedication deed thereof recorded in Volume 1835, Page 129 of the Deed Records of Lubbock County, Texas, at a distance of 1869.46 feet pass a 1/2" iron rod found at the end of said alley, continuing at a distance of 2204.38 feet pass a 1/2" iron rod with a cap marked "HRA" found at the southeast corner of said plat limits of Energy Circle, same being the northwest corner of that certain 11.16 acre tract of land described in a Warranty Deed recorded in County Clerk's file

number 2010001381 of the Official Public Records of Lubbock County, Texas, continuing for a total distance of 2359.76 feet to a 1/2" iron rod with a cap marked "HRA" found in the north right-of-way line of the West Texas and Lubbock railroad, as described in Volume 99, Page 459 of the Deed Records of Lubbock County, Texas, at the southwest corner of said 11.16 acre tract and the southeast corner of this said "Tract A", having coordinates of Northing: 7,272,050.90 and Easting: 898,539.46 of the Texas Coordinate System of 1983 (2011), Texas North Central Zone;

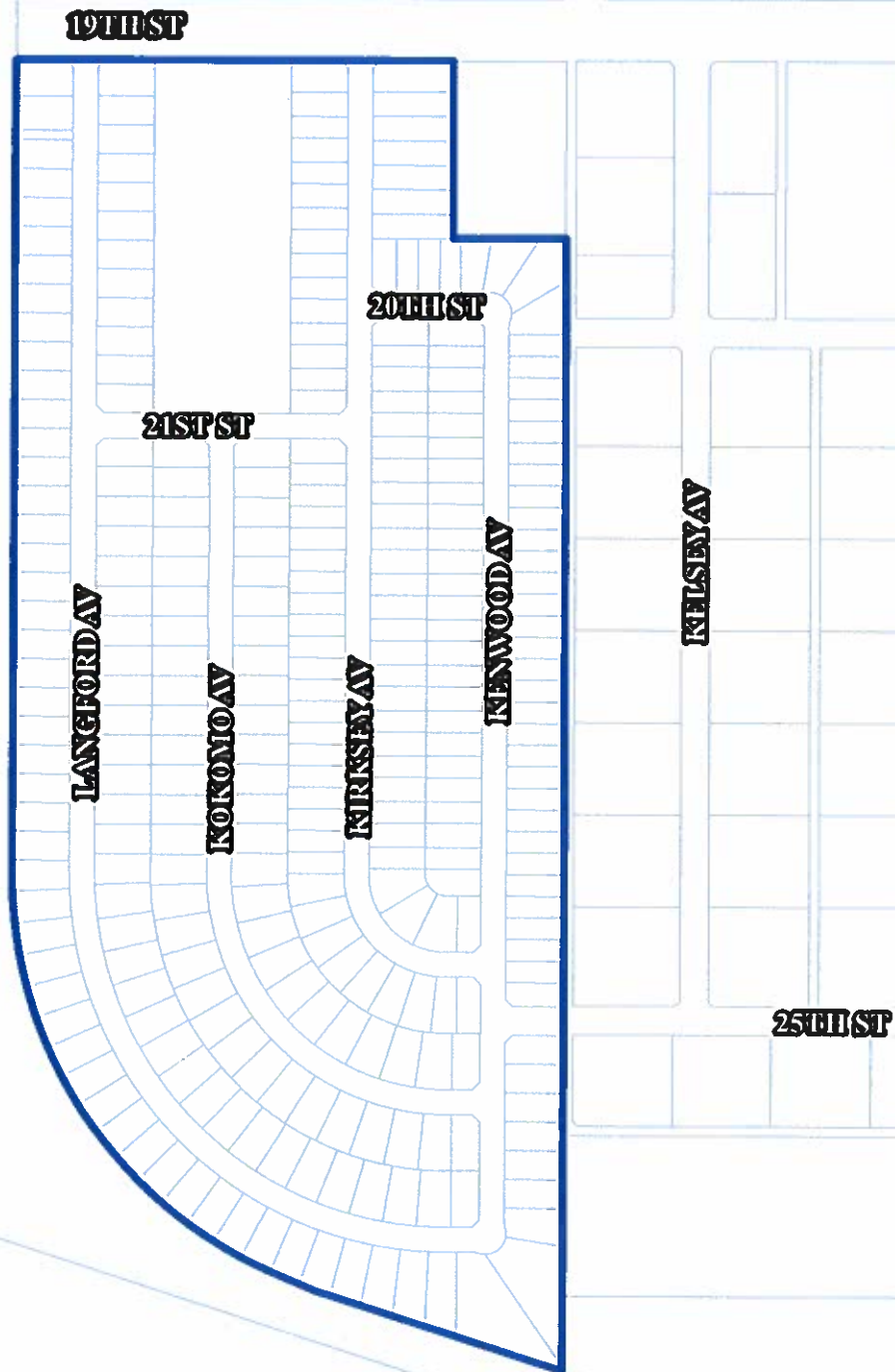
THENCE N. 70° 19' 00" W., along said railroad right-of-way line, a distance of 540.93 feet to a 1/2" iron rod with a cap marked "WSCI" found at a point of intersection at the southeast corner of that certain 8.71 acre right-of-way parcel for the West Texas and Lubbock Railroad described in Volume 6254, Page 30 of the Real Property Records of Lubbock County, Texas, for a corner of this said "Tract A";

THENCE N. 64° 25' 16" W. a distance of 103.01 to a 1/2" iron rod with a cap marked "WSCI" found at a point of intersection in the northeasterly right-of-way line of said railroad for a corner of this said "Tract A";

THENCE northwesterly, along a curve to the right and said railroad right-of-way line, an arc distance of 1049.59 feet, said curve having a radius of 904.93 feet, a delta angle of 66° 27' 17", a chord distance of 991.73 feet and a chord bearing of N. 31° 13' 29" W., to a 1/2" iron rod with a cap marked "WSCI" found at a point of tangency in the east right-of-way line of said railroad for a corner of this said "Tract A";

THENCE N. 02° 00' 10" E., along the east right-of-way line of said railroad at a distance of 1482.82 feet pass the northeast corner of said right-of-way in Volume 6254, Page 30, same being the southeast corner of said right-of-way in Volume 6182, Page 346, and the southwest corner of said 0.19 acre tract, continuing for a total distance of 1691.66 feet to the Point of Beginning. Bearings are based on the Texas Coordinate System of 1983 (2011), Texas North Central Zone. Distances are at surface, in U.S. Survey feet.

# Willow Bend Villas Public Improvement District



 Willow Bend Villas PID

 Parcels

 Lot-Block Lines



As required by Chapter 2051, Geospatial Data Products of the Government Code, this product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

5/21/2021

**Willow Bend Villas**  
**Proposed Revenue/Expense Worksheet**

**Method of Assessment**

- \* Properties will be assessed based on the City's 2022 "net taxable value" as established by the Lubbock Central Appraisal District
- \* Assessment rate will be \$0.15/\$100 valuation
- \* All property will be assessed based on the final 2022 "net taxable value".

**Service Plan**

	PROPOSED					Totals
	2022	2023	2024	2025	2026	
<b>TAX YEAR</b>						
Property Values*	8,750,000	22,050,000	37,366,000	53,863,320	54,940,586	54,940,586
Discounted Property Values	7,875,000	19,845,000	33,629,400	48,476,988	49,446,528	49,446,528
<b>FISCAL YEAR REVENUES</b>						
Interest	-	-	-	-	1,533	1,533
Assessment @ \$0.15	11,813	29,768	50,444	72,715	74,170	238,909
Assessment @ \$0.10	-	-	-	-	-	-
<b>Total</b>	<b>11,813</b>	<b>29,768</b>	<b>50,444</b>	<b>72,715</b>	<b>75,703</b>	<b>240,442</b>
<b>EXPENSES</b>						
<b>Park 1</b>						
Pocket Park (playscape and landscaping)	-	7,650	7,803	7,959	8,118	31,530
<b>Park 2</b>						
Pocket Park (playscape and landscaping)	-	7,650	7,803	7,959	8,118	31,530
<b>Signage</b>						
Neighborhood Entry Signs	-	1,020	1,040	1,061	1,082	4,204
<b>Landscaping</b>						
Trees along 19th st	-	1,020	1,040	1,061	1,082	4,204
<b>Basing Landscaping</b>						
Prolrrigation and grass establishment	-	5,100	5,202	5,306	5,412	21,020
<b>Electric Cost for irrigation</b>						
Proposed Parks 1 and 2	-	1,408	1,436	1,465	1,494	5,803
<b>Administrative Costs</b>						
Administrative Costs	3,000	3,577	3,649	3,722	3,796	17,744
<b>Annual Operating Costs</b>						
Annual Operating Costs	4,000	4,080	4,162	4,245	4,330	20,816
<b>Paid by developer</b>						
<b>Total</b>	<b>7,000</b>	<b>31,505</b>	<b>32,135</b>	<b>32,778</b>	<b>33,434</b>	<b>136,852</b>
<b>Cash Reserves</b>						
Cash Reserves	4,813	3,075	21,384	61,321	103,590	103,590

\*Property Value growth rate = 2% annually  
 \*\*Expense growth rate = 2% annually

Assessment Information for \$100,000 home \$ 150.00

**EXHIBIT 3**  
**Service and Assessment Plan Required Attachment**

Sec. 5.014. NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT. (a) A person who proposes to sell or otherwise convey real property that is located in a public improvement district established under Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code, shall first give to the purchaser of the property the [a] written notice prescribed by Subsection (a-1) or (a-2), as applicable.

(a-1) Except for the notice prescribed by Subsection (a-2), the notice required by Subsection (a) shall be executed by the seller and must, except as provided by Subsection (b), read as follows:

NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO (insert name of municipality or county  
levying assessment), TEXAS CONCERNING THE FOLLOWING PROPERTY  
(insert property address)

As the [a] purchaser of the real property described above, you are obligated to pay assessments [~~an~~  
~~assessment~~] to (insert name of [a] municipality or county, as applicable), Texas, for the costs of a portion of a public  
[~~an~~] improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property  
within (insert name of public improvement district) (the "District") created under (insert Subchapter A, Chapter 372,  
Local Government Code, or Chapter 382, Local Government Code, as applicable).

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS,  
WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE  
IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID,  
COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.

The exact amount of the assessment may be obtained from (insert name of municipality or county, as  
applicable). The exact amount of each annual installment will be approved each year by (insert name of city council  
or county commissioners court, as applicable) in the annual service plan update for the district. More information  
about the assessments, including the amounts and due dates, may be obtained from (insert name of [the]  
municipality or county, as applicable).

Your failure to pay any assessment or any annual installment may result in penalties and interest being  
added to what you owe or in a lien on and the foreclosure of your property.

The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding  
contract for the purchase of the real property at the address described above.

Date: \_\_\_\_\_

Signature of Purchaser

(a-2) For a district described by Section 372.0035, Local Government Code, the notice required by  
Subsection (a) shall be executed by the seller and must, except as provided by Subsection (b), read as follows:

NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO (insert name of municipality levying  
assessment), TEXAS CONCERNING THE FOLLOWING HOTEL PROPERTY  
(insert property address)

As the purchaser of the real property described above, you are obligated to pay assessments to (insert  
name of municipality), Texas, for the costs of a portion of a public improvement or services project (the "Authorized  
Services") undertaken for the benefit of the property within (insert name of public improvement district) (the  
"District") created under Subchapter A, Chapter 372, Local Government Code.

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED SERVICES, WHICH  
MUST BE PAID IN FULL WITH EVERY PAYMENT BY THE HOTEL OF LOCAL HOTEL OCCUPANCY TAX REMITTANCES TO  
THE MUNICIPALITY. YOUR FAILURE TO PAY THE ASSESSMENT MAY RESULT IN PENALTIES AND INTEREST BEING  
ADDED TO WHAT YOU OWE, AND MAY INCLUDE THE PURSUIT OF ANY OTHER REMEDY THAT IS AUTHORIZED UNDER  
SECTION 372.0035(d), LOCAL GOVERNMENT CODE.



**EXHIBIT 3**  
**2021 Service and Assessment Plan**

Information about the calculation of the assessment may be obtained from (insert name of the municipality). The exact assessment rate will be approved each year by (insert name of city council) in the annual service plan update for the district. More information about the assessments, including the assessment rate and due dates, may be obtained from (insert name of municipality).

The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

Date: \_\_\_\_\_

Signature of Purchaser

(b) The seller or the municipality or county that created the public improvement district may provide additional information regarding the district in the notice prescribed by Subsection (a-1) or (a-2), including whether an assessment has been levied, the amount of the assessment, and the payment schedule for assessments.

(c) This section does not apply to a transfer:

- (1) under a court order or foreclosure sale;
- (2) by a trustee in bankruptcy;
- (3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;
- (4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;
- (5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (6) from one co-owner to another co-owner of an undivided interest in the real property;
- (7) to a spouse or a person in the lineal line of consanguinity of the seller;
- (8) to or from a governmental entity; or
- (9) of only a mineral interest, leasehold interest, or security interest.

(d) For the purposes of this section, a contract for the purchase and sale of real property having a performance period of less than six months is considered a sale requiring notice



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## Information

### Agenda Item

**Public Hearing - Business Development:** Hold a public hearing regarding the proposed creation of the City of Lubbock Property Assessed Clean Energy Program (Lubbock City PACE).

### Item Summary

On October 12, 2021, the City Council approved a Resolution of Intent to create the City of Lubbock Property Assessed Clean Energy Program (Lubbock City PACE). The next step in the creation of the Lubbock City PACE Program is to hold a Public Hearing, per the requirements of the PACE Act as set forth in Texas Local Government Code Chapter 399.

The public will have the opportunity to comment on the proposed Lubbock City PACE Program, including the report that was made available on the City of Lubbock website, per the requirements of Section 399.008 in the Texas Local Government Code.

### Fiscal Impact

None

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager

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## Attachments

Report

**REPORT REQUIRED BY TEXAS LOCAL GOVERNMENT CODE SECTION 399.009**  
**FOR PROPOSED PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

This Report is adopted by the City Council for the City of Lubbock, Texas (“**Local Government**”) Property Assessed Clean Energy (PACE) Program (**the “Program”**) in accordance with the requirements of the Property Assessed Clean Energy Act (**the “PACE Act”**) as set forth in Texas Local Government Code Chapter 399.

The Local Government and its constituents benefit when older existing buildings are modified with new technology and equipment that increases energy efficiency and reduces water consumption. As described in this Report, the Local Government is establishing the commercial PACE Program to encourage private sector investment in energy efficiency and water conservation. The PACE Program will be offered to property owners on a strictly voluntary basis and will not require the use of any public funds or resources.

Authorized under the PACE Act enacted in 2013, the PACE program is an innovative financing program that enables private sector owners of privately owned commercial, industrial, and multi-family residential properties with five or more dwelling units to obtain low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and renewable energy retrofits. PACE loans provide up to 100% financing of all project costs, with little or no up-front out-of-pocket cost to the owner. The Local Government has chosen to follow the administrative principles, program processes, and model documents of the uniform Texas PACE in a Box model program.<sup>1</sup>

Loans made under the PACE Program will be secured by assessments on the property that are voluntarily imposed by the owner. Assessments may be amortized over the projected life of the improvements. The utility cost savings derived from improvements financed with PACE loans are expected to equal or exceed the amount of the assessment. In turn, these improvements are able to generate positive cash flow upon installation because the debt service will be less than the savings.

PACE assessments are tied to the property and follow title from one owner to the next. Each owner is responsible only for payment of the assessments accruing during its period of ownership. When the property is sold, the payment obligation for the remaining balance of the assessment is transferred automatically to the next owner. As a result, the program will help property owners overcome market barriers that often discourage investment in energy efficiency and water conservation improvements.

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<sup>1</sup> <https://www.keepingpaceintexas.org/pace-in-a-box>

## 1. Eligible Properties

The Local Government's PACE program is a strictly voluntary program. All private sector owners of Eligible Properties located within the Local Government's PACE region may participate in PACE financing. "*Eligible Properties*" include commercial, industrial, and multi-family residential properties with five or more dwelling units. Government, residential<sup>2</sup>, and undeveloped property and property undergoing development at the time of the assessment are not Eligible Properties.

## 2. Qualified Improvements

PACE financing may be used to pay for Qualified Improvements to Eligible Properties. "*Qualified Improvements*" are permanent improvements intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that use energy technology to generate electricity, provide thermal energy, or regulate temperature. Under the PACE Act, products or devices that are not permanently fixed to real property are not considered to be Qualified Improvements.

The following items may constitute Qualified Improvements:

- High efficiency heating, ventilating and air conditioning ("HVAC") systems
- High efficiency chillers, boilers, and furnaces
- High efficiency water heating systems
- Energy management systems and controls
- Distributed generation systems
- High efficiency lighting system upgrades
- Building enclosure and envelope improvements
- Water conservation and wastewater recovery and reuse systems
- Combustion and burner upgrades
- Heat recovery and steam traps
- Water management systems and controls (indoor and outdoor)
- High efficiency irrigation equipment

## 3. Benefits of PACE to Property Owners

The PACE program will enable owners of Eligible Properties to overcome traditional barriers to capital investments in energy efficiency and water conservation improvements, such as unattractive returns on investment, split incentives between landlords and tenants, and uncertainty of recouping the investment upon sale of the property.

By financing Qualified Improvements through the program, property owners may achieve utility cost savings that exceed the amount of the assessment and reduce their exposure to utility price volatility. As a result, the value of the property will be enhanced, and the owner will only be obligated to pay the assessment installments that accrue during its period of ownership of the property. Additionally, by investing in energy efficiency and water conservation with PACE

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<sup>2</sup> This encompasses single family residential and any multi-family properties with fewer than five units.

financing, property owners may also qualify for various rebate, tax credit, and incentive programs offered by utility providers and state or federal governmental authorities to encourage these types of investments.

#### **4. Benefits of PACE to the Local Government**

Among other things, projects financed through PACE will:

- Enable property owners and occupants to save substantial amounts in utility costs,
- Reduce demand on the electricity grid
- Mitigate greenhouse gas emissions associated with energy generation
- Enhance the value and efficiency of existing buildings
- Boost the local economy by creating new job opportunities and new business opportunities for contractors, engineers, commercial lenders, professionals, and equipment vendors and manufactures
- Increase business retention and expansion in the PACE region by enabling cost effective energy and water saving updates to existing property
- Improve productivity through optimized energy usage
- Support the State's water conservation plan
- Better enable the Local Government to meet its water conservation goals

Finally, through the reduction in energy consumption as a result of the PACE program, there will be a decreased demand for power resulting in lower emissions from power plants. EPA regulations have significant impacts on air quality standards in Texas. Being non-attainment for priority pollutants in the Clean Air Act endangers federal transportation funding.

The PACE program requires minimal support from the Local Government. It is designed to be self-sustaining. Furthermore, because the PACE program is tax neutral, it achieves all of the benefits listed in this Report without imposing a burden on the Local Government's general fund.

The 84<sup>th</sup> Texas Legislature added a provision that explicitly shields the Local Government and its employees, members of the governing body of a local government, employees of a local government, and board members, executives, employees, and contractors of a third party who enter into a contract with a local government to provide administrative services for a program under this chapter.<sup>3</sup>

#### **5. The Benefits of PACE to Lenders**

PACE loans are attractive to lenders because they are very secure investments. Like a property tax lien, the assessment lien securing the PACE loan has priority over other liens on the property. Therefore, the risk of loss from non-payment of a PACE loan is low compared to most other types of loans. PACE assessments provide lenders with an attractive new product to assist

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<sup>3</sup> TX. Local Gov't Code §399.019. In the 85th legislature, HB 2654 clarified that the personal immunity provisions apply to all elected officials performing rights and duties under chapter 399 of the Local Government Code.

existing and new customers in addressing an almost universal pent-up demand for needed commercial and industrial property equipment modernization. In order to protect the interests of holders of existing mortgage loans on the property, the PACE Act requires their written consent to the PACE assessment as a condition to obtaining a PACE loan.

## **6. The Benefits of PACE to Contractors, Engineers, and Manufacturers**

PACE loans provide attractive sources of financing for water and energy saving retrofits and upgrades, thereby encouraging property owners to make substantial investments in existing commercial and industrial buildings. As a result, PACE will unlock business opportunities for contractors, engineers, and manufacturers throughout the commercial and industrial sectors.

## **7. Administration of the Local Government PACE Program**

Under the PACE Act, the establishment and operation of the program are considered to be governmental functions.<sup>4</sup> The PACE Act further authorizes the Local Government to enter into a contract with a third party to provide administrative services for the PACE program (the “*Authorized Representative*”). The Local Government will delegate administration of the PACE program to Texas PACE Authority, a qualified, non-profit organization that can administer the program at no cost to the Local Government.

The Authorized Representative’s role is to serve as an extension of the local government staff to provide oversight of the program to ensure best practices and consumer protections at the lowest possible cost to the property owner in a transparent and ethical manner and to provide education and outreach.

The Authorized Representative will be funded by administrative fees paid by the property owners establishing a PACE project, charitable grants or other authorized sources of revenue. The Authorized Representative will not receive compensation or reimbursement from the Local Government.

## **8. Eligible Lenders**

The PACE Act does not set criteria for financial institutions or investors to be PACE lenders. The Local Government will follow best practices of other PACE programs and the Texas PACE in a Box model program by recommending that lenders be:

- Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a Small Business Administration small business investment company;
- Any publicly traded entity; or
- Any private entity that:
  - Has a minimum net worth of \$5 million; and

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<sup>4</sup> TX Local Government Code §399.003(b)



- Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending; and
- Can provide independent certification as to availability of funds; and
- All lenders must have the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

Any lender can participate in the PACE program as long as it is a financially stable entity with the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts. The property owner, not the Local Government or the Authorized Representative, selects the lender.

The Authorized Representative will not guarantee or imply that funding will automatically be provided from a third-party lender, imply or create any endorsement of, or responsibility for, any lender; or create any type of express or implied favoritism for any eligible lender.

## 9. Components of the PACE Program

As required under Section 399.009 of the PACE Act, the following describes all aspects of the PACE Program:

- a. Map of Region. A map of the boundaries of the region included in the program is attached to this Report as Exhibit 1. The region encompasses the Local Government limits.
- b. Form Contract with Owner. A form contract between the Local Government and the record owner of the Eligible Property is attached as Exhibit 2. It specifies the terms of the assessment under the PACE program and the financing to be provided by an Eligible Lender of the property owner's choosing.
- c. Form Contract with Lender. A form contract between the Local Government and the Eligible Lender chosen by a property owner is attached to this Report as Exhibit 3. It specifies the financing and servicing of the debt through assessments.

Form Notice of Contractual Assessment Lien. A form Notice of Assessment Lien to be filed by the Local Government with the County Clerk is attached to this Report as Exhibit 4.

- d. Qualified Improvement. The following types of projects are qualified improvements that may be subject to contractual assessments under the PACE program:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial,

industrial or residential real property with five (5) or more dwelling units;<sup>5</sup> and (b) are intended to decrease energy or water consumption or demand by installing a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.<sup>6</sup>

A sample list of potential Qualified Improvements appears in Section 2 above.

The PACE program may not be used to finance improvements to undeveloped lots or lots undergoing development at the time of the assessment, or for the purchase or installation of products or devices not permanently fixed to real property.<sup>7</sup>

- e. Authorized Representative. HB 3187 was signed into law on June 16, 2015. It authorizes the Local Government to delegate administration of the PACE program to a third-party "Authorized Representative." The Local Government may delegate all official administrative responsibilities, such as the execution of individual contracts with property owners and lenders, to an Authorized Representative. This relationship will be monitored and maintained by the City Manager or his designee.
- f. Project Review. Track and provide a public overview with savings metrics for all PACE projects
- g. Plans for Insuring Sufficient Capital<sup>8</sup>. Lenders will extend loans to finance Qualified Improvements. Financing documents executed between owners and lenders will impose a contractual assessment on Eligible Property to repay the owner's financing of the Qualified Improvements. The lenders will ensure that property owners demonstrate the financial ability to fulfill the financial obligations to be repaid through contractual assessments.
- h. No Use of Bonds or Public Funds. The Local Government does not intend to issue bonds or use any other public monies to fund PACE projects. Property owners will obtain all financing from the Eligible Lenders they choose.
- i. Limit on Length of Loan. One of the statutory criteria of a PACE loan is that the assessment payment period cannot exceed the useful life of the Qualified Improvement that is the basis for the loan and assessment. As part of the application process, the property owners will submit an independent third-party review prepared by a licensed engineer showing the water or energy baseline

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<sup>5</sup> TX. Local Gov't Code §399.002(5).

<sup>6</sup> TX. Local Gov't Code §399.002(3).

<sup>7</sup> TX. Local Gov't Code §399.004.

<sup>8</sup> The Texas PACE Authority's website ([www.texaspaceauthority.org](http://www.texaspaceauthority.org)) offers a non-exhaustive list of interested and qualified lenders to assist property owners in funding PACE projects in Texas.

conditions and the projected water or energy savings. This review will aid the Authorized Representative in making a determination that the period of the requested assessment does not exceed the useful life of the Qualified Improvement.

- j. Application Process. The Authorized Representative will accept applications from property owners seeking to finance Qualified Improvements under the program. Each application must be accompanied by the required application fee and must include:
- (1) A description of the specific Qualified Improvements to be installed or modified on the property,
  - (2) A description of the specific real property to which the Qualified Improvements will be permanently fixed, and
  - (3) The total amount of financing, including any transaction costs, to be repaid through assessments.

Based on this information, the Authorized Representative may issue a preliminary letter indicating that, subject to verification of all requirements at closing, the proposed project appears to meet program requirements. Based on this preliminary letter, the property owner may initiate an independent third-party review of the project and submit the project to Eligible Lenders for approval of financing.

Once the above processes are completed, the property owner will submit the application to the Authorized Representative to obtain preliminary approval. The property owner is expected to produce the following documentation prior to closing on the PACE loan:

- (1) A Report conducted by a qualified, independent third-party reviewer, showing water or energy baseline conditions and the projected water or energy savings, or the amount of renewable energy generated attributable to the project;
  - (2) Such financial information about the owner and the property as the lender chosen by the owner deems necessary to determine that the owner has demonstrated the financial ability to fulfill the financial obligations to be paid through assessments; and
  - (3) All other information required by the Authorized Representative.
- k. Financial Eligibility Requirements. The Authorized Representative will determine whether the owner, the property and the improvements are eligible for financing under the program. The Eligible Lender chosen by the owner will determine whether the owner has demonstrated the financial ability to repay the financial obligations to be collected through contractual assessments. The statutory method<sup>9</sup> for ensuring such a demonstration of financial ability must be based on appropriate underwriting factors, including the following:

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<sup>9</sup> TX. Local Gov't Code §399.009(b).

- (1) verification that the person requesting to participate in the program is the legal record owner of the benefitted property,
- (2) the applicant is current on mortgage and property tax payments,
- (3) the applicant is not insolvent or in bankruptcy proceedings,
- (4) the title of the benefitted property is not in dispute; and
- (5) there is an appropriate ratio of the amount of the assessment to the assessed value of the property. The Local Government determines that it will follow the Texas PACE in a Box model program recommendation for determining the appropriate loan to assessed value of the property.

The Local Government determines to be eligible for PACE financing, the projected savings derived from the Qualified Improvement must be greater than the cost of the PACE assessment and lien over the life of the assessment (i.e., the Savings to Investment Ratio (SIR) should be greater than one,  $SIR > 1$ ). A third-party lender and a for profit-property owner may request a waiver in writing for a project with an  $SIR < 1$  and address the interests of tenants and future property owners. The Authorized Representative may consider factors in a variance request including:

- (a). Are there other environmental benefits such as air or water quality or resiliency that are not captured in the SIR analysis;
- (b) Will the proposed qualifying improvements generate environmental marketable credits that can be monetized?
- (c). What is the SIR calculation for the project (how far below 1?);
- (d). If the SIR is  $< 1$  over the term of the assessment, is the  $SIR > 1$  over the useful life of the equipment?
- (e). What is the impact of a variance request on affected third parties? and
- (f) Other information the owner and lender wish to submit regarding the impact of the qualified improvements on the company and the community.

l. Mortgage Holder Notice and Consent. As a condition to the execution of a written contract between the Authorized Representative and the property owner imposing an assessment under the program, the holder of any mortgage lien on the property must be given notice of the owner's intention to participate in the program on or before the 30<sup>th</sup> day before the date the contract is executed, and the owner must obtain the written consent of all mortgage holders.<sup>10</sup>

m. Imposition of Assessment. The Authorized Representative will enter into a written contract with the property owner, only after:

- (1) The property owner delivers to the Authorized Representative written consent of all mortgage lien holders;
- (2) The Authorized Representative's determination that the owner and the property are eligible to participate in the program, that the proposed improvements are reasonably likely to decrease energy or water

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<sup>10</sup> TX. Local Gov't Code §399.010.

consumption or demand, and that the period of the requested assessment does not exceed the useful life of the Qualified Improvements; and  
(3) The Eligible Lender notifies the Authorized Representative that the owner has demonstrated the financial ability to fulfill the financial obligations to be repaid through contractual assessments.

The contract will impose a contractual assessment on the owner's Eligible Property to repay the lender's financing of the Qualified Improvements. The Authorized Representative will file "A Notice of Contractual Assessment Lien," in substantially the form in Exhibit 4 in the Official Public Records of the County in which the property is located, as notice to the public of the assessment, from the date of filing. The contract and the notice must contain the amount of the assessment, the legal description of the property, the name of the property owner, and a reference to the statutory assessment lien provided under the PACE Act.

- n. Collection of Assessments. The execution of the written contract between the Local Government and the property owner and recording of the Notice of Contractual Assessment Lien incorporate the terms of the financing documents executed between the property owner and with the lender to repay the financing secured by the assessment. The third-party lender will advance financing to the owner, and the terms for repayment will be such terms as are agreed between the lender and the owner. Under the form lender contract attached as Exhibit 3, the lender or a designated servicer will agree to service the debt secured by the assessment.<sup>11</sup>

With funds from the lender, the property owner can purchase directly the equipment and materials for the Qualified Improvement and contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of the Qualified Improvements. Alternatively, the lender may make progress payments to the property owner as the Qualified Improvement is installed.

The lender will receive the owner's assessment payments to repay the debt and remit to the Authorized Representative any administrative fees. The lender will have the right to assign or transfer the right to receive the installments of the debt secured by the assessment, provided all of the following conditions are met:

- (1) The assignment or transfer is made to an Eligible Lender, as defined above;
- (2) The property owner and the Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the schedule for repayment of the debt; and

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<sup>11</sup> The servicer will be responsible for maintaining payment records, account balances, and reporting to the Authorized Representative as required.

(3) The assignee or transferee, by operation of the financing documents or otherwise, written evidence of which shall be provided, assumes lender's obligations under the lender contract.

- o. Verification Review. After a Qualified Improvement is completed, the Authorized Representative will require the property owner to provide verification by a qualified independent third-party reviewer that the Qualified Improvement was properly completed and is operating as intended.<sup>12</sup> The verification report conclusively establishes that the improvement is a Qualified Improvement and the project is qualified under the PACE program.<sup>13</sup>
- p. Marketing and Education Services. The Program Administrator will provide service provider training workshops for contractors, engineers, property managers and other stakeholders, provide outreach and education for all stakeholders including presentations, conference booths and individual meetings, and provide written and electronic materials such as case studies, flyers, and webinars.
- q. The Local Government may subsequently enter into agreements with one or more other local governments or non-profit organizations that promote energy and water conservation and/or economic development to provide marketing and education services for the PACE program.
- r. Quality Assurance and Antifraud Measures. The Authorized Representative will institute quality assurance and antifraud measures for the Program. The Authorized Representative will review each PACE application for completeness and supporting documents through independent review and verification procedures. The application and required attachments will identify and supply the information necessary to ensure that the property owner, the property itself, and the proposed project all satisfy PACE program underwriting and technical standard requirements. Measures will be put in place to provide safeguards, including a review of the energy and water savings baseline and certification of compliance with the technical standards manual from an independent third-party reviewer (ITPR), who must be a registered professional engineer, before the project can proceed. This review will include a site visit, report, and a letter from the ITPR certifying that he or she has no financial interest in the project and is an independent reviewer. After the construction of the project is complete, an ITPR will conduct a final site inspection and determine whether the project was completed and is operating properly. The reviewer's certification will also include a statement that the reviewer is qualified and has no financial interest in the project.

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<sup>12</sup> TX Local Gov't Code §399.011.

<sup>13</sup> TX Local Government Code §399.011(a-1)

- s. Delinquency. Under the terms of the form lender contract attached as Exhibit 3, if a property owner fails to pay an agreed installment when due on the PACE assessment, the lender will agree to take at least the following steps to collect the delinquent installment:
- (1) Mail to the owner a written notice of delinquency and demand for payment by both certified mail (return receipt requested) and first-class mail, and
  - (2) Mail to the owner a second notice of delinquency and demand for payment by both certified mail (return receipt requested) and first-class mail, at least 30 days after the date of the first notice if the delinquency is continuing.

If the owner fails to cure the delinquency within 30 days after mailing the second notice of delinquency, the lender may notify the Authorized Representative of the owner's default. Pursuant to Texas Local Government Code Section 399.014(c), the Authorized Representative will initiate steps for the Local Government to enforce the assessment lien in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, of the Texas Constitution. Delinquent installments will incur penalties and interest in the same manner and at the same rate as delinquent property taxes, according to Texas Local Government Code Section 399.014(d), and such statutory penalties and interest will be due to the Local Government to offset the cost of collection.

If the Local Government files suit to enforce collection, the Local Government may also recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner and at the same rate as in suit to collect a delinquent property tax. If a delinquent installment of an assessment is collected after the filing of a suit, the Local Government will remit to the lender the net amount of the delinquent installments and contractual interest collected and remit to the Authorized Representative the amount of any administrative fees collected but will retain any statutory penalties, interest, and attorney's fees collected.





**EXHIBIT 2**  
**FORM OWNER CONTRACT**

## FORM PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“**PACE**”) OWNER CONTRACT including the attached exhibits (“**Owner Contract**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“**Effective Date**”), by and between the City of Lubbock, Texas (“**Local Government**”), and \_\_\_\_\_ (“**Property Owner**”).

### RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated \_\_\_\_\_, adopted by the City Council (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of the City of Lubbock, Texas as a region (**the “Region”**) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owners’ property pursuant to the PACE Program.

C. Property Owner is/are the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at \_\_\_\_\_, Lubbock, Texas \_\_\_\_\_ - \_\_\_\_\_ (the “**Property**”).

D. Pursuant to Application number \_\_\_\_\_, Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has requested that Local Government enter into this Owner Contract pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the real property records of Lubbock, County, Texas (the “**Notice of Contractual Assessment Lien**”), to repay the financing of such Qualified Improvements. A copy of the Notice

of Contractual Assessment Lien is attached hereto as Exhibit A and made a part hereof. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (“**Financing**”) will be provided to Property Owner by \_\_\_\_\_ (“**Lender**”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act (the “**Lender Contract**”). The financing will include only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. Local Government has agreed to maintain and continue the Assessment for the benefit of Lender until the Financing, all contractual interest due to Lender (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, fees, and costs due under or authorized by the PACE Act are paid in full and to release the Assessment upon notice from Lender of such payment, or to foreclose the lien securing the Assessment for the benefit of Lender upon notice from Lender of a default in payment by Property Owner.

F. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of this Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage holder to the Assessment was obtained on or prior to the date of this Owner Contract and is attached hereto as Exhibit B and made a part hereof.

AGREEMENT

The parties agree as follows:

1. Imposition of Assessment. In consideration for the Financing advanced or to be advanced to Property Owner by Lender for the Project under the PACE Program pursuant to the Lender Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment in the principal amount of \$ \_\_\_\_\_, as set forth in the Notice of Contractual Assessment Lien. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien. The Assessment includes the application and administration fees authorized by the PACE Program and Section 399.006(e) of the PACE Act. Property Owner promises and agrees to pay the Assessment, Contractual Interest thereon, any prepayment penalty, and all penalties, interest, fees, and costs due under or authorized by the PACE Act and the financing documents executed between Property Owner and Lender (the “**Financing Documents**”) described in or copies of which are attached as Exhibit C attached hereto and made a part hereof by reference. Property Owner will pay such amount in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to this Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to repay the Financing of the Project, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. Maintenance and Enforcement of Assessment. In consideration for Lender's agreement to advance Financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, and costs, due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner, in accordance with the provisions set forth in paragraph 5. Authorized Representative will deliver an annual notice of assessment to Property Owner by electronic mail each year until the Assessment is released. If requested by Property Owner by marking the box below, Local Government agrees to also deliver an annual notice of assessment to Property Owner by first-class mail in the envelope with the tax bill of the Property each year until the Assessment is released.

Property Owner requests an annual notice of assessment from Local Government.

Any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property's Owner's obligations under this Owner Contract.

3. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments ("**Installments**"), according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit C. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing, and (2) a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount will be collected by Lender and paid to Authorized Representative within thirty (30) days of receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of a delinquency in the payment of any Installment, Lender will, upon notice to Authorized Representative, withhold payment of any administration fee due to Authorized Representative in connection with such Installment until the Installment is paid. Any such temporary withholding will not reduce the amount of the administration fees included in the Assessment. The amounts due to Authorized Representative are identified in Exhibit C hereto. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, have been paid in full, Local Government's rights under this Owner Contract will cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative will execute a release of the Assessment and this Owner Contract and record the release. As required by Section 399.009(a) (8) of the PACE Act, the period during which such Installments are payable does not exceed the useful life of the Project.

4. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender will have the right, with or without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with all corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender as defined in the Lender Contract;

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed at least 30 days before the next Installment is due according to the payment schedule included in the Financing Documents, and

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under the Lender Contract related to the receipt of the Installments or the enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative within 10 days after execution of the agreement.

Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer that meets all of these conditions, the assignor will be released of all of the rights and obligations of the Lender under such Lender Contract accruing after the date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations will be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or require enforcement of the assessment lien that does not meet all of these conditions is void. Lender will retain all of the rights and obligations of Lender under the Lender Contract until such rights and obligations are assigned or transferred according to this paragraph.

5. Lien Priority and Enforcement. Pursuant to Section 399.014 of the PACE Act:

(a) Delinquent Installments will incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, that is, a delinquent Installment incurs a penalty of 6% of the principal amount of the Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment will also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 16 below, penalties, interest, fees, and costs payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees that become due pursuant to the Financing Documents, may be imposed and retained by Lender.

(b) The Assessment and any interest or penalties thereon,

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the real property records

of Lubbock County, Texas as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax.

(c) The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of the Assessment that has not yet become due will not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse to Lender, Local Government, or Authorized Representative.

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment will be enforced by Local Government for the benefit of Lender, in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal amount of the delinquent Installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender will be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.

(f) As provided in Section 399.014 (a-1) of the PACE Act, after the Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a "qualified improvement" or the project is not a "qualified project", as such terms are defined in Section 399.002 of the PACE Act.

6. Written Contract Required by PACE Act. This Owner Contract constitutes a written contract for the Assessment between Property Owner and Local Government as required by Section 399.005 of the PACE Act. The Notice of Contractual Assessment Lien will be recorded in the real property records of Lubbock County, Texas as public notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

7. Qualified Improvements. Property Owner agrees that all improvements purchased, constructed, or installed through the Financing obtained pursuant to this Owner Contract will be permanently affixed to the Property and will transfer with the Property to the transferee in the event of a sale or transfer of the Property. Property Owner agrees to provide to Authorized Representative within 30 days after the completion of the Project a verification by an independent



third party reviewer (“ITPR”) that the project was properly completed and is operating as intended. Property Owner agrees that Lender may retain the final advance of Financing until such verification is submitted or require Property Owner to pay liquidated damages for a failure to do so, according to paragraph 19 below.

8. Water or Energy Savings. For so long as the Assessment encumbers the Property, Property Owner agrees, on or before January 31<sup>st</sup> of each year, to report to Authorized Representative the water or energy savings realized through the Project in accordance with the reporting requirements established by Authorized Representative.

9. Construction and Definitions. This Owner Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein have the meanings ascribed to them in the PACE Program and/or the PACE Act.

10. Binding Effect. This Owner Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted by this Owner Contract shall be in writing and delivered by first-class mail or by electronic mail, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law. This Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

13. Entire Agreement. This Owner Contract constitutes the entire agreement between Local Government and Property Owner with respect to the subject matter hereof and may not be amended or altered in any manner except by a document in writing executed by both parties.

14. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

15. Counterparts. This Owner Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together will constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the “**usury limit**”). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the usury limit, the interest payable to Local Government will be reduced and any interest in excess of the usury limit will be credited to the

amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this Owner Contract.

17. Costs. No provision of this Owner Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

18. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this Owner Contract as may be reasonably necessary or required.

19. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender will withhold \_\_\_\_\_% of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an Independent Third Party Reviewer ("ITPR), or Property Owner will pay liquidated damages to Lender of \$\_\_\_\_\_ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If the Lender Contract includes requirements related to the construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit D attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

**PROPERTY OWNER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email address: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_, on behalf of \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
(print name)

NOTARY PUBLIC, STATE OF \_\_\_\_\_

**LOCAL GOVERNMENT:**

CITY OF LUBBOCK, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY  
AUTHORIZED REPRESENTATIVE

Pursuant to Tex. Local Gov't Code §399.006(b)

By: \_\_\_\_\_

Name: CHARLENE HEYDINGER

Title: PRESIDENT, TEXAS PACE AUTHORITY

Address: PO BOX 200368  
AUSTIN, TX 78720-0368

Email Address: charlene@texaspaceauthority.org

**ACKNOWLEDGEMENT**

STATE OF TEXAS           §

COUNTY OF \_\_\_\_\_ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on \_\_\_\_\_, 20\_\_ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation as Authorized Representative for the Local Government.

\_\_\_\_\_  
\_\_\_\_\_  
(print name)

NOTARY PUBLIC, STATE OF TEXAS

**OWNER CONTRACT EXHIBIT A**

**NOTICE OF CONTRACTUAL ASSESSMENT LIEN**  
**PURSUANT TO**  
**PROPERTY ASSESSED CLEAN ENERGY ACT**

**OWNER CONTRACT EXHIBIT B**

**MORTGAGE HOLDER(S) CONSENT**





**OWNER CONTRACT EXHIBIT D**

**CONSTRUCTION TERMS**

**Retainage or Liquidated Damages:**

**Lender will retain \_\_\_\_\_% of the Financing until a report of completion by a qualified Independent Third Party Reviewer (“ITPR”) is provided to Authorized Representative.**

**OR**

**Property Owner will pay liquidated damages to Lender of \$\_\_\_\_\_ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender will then provide the report of completion to Authorized Representative.**

**Additional Construction Terms**

<b>Date</b>	<b>Draw down Amount</b>	<b>Purpose</b>

**EXHIBIT 3**  
**FORM LENDER CONTRACT**

## FORM PACE LENDER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“**PACE**”) LENDER CONTRACT including the attached exhibits (“**Lender Contract**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (“**Effective Date**”) by and between the City of Lubbock, Texas (“**Local Government**”) and \_\_\_\_\_ (“**Lender**”).

### RECITALS

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated \_\_\_\_\_, adopted by the City Council (“**PACE Program**”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government (“**Authorized Representative**”) authorized to enter into the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of the City of Lubbock, Texas jurisdiction as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

C. Pursuant to Application number \_\_\_\_\_, \_\_\_\_\_ (“**Property Owner**”), the sole legal and record owner of the following qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region has/have applied to Local Government to participate in the PACE Program with respect to certain real property located at \_\_\_\_\_, Lubbock, Texas, \_\_\_\_\_ - \_\_\_\_\_ (the “**Property**”) by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (“**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”).

D. Property Owner and Local Government have entered into a written contract as required by Section 399.005 of the PACE Act, a copy of which is attached hereto as Exhibit A and made a part hereof (the “**Owner Contract**”), in which Property Owner has requested that Local

Government impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the real property records of Lubbock County, Texas (the “**Notice of Contractual Assessment Lien**”), to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached as Exhibit A to the Owner Contract and made a part hereof. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project (“**Financing**”) will be provided to Property Owner by Lender in accordance with financing documents which are described in or copies of which are attached as Exhibit B attached hereto and made a part hereof (the “**Financing Documents**”). Such Financing will include only those costs and fees for which an assessment may be imposed under Section 399.006 (e) of the PACE Act. This Lender Contract is entered into between Local Government and Lender as required by Section 399.006(c) of the PACE Act to provide for repayment of the Financing through the Assessment.

F. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of the Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage lien holder to the Assessment was obtained on or prior to the date of the Owner Contract, as shown by the copy of such consent(s) attached as Exhibit B to the Owner Contract.

## **AGREEMENT**

The parties agree as follows:

1. Maintenance and Enforcement of Assessment. Lender agrees to provide Financing for the Project in the total principal amount of \$ \_\_\_\_\_, according to the terms set out in the Financing Documents attached hereto as Exhibit B. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this Lender Contract, Local Government agrees to maintain and continue the Assessment for the benefit of Lender until the Assessment, all contractual interest due to Lender according to the Financing Documents (“**Contractual Interest**”), any prepayment penalty, and any penalties, interest, fees, or costs due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government will not release, sell, assign or transfer the Assessment or the lien securing it without the prior written consent of Lender. Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner in accordance with the provisions set forth in paragraph 6. Local Government shall have no obligation to repurchase the Assessment and no liability to Lender should there be a default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

2. Installments. The Assessment and Contractual Interest thereon are due and payable to Lender in installments (“**Installments**”) according to the payment schedule set forth in the Financing Documents attached hereto as Exhibit B. The Assessment includes (1) an application fee paid by Property Owner to Authorized Representative at closing of the Financing and (2) a recurring administration fee paid by Property Owner to Authorized Representative until the Assessment is released. The recurring administration fee amount will be collected by Lender and paid to Authorized Representative within thirty (30) days of receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of delinquency in the payment of any Installment, Lender will, upon notice to Authorized Representative, withhold payment of any amounts due to Authorized Representative in connection with such Installment until the Installment is paid. Any such temporary withholding will not reduce the amount of administration fees included in the Assessment. The amounts due to Authorized Representative are identified in Exhibit B hereto. As required by Section 399.009(a)(8) of the PACE Act, the period during which such Installments are payable does not exceed the useful life of the Project.

3. Assignment of Right to Receive Installments or Require Enforcement of Lien. Lender will have the right, with or without the consent of Property Owner, to assign or transfer the right to receive the Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with the corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender, which may be one of the following:

(1) Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;

(2) Any insurance company authorized to conduct business in one or more states;

(3) Any registered investment company, registered business development company, or a Small Business Administration small business investment company;

(4) Any publicly traded entity; or

(5) Any private entity that:

(i) Has a minimum net worth of \$5 million;

(ii) Has at least three years’ experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years’ experience in business or industrial lending or commercial real estate lending;

(iii) Can provide independent certification as to availability of funds; and

(iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts

(6) A financially stable entity, whether or not from the list above, with the ability to carry out, either directly or through a servicer, the obligations of this Lender Contract related to the receipt and accounting of the Installments or the enforcement of the assessment lien.

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future Installments should be mailed at least 30 days before the next Installment is due according to the payment schedule included in the Financing Documents; and

(c) The assignee or transferee executes a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under this Lender Contract related to the receipt of the Installments or enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative within 10 days after execution of the agreement. Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer that meets all of these conditions, the assignor will be released of all of the rights and obligations of the Lender under this Lender Contract accruing after the date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations will be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the Installments or to require enforcement of the assessment lien that does not meet all of these conditions is void. Lender will retain all of the rights and obligations of Lender under this Lender Contract until such rights and obligations are assigned or transferred according to this paragraph.

4. Financing Responsibility. Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder. In the event the assessment lien on the Property is enforced by foreclosure as provided below, Lender will have no further obligations to Property Owner with respect to the Installments that were the subject of the foreclosure, but Lender will retain the rights to enforcement of the lien for any Installments that are not eliminated by the foreclosure, and the succeeding owner of the Property will be subject to such lien.

5. Lien Priority and Enforcement. As provided in the Owner Contract and Section 399.014 of the PACE Act:

(a) Delinquent Installments will incur penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, that is, a delinquent Installment incurs a penalty of 6% of the principal amount of the Installment for the first calendar month it is delinquent plus 1% for each additional month

or portion of a month the Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent Installment without regard to the number of months it has been delinquent. A delinquent Installment will also accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the Installment remains unpaid. Subject to paragraph 16 below, penalties, interest, fees, and costs payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be imposed and retained by Lender.

(b) The Assessment and any interest or penalties thereon,

(1) are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is recorded in the real property records of Lubbock County, Texas, as provided by Section 399.013 of the PACE Act, until the Assessment, interest, or penalty is paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax.

(c) The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of the Assessment that has not yet become due will not be eliminated by foreclosure of (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse to Lender, Local Government or Authorized Representative

(d) In the event of a default by Property Owner in payment of an Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment will be enforced by Local Government for the benefit of Lender according to paragraph 6(c) below in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent Installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal amount of the delinquent Installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender will be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Installment of the Assessment.



(f) As provided in Section 399.014(a-1) of the PACE Act, after written notice of the Assessment is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

6. Servicing and Enforcement of Assessment.

(a) Servicing. The Installments and other amounts due under the Financing Documents will be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents. Lender or its designee will be responsible for all servicing duties other than those specifically undertaken by Local Government in this Lender Contract. Authorized Representative will deliver an annual notice of assessment to Property Owner by electronic mail each year until the Assessment is released. If requested by Property Owner in the Owner Contract, Local Government agrees to also send an annual notice of assessment to Property Owner by first class mail in the envelope with the tax bill of the Property each year until the Assessment is released. However, any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property Owner’s obligations under the Owner Contract.

(b) Remittances. Each of the parties covenants and agrees to promptly remit to the other party any payments incorrectly received by such party with respect to the Assessment after the execution of this Lender Contract.

(c) Default and Enforcement. In the event of a default in payment of any Installment according to the Financing Documents, Lender agrees to take at least the following steps to collect the delinquent Installment:

(1) Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first class mail; and

(2) Mail a second notice of delinquency to the Property Owner and the holder of any mortgage lien on the property by both certified mail, return receipt requested, and first-class mail at least 30 days after the date of the first notice if the delinquency is continuing.

The holder of any mortgage lien on the property will have not less than a 30-day right to cure the delinquency by paying the amount of the delinquent installment. If the Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, Lender or its designee may notify Authorized Representative in writing of a default in payment by Property Owner. Upon receipt of such notice and after doing its own due diligence, including delivering a notice of foreclosure to Freddie Mac not less than 30 days prior to the foreclosure if the mortgage lien is held by Freddie Mac, Authorized Representative will certify the default to Local Government, which will enforce the assessment lien for the benefit of Lender pursuant to Sec. 399.014(c) of the PACE Act, in the same manner as a property tax lien against real property

may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution. However, if a case under the U.S. Bankruptcy Code is filed by or against Property Owner or if the enforcement of the assessment lien is prevented by the order of a court, Local Government will notify Authorized Representative and will file a proof of claim for the balance of the assessment, accrued interest and penalties, and all costs and expenses, including attorney's fees, as authorized by Section 399.014 of the PACE Act. Authorized Representative will notify Lender of the filing of the proof of claim. Lender will not be required to mail a notice of delinquency to Property Owner or a notice of default to Local Government. Lender will reimburse Local Government for any costs and expenses, including attorney's fees, required to file and present the claim.

(d) Priority. If the assessment lien is enforced by foreclosure or collected through a bankruptcy or similar proceeding, the assessment balance and any interest or penalties on the assessment will have the same priority status as a lien for any other ad valorem tax, pursuant to Sec. 399.014(a)(2) of the PACE Act.

(e) Final Payment and Release. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees, or costs due under or authorized by the PACE Act or the Financing Documents have been paid in full, Local Government's rights under the Owner Contract will cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative will execute a release of the Assessment and the Owner Contract and record the release.

(f) Limitations on Local Government's Actions. Without the prior written consent of Lender, Local Government will not enter into any amendment or modification of or deviation from the Owner Contract. Local Government or Authorized Representative will not institute any legal action with respect to the Owner Contract, the Assessment, or the assessment lien without the prior written request of Lender.

(g) Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Lender Contract, and no implied duties on the part of Local Government are to be read into this Lender Contract. Local Government will not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender and refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

(h) Costs. No provisions of this Lender Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

7. Lender's Warranties and Representations. With respect to this Lender Contract, Lender hereby warrants and represents that on the date on which Lender executes this Lender Contract:

(a) Lender is a qualified lender under the PACE Program, as defined in paragraph 3(a) above, and is fully qualified under the PACE Program to enter into this Lender Contract and the Financing Documents;

(b) Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

(c) Lender has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government, Authorized Representative, or any agent or employee of Local Government, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

8. Written Contract Required by the PACE Act. This Lender Contract constitutes a written contract between Local Government and Lender, as required under Section 399.006 (c) of the PACE Act.

9. Construction and Definitions. This Lender Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein and not otherwise defined herein have the meanings ascribed to them in the PACE Program, and/or the PACE Act.

10. Binding Effect. This Lender Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

11. Notices. Unless otherwise specifically provided herein, all notices and other communications required or permitted hereunder shall be in writing and delivered by first-class mail or by electronic mail, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law. This Lender Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

13. Entire Agreement. This Lender Contract constitutes the entire agreement between Local Government and Lender with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

14. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

15. Counterparts. This Lender Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together will constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the “**usury limit**”). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the usury limit, interest payable to Local Government will be reduced and any interest in excess of the usury limit will be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this Lender Contract.

17. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the date of this Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a “qualified project” as defined in the PACE Program and Section 399.002 of the PACE Act. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

18. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender will withhold \_\_\_\_\_% of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an Independent Third Party Reviewer (“ITPR”), or Property Owner will pay liquidated damages to Lender of \$\_\_\_\_\_ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If this Lender Contract includes any additional requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit C attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.



**LOCAL GOVERNMENT:**

\_\_\_\_\_  
By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY  
AUTHORIZED REPRESENTATIVE  
Pursuant to Tex. Local Gov't Code §399.006(b)

By: \_\_\_\_\_

Name: CHARLENE HEYDINGER  
Title: PRESIDENT, TEXAS PACE AUTHORITY  
Address: PO BOX 200368  
AUSTIN, TX 78720-0368

Email Address: charlene@texaspaceauthority.org

**ACKNOWLEDGEMENT**

STATE OF TEXAS           §

COUNTY OF \_\_\_\_\_ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on \_\_\_\_\_, 20\_\_ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation as Authorized Representative for the Local Government.

\_\_\_\_\_  
\_\_\_\_\_  
(print name)

NOTARY PUBLIC, STATE OF TEXAS

**LENDER CONTRACT EXHIBIT A**

**OWNER CONTRACT**





**LENDER CONTRACT EXHIBIT C**

**CONSTRUCTION TERMS**

**Retainage or Liquidated Damages:**

**Lender will retain \_\_\_\_\_% of the Financing until a report of completion by a qualified Independent Third Party Reviewer (“ITPR”) is provided to Authorized Representative.**

**OR**

**Property Owner will pay liquidated damages to Lender of \$\_\_\_\_\_ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender will then provide the report of completion to Authorized Representative.**

<b>Date</b>	<b>Draw down Amount</b>	<b>Purpose</b>

**EXHIBIT 4**

**FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN**  
**PURSUANT TO PROPERTY ASSESSED CLEAN ENERGY ACT**

**FORM NOTICE OF CONTRACTUAL ASSESSMENT LIEN  
PURSUANT TO  
PROPERTY ASSESSED CLEAN ENERGY ACT**

STATE OF TEXAS           §  
  §  
COUNTY OF LUBBOCK   §

**RECITALS**

A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand. Unless otherwise expressly provided herein, all terms used herein have the same meanings ascribed to them in the PACE Act.

B. City of Lubbock, Texas (“**Local Government**”) has established a program under the PACE Act (“**PACE Program**”) pursuant to a resolution dated \_\_\_\_\_, adopted by the City Council, and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, as the representative of Local Government (“**Authorized Representative**”) authorized to enter into and enforce the written contracts with the owners of such property and the providers of such financing described herein, and has designated the entire territory within the boundaries of the City of Lubbock, Texas as a region (the “**Region**”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owners’ property pursuant to the PACE Program.

C. \_\_\_\_\_ (“**Property Owner**”) is/are the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at \_\_\_\_\_, Lubbock, Texas \_\_\_\_\_ - \_\_\_\_\_ and more fully described in Exhibit A attached hereto and made a part hereof (the “**Property**”).

D. Property Owner has applied to Local Government to participate in the PACE Program by installing or modifying on the Property certain permanent improvements described in Exhibit B attached hereto and made a part hereof, which are intended to decrease water or energy consumption or demand and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act (the “**Qualified Improvements**”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”). Property Owner has entered into a written contract (the “**Owner Contract**”) with Local Government pursuant to the PACE Act and the PACE Program and has requested Local

Government to impose an assessment on the Property to repay the financing of such Qualified Improvements.

E. The financing of such Qualified Improvements will be provided to Property Owner by \_\_\_\_\_ (“**Lender**”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act (the “**Lender Contract**”). Lender will be responsible for all servicing duties other than those specifically undertaken by Local Government in the Lender Contract.

THEREFORE, Local Government hereby gives notice to the public pursuant to Section 399.013 of the PACE Act that it has imposed an assessment on the Property in the principal amount of \$ \_\_\_\_\_ (the “**Assessment**”). The Assessment includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. In the event that the actual total of costs and fees for which an assessment may be imposed is different from the amount stated or any other term requires correction, Local Government, Property Owner, and Lender will execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien.

The Assessment and contractual interest thereon due to the Lender (the “**Contractual Interest**”) are due and payable in installments (“**Installments**”) in accordance with the terms and payment schedule included in the financing documents executed between Property Owner and Lender that are described in or copies of which are attached hereto as Exhibit C (the “**Financing Documents**”).

Pursuant to Section 399.014 of the PACE Act,

1. The Assessment and any interest or penalties thereon,
  - (i) are a first and prior lien against the Property from the date on which this Notice of Contractual Assessment Lien is recorded in the real property records of Lubbock County, Texas, until the Assessment, interest, or penalty is paid; and
  - (ii) such lien has the same priority status as a lien for any other ad valorem tax.
2. The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of the Assessment that has not yet become due will not be eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for a delinquent Installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner’s obligations under the Financing Documents will be transferred to the succeeding owner without recourse to Local Government, or Authorized Representative.

As provided in Section 399.014(a-1) of the PACE Act, after this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located, the lien created by the Assessment may not be contested on the basis that the improvement is not a “qualified improvement” or the project is not a “qualified project”, as such terms are defined in Section 399.002 of the PACE Act.

EXECUTED on \_\_\_\_\_, \_\_\_\_\_.

**LOCAL GOVERNMENT:**

CITY OF LUBBOCK, TEXAS

By: Texas Property Assessed Clean Energy Authority  
**AUTHORIZED REPRESENTATIVE**  
Pursuant to Tex. Local Gov't Code §399.006(b)

By: \_\_\_\_\_

Name: CHARLENE HEYDINGER  
Title: PRESIDENT, TEXAS PACE AUTHORITY  
Address: PO BOX 200368  
AUSTIN, TX 78720-0368

**E-mail: charlene@texaspaceauthority.org**

**ACKNOWLEDGEMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This Notice of Contractual Assessment Lien pursuant to Property Assessed Clean Energy Act was acknowledged before me on \_\_\_\_\_, 20\_\_ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation as Authorized Representative for the Local Government.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (print name)

**NOTARY PUBLIC, STATE OF TEXAS**

**NOTICE OF LIEN EXHIBIT A**  
**PROPERTY DESCRIPTION**



**NOTICE OF LIEN EXHIBIT B**  
**QUALIFIED IMPROVEMENTS**



INDEXING INSTRUCTION:

Grantor: \_\_\_\_\_, Property Owner  
Grantees: \_\_\_\_\_, Local Government  
              \_\_\_\_\_, Lender

After recording, return to- Texas PACE Authority  
  Charlene Heydinger  
  PO Box 200368  
  Austin, TX 78720-0368



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## Information

### Agenda Item

**Resolution - Business Development:** Consider a resolution to establish the City of Lubbock Property Assessed Clean Energy Program (Lubbock City PACE).

### Item Summary

The Texas Property Assessed Clean Energy Program (TX-PACE) is an economic development tool that encourages and incentivizes private sector investment in energy efficiency and water conservation. The PACE program will be offered to property owners on a strictly voluntary basis and will not require the use of any public funds or resources.

Authorized under the PACE Act enacted in 2013, the PACE program is an innovative financing program that enables private sector owners of privately owned commercial, industrial, and multi-family residential properties with five or more dwelling units to obtain low-cost, long-term loans to pay for water conservation, energy-efficiency improvements, and renewable energy retrofits.

Loans made under the PACE program will be secured by assessments voluntarily imposed by the owner on the property. The utility cost savings derived from the improvements financed with the PACE loans are expected to equal or exceed the amount of the assessment. PACE assessments are tied to the property and follow title from one owner to the next.

Under the PACE Act, the establishment and operation of the program are considered to be governmental functions. Following the approval of a Resolution of Intent to establish the PACE program, and conducting a public hearing, the City Council may consider a Resolution to Establish the Lubbock City PACE Program. If the program is established, the City will then delegate administration of the PACE program to the Texas PACE Authority, who will administer the program at no cost to the City.

### Fiscal Impact

None

### Staff/Board Recommending

Blu Kostelich, Chief Financial Officer

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## Attachments

Resolution - Establish PACE



1. Recitals. The recitals to this Resolution are true and correct and are incorporated into this resolution for all purposes.

2. Establishment of Program. The City hereby adopts this Resolution Establishing the City of Lubbock Property Assessed Clean Energy Program ("Lubbock City PACE"), herein called "the Program," and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose and is convenient and advantageous to the City and its citizens.

3. Contractual Assessments. The City will, at the property owner's request, impose contractual assessments on the property to repay PACE financing for qualified energy and water conserving projects available to owners of privately owned commercial, industrial, and large multifamily property.

4. Qualified Projects. The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

5. Region. The boundaries of the entire geographic area within the City's jurisdiction are included in the boundaries of the region where PACE financing and assessments can occur.

6. Third- Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the Authorized Representative to service the debt through assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to financing documents executed between the lenders and the owners. The City will maintain and continue the assessments for the benefit of such lenders and will enforce the assessment lien for the benefit of a lender in the event of a default by an owner. The City will not, at this time, provide financing of any sort for the Lubbock City PACE program.

7. Authorized Representative. The City Council will designate Texas PACE Authority, a non-profit organization, to act as the Authorized Representative with authority to enter into written contracts with the record owners of real property in the City to impose assessments pursuant to the PACE Act to repay the financing of qualified projects on the owners' property, to enter into written contracts with the parties that provide third-party financing for such projects to service the debts through assessments, and to file written notice of each contractual assessment in the real property records of Lubbock County, all on behalf of the City. The Authorized Representative may make technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the statute. The City Manager or his designee will be the liaison with the Authorized Representative.

8. Enforcement. The City will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.

9. Report. The final report on the City PACE program, prepared in accordance with Section 399.009 of the Texas Local Government Code is attached and incorporated into this resolution. The City will post the resolution and report on the City's website.

10. Amendment of Program. The City Council may amend the Lubbock City PACE Program by resolution. However, another public hearing is required before the Program may be amended to provide for City financing of qualified improvements through assessments.

**Passed by the City Council this 26th day of October, 2021.**

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DANIEL M. POPE, MAYOR

**ATTEST:**

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Rebecca Garza, City Secretary

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
D. Blu Kostelich, Chief Financial Officer

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney





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## Information

### Agenda Item

**Resolution - Business Development:** Consider a resolution authorizing the Mayor to execute Contract 16202, with Texas Property Assessed Clean Energy Authority (Texas PACE Authority), for administrative services for the City of Lubbock Property Assessed Clean Energy Program (Lubbock City PACE).

### Item Summary

On October 12, 2021, the City Council approved a Resolution of Intent to create the Lubbock City PACE program. Following a public hearing, and the approval of a Resolution to Establish the program, the City Council will consider a contract with the Texas PACE Authority for administration of the Lubbock City PACE Program.

The City of Lubbock will have no financial obligation as a result of this agreement, and the contract will remain in place for the life of the program, unless the contact is terminated. The Texas PACE Authority will provide the following services as part of this agreement:

- Community Outreach
- Application and Approval Process
- Management and Reporting

### Fiscal Impact

None

### Staff/Board Recommending

Jesica McEachern, Assistant City Manager  
Blu Kostelich, Chief Financial Officer

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## Attachments

Resolution  
Contract

**RESOLUTION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LUBBOCK:

THAT the Mayor of the City of Lubbock is hereby authorized and directed to execute for and on behalf of the City of Lubbock, Professional Services Agreement No. 16202 for administration services of the Property Assessed Clean Energy Act (PACE) program, by and between the City of Lubbock and the Property Assessed Clean Energy Authority, a Texas non-profit business association, and related documents. Said Contract is attached hereto and incorporated in this resolution as if fully set forth herein and shall be included in the minutes of the City Council.

Passed by the City Council on \_\_\_\_\_.

\_\_\_\_\_  
DANIEL M. POPE, MAYOR

ATTEST:

\_\_\_\_\_  
Rebecca Garza, City Secretary

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Jessica McEachern, Assistant City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**PROFESSIONAL SERVICES AGREEMENT  
BY AND BETWEEN THE CITY OF LUBBOCK TEXAS AND  
TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY**

**THIS AGREEMENT** is made and entered by and between the **City of Lubbock, Texas**, hereinafter referred to as "**Local Government**", and **TEXAS PROPERTY ASSESSED CLEAN ENERGY (PACE) AUTHORITY (dba Texas PACE Authority)**, a Texas non-profit business association, hereinafter referred to as "**Services Provider**" to be effective from and after the date as provided herein.

**WITNESSETH:**

**WHEREAS**, the City Council of **Local Government** desires to engage the services of a qualified consultant to administer a Texas Property Assessed Clean Energy program for **Local Government** pursuant to the Property Assessed Clean Energy Act ("**PACE Act**"), Texas Local Government Code Chapter 399, and serve as Authorized Representative pursuant to Tex. Local Gov't Code §399.006(b), hereinafter referred to as the "**Program**"; and

**WHEREAS**, **Services Provider** desires to render such services for **Local Government** upon the terms and conditions provided herein –

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

**I. ENGAGEMENT**

**Local Government** hereby agrees to retain **Services Provider** to serve as administrator of **Local Government's Program** and **Services Provider** agrees to perform such services in accordance with the terms and conditions of this Agreement.

**II. SCOPE OF SERVICES**

The parties agree that **Services Provider** shall perform such services as are further described in **Exhibit "A"** hereto (collectively "**Scope of Services**"). The parties understand and agree that deviations or modifications in the **Scope of Services** may be authorized from time to time by **Local Government** but said authorization must be made in writing.

**III. TERM OF AGREEMENT**

The initial term of this Agreement shall commence upon the complete execution of the Agreement by **Local Government** and **Services Provider**. Notwithstanding the termination of this Agreement, **Services Provider** shall be permitted to continue

administration of any third-party agreements under the **Program** commenced prior to termination of this Agreement, and to recover any compensation due **Services Provider** for services performed in accordance with Section IV of this Agreement.

#### **IV. COMPENSATION AND EXPENSES**

**Services Provider** shall be paid for performance of the **Scope of Services** set forth in Exhibit "A", in accordance with the compensation schedule set forth in Exhibit "B" hereto. **Services Provider** is entitled to payment in accordance with Exhibit "B"; however, **Local Government** shall have no obligation to pay **Services Provider** for performance of the **Scope of Services**. All payments to **Services Provider** shall be made by participants in the **Program** in accordance with the PACE Act

#### **V. INSURANCE**

**Services Provider** agrees to meet all insurance requirements, and to require all consultants who perform work for **Services Provider** to meet all insurance requirements, as set forth in Exhibit "C" to this Agreement.

#### **VI. INDEMNIFICATION**

**SERVICES PROVIDER AGREES TO INDEMNIFY AND HOLD LOCAL GOVERNMENT AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT FROM LOCAL GOVERNMENT ARISING OUT OF OR OCCASIONED BY SERVICES PROVIDER 'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, VIOLATIONS OF LAW BY SERVICES PROVIDER, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE SERVICES PROVIDER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE SERVICES PROVIDER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY TO THE EXTENT RESULTING FROM THE NEGLIGENCE OF LOCAL GOVERNMENT, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. LOCAL GOVERNMENT DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

#### **VII. INDEPENDENT CONTRACTOR**

**Services Provider** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **Local Government**; that it shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between **Local Government** and **Services Provider**, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between **Local Government** and **Services Provider**.

### **VIII. ASSIGNMENT AND SUBLETTING**

**Services Provider** agrees that this Agreement shall not be assigned without the prior written consent of **Local Government**, except to an Affiliate of **Services Provider**. Affiliate shall mean (1) any corporation or other entity controlling, controlled by, or under common control with (directly or indirectly) **Services Provider**, including, without limitation, any parent corporation controlling **Services Provider** or any subsidiary that **Services Provider** controls; (2) the surviving corporation resulting from the merger or consolidation of **Services Provider**; or (3) any person or entity which acquires all of the assets of **Services Provider** as a going concern. **Services Provider** shall be permitted to enter into subcontracts for performance of portions of the **Scope of Services**; however, **Services Provider** shall not subcontract the entirety of the **Scope of Services** to a single subcontractor without **Local Government's** consent. **Services Provider** further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the **Services Provider** from its full obligations to **Local Government** as provided by this Agreement.

### **IX. AUDITS AND RECORDS**

**Services Provider** agrees that **Local Government** or its duly authorized representatives shall, until the expiration of three (3) years after termination under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of **Services Provider** which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. **Services Provider** agrees that **Local Government** shall have access during normal working hours to all necessary **Services Provider's** facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. **Local Government** shall give **Services Provider** reasonable advance notice of intended audits.

### **X. CONTRACT TERMINATION**

The parties agree that **Local Government** and **Services Provider** shall have the right to terminate this Agreement upon thirty (30) days written notice to **Services Provider**. In the event of such termination, **Services Provider** shall deliver to **Local Government** all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by **Services Provider** in connection with this Agreement. In the event of termination by **Local Government**, **Services Provider** shall be compensated in accordance with Section III of this Agreement with respect to any third party agreements under administration by **Services Provider** at the time of termination.

#### **XI. COMPLETE AGREEMENT**

This Agreement, including the Exhibits lettered "A" through "C", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

#### **XII. AMENDMENTS (Added)**

Amendments to this agreement may be made at any time upon written agreement by **Local Government** and **Services Provider**.

#### **XIII. MAILING OF NOTICES**

Unless instructed otherwise in writing, **Services Provider** agrees that all notices or communications to **Local Government** permitted or required under this Agreement shall be addressed to **Local Government** at the following address:

City of Lubbock, Texas  
Attn: Blu Kostelich  
1314 Avenue K  
PO Box 2000  
Lubbock, TX 79457

**Local Government** agrees that all notices or communications to **Services Provider** permitted or required under this Agreement shall be addressed to **Services Provider** at the following address:

Texas Property Assessed Clean Energy Authority  
Attn: Charlene Heydinger  
PO Box 200368  
Austin TX 78720-0368

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

#### **XIV. AUTHORITY TO SIGN**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

#### **XV. MISCELLANEOUS**

A. This is a contract for the purchase of personal or professional services and is therefore exempt from any competitive bidding requirements of **Local Government**.

B. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

C. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

D. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Lubbock County, Texas. Exclusive venue shall lie in Lubbock County, Texas.

E. Successors and Assigns:

**Local Government** and **Services Provider** and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

F. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.



G. Effective Date:

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

**SIGNED** on the date indicated below.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this \_\_\_\_ day  
of \_\_\_\_\_ 2021.

**For the City of Lubbock:**

\_\_\_\_\_  
DANIEL M. POPE, Mayor

Attest:

\_\_\_\_\_  
Rebecca Garza, City Secretary

Approved as to Content:

  
\_\_\_\_\_  
Blu Kostelich, Chief Financial Officer

Approved as to Form:

  
\_\_\_\_\_  
Kelli Leisure, Assistant City Attorney

**TEXAS PROPERTY ASSESSED  
CLEAN ENERGY AUTHORITY**

DATE: October 13, 2021

BY: Charlene Heydinger  
Name: Charlene Heydinger  
Title: president

## Exhibit "A" **Scope of Services**

The **Services Provider** will perform the following services in the administration of the **Program**:

### Community Outreach

Maintain a website and database;

Respond to inquiries from property owners, vendors, contractors, consultants, and the general public;

Publish the Technical Standards Manual on the **Program** website;

List interested, qualified lenders on the **Program** website or link to another neutral non-profit directory of lenders to enable property owners to identify potential sources of private third-party financing;

Arrange for training of contractors and independent third-party reviewers on how to apply for PACE financing and comply with the PACE-in-a-Box Technical Standards Manual; and

Establish quality assurance measures.

Maintain uniform documents. Periodic updates to the standard form documents will be necessary as the program evolves, incorporating best practices and standardizing the PACE documents across various PACE programs. The Authorized Representative will be tasked with maintaining the form documents and making technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the Texas PACE Act.

### Application and Approval Process

Publish a Project Application Form based on PACE-in-a-Box model application form on the **Program** website;

Review submitted Application forms for administrative completeness and notify the applicants of any missing information;

Maintain the confidentiality of confidential owner information;

Maintain the PACE application process, including:

- Draft and distribute the PACE application, as well as accept and review the property owner's completed application;
- If the project meets eligibility requirements, provide written indication that the project meets PACE standards at this stage (subject to verification of all requirements at closing).

- Inform the property owner of his or her responsibilities in the process, including hiring a third-party reviewer, obtaining a lender, determining final project scope and completing and submitting a closing verification package.
- Conduct a Pre-Closing Verification, which will confirm the statutorily required eligibility requirements of the owner including that the property owner:
  - Is the legal property owner of the benefited property;
  - Is current on mortgage and tax payments;
  - Is not insolvent or the subject of bankruptcy proceedings;
  - Holds a title to the property to be subject to a PACE assessment that is not in dispute; and
  - Has consent of any pre-existing mortgagee to the proposed PACE assessment through a written contract.

Require independent third-party verification of expected energy or water savings resulting from a project (provided by engineer or consultant retained by applicant), according to the PACE-in-a-Box Technical Standards Manual. This review will include a:

- Site visit,
- Report stating the savings (energy, demand, and/or water) and expected project life are reasonable and in compliance with PACE in a Box program guidelines; and
- Letter from the ITPR certifying that he/she has no financial interest in the project and is an independent reviewer.

Require independent third-party verification, according to the PACE-in-a-Box Technical Services Manual, that the period of an assessment does not exceed the expected life of the improvements or thoroughly review waiver application and justification (provided by engineer or consultant retained by applicant);

Require lender to confirm in writing its determination, based on underwriting factors established by the lender, that the owner has demonstrated the financial ability to repay the financial obligations to be repaid through assessment.

Require the owner to notify the holder of any mortgage lien on the property of the owner's intention to participate in the **Program** and obtain the lienholder's written consent prior to the imposition of the PACE assessment;

Review and finalize the terms of every Owner Contract and Lender Contract prior to execution; The Contract must contain:

- Amount of the assessment;
- The legal description of the property;
- The name of the property owner; and
- A reference to the statutory assessment lien provided under the PACE Act.

Collect and retain owner application fees as compensation for administrative services;

Perform closing verification reviews and schedule assessment transaction closings when all requirements are met. Such closing verification must include:

- The report conducted by a qualified independent third-party reviewer of water or energy baseline conditions and the projected water or energy savings attributable to the project;
- Such financial information about the owner and the property as the lender chosen by the owner deems necessary to determine that the owner has demonstrated the financial ability to fulfill the financial obligations to be paid through assessments; and
- All other information required by the **Services Provider**.

Coordinate and take part in assessment transaction closings.

Execute contracts under the **Program** as authorized on behalf of **Local Government**.

Arrange for recordation of a Notice of Contractual Assessment Lien for each approved project in the Official Public Records of the county where the project is located; The Notice must contain:

- Amount of the assessment;
- The legal description of the property;
- The name of the property owner; and
- A reference to the statutory assessment lien provided under the PACE Act.

Require independent post-closing third-party verification (by engineer or consultant retained by Applicant) that each project was properly completed and is operating as intended; and

Collect and retain administration fees collected by lenders from owners that receive PACE financing.

### Management and Reporting

Manage communications with lenders regarding assessment servicing, payment, and default;

Upon notification by a lender of an owner's default in payment of an assessment and the lender's compliance with the requirements of the Lender Contract on collection after default, notify the **Local Government** to enforce the assessment lien in accordance with law and the agreements between the parties;

Receive and store owner reports on energy and water savings;

Maintain the form contracts and make technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the statute.

At the request of property owners, prepare annual notices of assessment to be issued by **Local Government** to the owners, stating the total amount of the payments due on each

assessment in the coming calendar year according to the owner contract and the financing documents;

Determine the amounts of the application and administration fees to be paid by owners;

Produce annual report on Texas PACE financing usage and the resulting energy and water savings enabled through PACE Assessments.



**Exhibit "B"**  
**Compensation and Fees**

**Service Provider** shall determine the amounts of the uniform application and administration fees to be paid by property Owners participating in the **Program**. Such fees will not exceed the fees below:

- An application fee of the greater of:
  - \$2,000.00; or
  - Amounting to
    - 1% of the total project cost of the first \$5 million
    - plus 0.5% of the marginal amount above \$5 million and \$20 million, and
    - 0.25% of the marginal amount above \$20 millionto be paid as follows:
    - \$500.00 per project at the time of application submittal;
    - the balance of the full remaining application fee paid at closing; and
- A recurring administration fee of 0.08% of the outstanding principal balance, which amount shall be collected by lender and paid to the **Services Provider** as provided in the Owner Contract and the financing documents. This fee can also be capitalized and paid at closing. If paid under a negotiated regular schedule to the lender by the property owner, the lender shall pay this fee to **Services Provider** at the time of each payment by the property owner in accordance with the financing documents.
  
- No amounts shall be due by **Local Government** to **Services Provider**.

**Exhibit "C"**  
Insurance Requirements

<b>COVERAGE</b>	<b>LIMIT OF LIABILITY</b>
Employer's Liability	\$500,000 per occurrence
General Liability	Bodily Injury and Property Damage, Combined Limits of \$500,000 each Occurrence, and \$1,000,000 aggregate